THE GENERAL STATUTES OF NORTH CAROLINA OF 1943

Containing the General Laws of North Carolina to and Including the Legislative Session of 1943

Prepared under Legislative Authority by the Department of Justice of the State of North Carolina

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Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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IN FOUR VOLUMES

VOLUME THREE

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1944

Scope of Publication

Constitutions:

The Constitution of North Carolina of 1868, with amendments to 1943.
The Constitution of the United States.

Statutes:

Full text of the General Statutes of North Carolina of 1943.

Annotations:

Sources of the annotations to the North Carolina Constitution and General Statutes appearing in this work were:

North Carolina Reports volumes 1-222.
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-134 (p. 416).
Federal Supplement volumes 1-49 (p. 224).
United States Reports volumes 1-317.
Supreme Court Reporter volumes 1-63 (p. 861).
North Carolina Law Review volumes 1-21.

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior official codes.)

C. C. P.....Code of Civil Procedure (1868)
C. S.....Consolidated Statutes of North Carolina (1919, 1924)
Code.....The Code of North Carolina (1883)
R. C.....Revised Code of North Carolina (1854)
R. S.....Revised Statutes of North Carolina (1837)
Rev.....Revisal of 1905

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Art. 1. Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-1. Constitutional provision.—The general assembly shall establish a department of agriculture, immigration, and statistics, under such regulations as may best promote the agricultural interests of the state, and shall enact laws for the adequate protection and encouragement of sheep husbandry. (Rev., s. 3930; Const., Art. III, s. 17; C. S. 4666.)

General Considerations. — This section is identical with (and consequently not in conflict with) the constitutional provision, Art. III, sec. 17, which is not self-executing, but mandatory upon the legislature, hence, its incorporation in this act. Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138.

Appointment of Members.—Members of the board of agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment. They are not exclusively, nor of necessity, within the power of executive appointment. Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138.

Actions against Board.—The board of agriculture is a department of the state government and an action cannot be maintained against it without the consent of the state. Chemical Co. v. Board of Agriculture, 111 N. C. 135, 15 S. E. 1032.

Cited in Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603.

§ 106-2. Department of agriculture, immigration, and statistics established; board of agriculture, membership, terms of office, etc.—The department of agriculture, immigration, and statistics is created and established and shall be under the control of the commissioner of agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The board of agriculture shall consist of the commissioner of agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members from the state at large, so distributed as to reasonably represent the different sections and agriculture of the state. In the appointment of the members of the board the governor shall also take into consideration the different agricultural interests of the state, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the state, one who shall be a practical poultry man to represent the poultry interest of the state, one who shall be a practical peanut grower to represent the peanut interest, one who shall be a man experienced in marketing to represent the marketing of products of the state. The members of such board shall be appointed by the governor by and with the consent of the senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present board of agriculture shall continue for the time for which they were ap-

pointed. In making appointments for the enlarged board of agriculture, the governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such board shall be filled by the governor for the unexpired term. The commissioner of agriculture and the members of the board of agriculture shall be practical farmers engaged in their profession. (Rev., s. 3931; Code, s. 2184; 1901, c. 479, ss. 2, 4; 1907, c. 497, s. 1; 1931, c. 360, s. 1; 1937, c. 174; C. S. 4667.)

Editor's Note.—The Act of 1931 repealed the original section and substituted a new one in lieu thereof.

The 1937 amendment struck out the former section and inserted the above in lieu thereof.

§ 106-3. Compensation of members. — Each member of the board of Agriculture shall receive compensation for each day he attends a session of the board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the board. (Rev., s. 3932; 1901, c. 479, s. 3; 1919, c. 247, s. 10½; C. S. 4668.)

Cross Reference.—See current appropriations act for per diem rate.

§ 106-4. Meetings of board.—The board of agriculture, herein established, hereafter called "the board," shall meet for the transaction of business in the city of Raleigh at least twice a year, and oftener, if called by the commissioner of agriculture. (Rev., s. 3935; 1901, c. 479, s. 3; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2; C. S. 4669.)

Editor's Note.—This section formerly set the specific date for one of the meetings on the second Wednesday in December. The Act of 1931 made no mention of any specific date.

§ 106-5. Executive committee and finance committee.—The board shall elect from its numbers an executive committee of four, of which committee the commissioner shall also be ex officio a member and chairman. The board shall elect a finance committee of five from its numbers. The board shall prescribe the powers and duties of these committees, and the commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S. 4670.)

§ 106-6. Moneys received to be paid into state treasury.—All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feeding stuff, and from the sale of any property seized and condemned under the provisions of this chapter, and all other moneys which may come into the hands of the commissioner of agriculture or other officer, member or employee of the department of agriculture by virtue of this chapter, shall be paid into the state treasury by the commissioner of agriculture, and shall be kept on a separate account by the treasurer as a fund for the exclusive use and benefit of the department of agriculture. (Rev., s. 3937; Code, s. 2208; 1876-7, c. 174, s. 22; C. S. 4671.)

§ 106-7. Power of board.—The board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the department. (Rev., s. 3933; 1901, c. 479, s. 3; C. S. 4672.)

§ 106-8. May require bonds of officers.—Bonds may be required for such amounts as the board may think best for all officers of the department who handle funds. (Rev., s. 3934; 1901, c. 479, s. 14; C. S. 4673.)

§ 106-9. Annual report.—The board shall annually make a report to the governor, to be transmitted by him to the general assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S. 4674.)

Part 2. Commissioner of Agriculture.

§ 106-10. Election; term; vacancy.—The commissioner of agriculture shall be elected at the general election for other state officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such commissioner shall be filled by the governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (Rev., s. 3938; 1901, c. 479, s. 4; C. S. 4675.)

§ 106-11. Salary of commissioner of agriculture.—The salary of the commissioner of agriculture shall be six thousand and six hundred dollars ($6,600.00) a year, payable monthly. (Rev., s. 2749; 1901, c. 479, s. 4; 1905, c. 529; 1907, c. 887, s. 1; 1913, c. 58; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; C. S. 3852.)

Editor's Note.—The amendments increased the salary.

The 1943 amendment increased the salary from $6,000 to $6,600.

§ 106-12. To appoint secretary and other officials.—The commissioner of agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the department of agriculture. He shall, subject to the approval of a majority of the board, appoint heads of divisions and their assistants. (Rev., s. 3939; 1901, c. 479, s. 4; 1913, c. 202; C. S. 4676.)

§ 106-13. To investigate purchases, sources, and manufacture of fertilizer. — The commissioner of agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish-scrap, nitrate of soda, cotton-seed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and

to publish the same in The Bulletin; but he shall not expose to the public the name of any manufacturer in this state who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this state: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price-list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (Rev., s. 3940; 1901, c. 479, s. 4; C. S. 4677.)

§ 106-14. To establish regulations for transportation of livestock.—The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ 106-15. Agricultural experiment station and branch stations.—The work of investigation in agriculture required in this chapter may be designated by the board of agriculture as an agricultural experiment station, and the four test farms now in operation be and the same are hereby designated and established as branch experiment stations, to be conducted as at present under the auspices of the board of agriculture and out of its funds. (1907, c. 876, s. 5; C. S. 4682.)

Cross Reference.—For another section relating to control of experiment station, see § 116-32.

§ 106-16. Sale and conveyance of test farms; use of proceeds.—The board of agriculture is hereby authorized and empowered to sell at the discretion of said board any land or lands which may be conveyed to the state or the department of agriculture for the purpose of conducting "test farms"; and a deed, signed by the commissioner of agriculture and attested by the secretary of the board of agriculture in the name of the state and the board of agriculture, shall be sufficient to convey title to the purchaser or purchasers. The proceeds of any sale may be used by the board of agriculture in the work of the department, except so much of said money as may be necessary to reimburse any one who has contributed to the purchase money. This amount shall be returned to the contributors. (1909, c. 97; 1917, c. 45; C. S. 4683.)

§ 106-17. Acquisition of test farm.—The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than one hundred acres in the sandhill section of North Carolina, and in northeastern North Carolina composed of the counties of Currituck, Camden, Pasquotank, Perquimans, Chowan and Gates, to be developed and used as a "test farm" for the purposes of work in investigation in agriculture.

Such "test farm" when acquired and established shall be operated, managed and controlled as other "test farms" in the State. (1927, c. 182, ss. 1, 2.)

§ 106-18. Peanut Test Farm.—The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a test farm in some suitable place in the peanut section of Eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said test farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut test farm as may be necessary for its proper conduct and in the same way as is now being done for the other test farms in the State. The test farm shall be established, operated and controlled by the Department of Agriculture as the other test farms for the study of other farm crops. (1937, c. 218.)

§ 106-19. State chemist; duties of office.—The department of agriculture shall employ an analyst or state chemist, skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the state chemist to analyze such fertilizers and products as may be required by this department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the department, analyze for citizens of the state such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the department of benefit to the development of the material interest of the state, when such samples are supplied under rules by the department, and he shall carry on such other investigations as the department may direct. He shall make regular reports to the department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (Rev., s. 3941; 1901, c. 479, s. 11; C. S. 4684.)

§ 106-20. Inoculating culture for leguminous crops.—The board of agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the state applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the department of agriculture. (Ex. Sess. 1913, c. 43; C. S. 4685.)

§ 106-21. Timber conditions to be investigated and reported.—The department of agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (Rev., s. 3942; 1901, c. 479, s. 13; C. S. 4686.)

§ 106-22. Joint duties of commissioner and board.—The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall:

1. General.—Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration

and capital as he may think proper; but he is especially charged—

2. Commercial Fertilizers.—With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to solicitors and to the general assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this state, whereby the interests of the farmers may be injuriously affected, and shall publish such information in The Bulletin of the department;

3. Cattle and Cattle Diseases.—With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this state, or from one section of it to another, and may coöperate with the United States department of agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

4. Honey and Bee Industry.—With investigations adapted to promote the improvement of the honey and bee industry in this state, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the state to another, and may cooperate with the United States department of agriculture in establishing and maintaining quarantine lines or districts. The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the commissioner of agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations.

5. Insect Pests.—With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

6. New Agricultural Industries.—With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the state, especially the culture of truck and market gardens, the grape and other fruits;

7. Drainage and Irrigation; Fertilizer Sources.—With the investigation of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulæ for composting adapted to the different crops, soils, and materials;

8. Farm Fences.—With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

9. Sales of Fertilizers, Seeds, and Food Products.—With the enforcement and supervision of the laws which are or may be enacted in this state for the sale of commercial fertilizers, seeds and food products, and with authority to make regulations concerning the same;

10. Inducement of Capital and Immigration.—With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this state, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring home-seekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

11. Diversified Farming.—With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

12. Farmers' Institutes.—With the holding of farmers' institutes in the several counties of the state, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the state. He may secure such assistants as may be necessary or beneficial in holding such institutes.

13. Publication of Bulletin.—The commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The department may determine the number of bulletins which shall be issued each year.

14. Reports to Legislature.—He shall transmit

to the general assembly at each session a report of the operations of the department with suggestions of such legislation as may be deemed needful.

15. State Museum.—He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the state. (Rev., ss. 3294, 3724, 3944; 1901, c. 479, s. 4; 1917, c. 16; 1939, c. 173; C. S. 4688.)

Editor's Note.—The 1939 amendment inserted subsection 4.

Constitutionality.—Legislation of this character has been upheld by well considered decisions in this and other jurisdictions. Morgan v. Stewart, 144 N. C. 424, 428, 57 S. E. 149.

Same—Not a Delegation of Legislative Power.—Congress cannot delegate legislative power (Field v. Clark, 143 U. S. 649, 692, 12 S. Ct. 495, 36 L. Ed. 294), but the authority to make administrative rules is not a delegation of legislative power and such rules do not become legislation, because violations thereof are punished as "public offenses." United States v. Grimaud, 220 U. S. 506, 31 S. Ct. 480, 55 L. Ed. 563; State v. Sou. R. Co., 141 N. C. 486, 54 S. E. 294.

Cattle and Cattle Diseases.—The State Board of Agriculture has authority to make and enforce regulations for the quarantine of cattle and to prevent their transportation in view of preventing the spreading of contagious diseases. State v. Garner, 158 N. C. 630, 74 S. E. 458. And an owner permitting cattle to run at large in a no-fence county who wilfully allows cattle to stray across the line is guilty of a violation of the act. Id.

The third clause of this section confers power upon the commissioner to make regulations prohibiting the transportation of cattle. State v. Southern R. Co., 141 N. C. 846, 54 S. E. 294.

The provision to get rid of the ticks on cattle and prevent infection is a reasonable and valid regulation. State v. Hodges, 180 N. C. 751, 105 S. E. 417.

Same—Judicial Notice of Quarantined District.—Where the quarantine regulations of the United States Department of Agriculture, relating to the transportation of cattle, which were adopted by the State Board of Agriculture, provided that no cattle originating in the quarantined district as therein described should be moved into "that part of Burke south of the Catawba River," this Court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line. State v. Sou. R. Co., 141 N. C. 846, 54 S. E. 294.

Part 4. Coöperation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams act for experiment station.—Legislative assent be and the same is hereby given to the purpose of an act of congress approved March sixteenth, one thousand nine hundred and six, entitled "An act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams act, and the money appropriated by this act be and the same is hereby accepted on the part of the state for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S. 4689.)

Cross References.—As to control of the experiment station, see § 116-32. See also, § 106-15.

Part 5. Coöperation Between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; coöperation.—The department of agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said department is authorized to coöperate with the United States department of agriculture and the several boards of county commissioners of the state, to accomplish the purpose of §§ 106-24 to 106-26. (1921, c. 201, s. 1; 1941, c. 343; C. S. 4689(a).)

Editor's Note.—The 1941 amendment rewrote the section.

Cited in Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603.

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; duties of tax supervisors and list takers; information confidential.—The said department shall annually provide and submit report books or forms to the official in charge of tax listing in each county of the state, as may be necessary for procuring and tabulating all statistical survey information required by §§ 106-24 to 106-26. The tax supervisor or other person charged with tax supervision of each county in the state shall prepare each township book and supply to each list taker of each county the report books or forms provided herein, and shall instruct such list taker as to his duties in carrying out the provisions of §§ 106-24 to 106-26. Such report books or forms shall be furnished the list taker before he enters upon his duties as list taker. It shall be the duty of each list taker and his assistants in each county of the state to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, shall return and deliver the said books or forms to the tax supervisor or other person performing such duties, within ten days after the time prescribed by law for securing the tax lists of his county. The tax listing supervisor or other person charged with tax supervision in such county shall inspect said books or forms for the purpose of determining whether or not at least ninety per cent of the tracts of land of such county are reported on in such report books or forms before accepting or paying the person performing these duties for his services. Upon being satisfied that the report books or forms are properly filled out in accordance with §§ 106-24 to 106-26, the tax supervisor or other person charged with tax listing supervision shall, within ten days after acceptance thereof, transmit and deliver such report books or forms to the department of agriculture. The information required in §§ 106-24 to 106-26 shall be held confidential by the tax supervisor or other person charged with this duty of tax supervision, by the list taker or his assistants obtaining the same, and by the department of agriculture. No information shall be required hereunder on farm tracts consisting of less than three acres. (1921, c. 201, s. 2; 1941, c. 343; C. S. 4689(b).)

Editor's Note.—The 1941 amendment rewrote the section.

§ 106-26. Compensation of list takers; examination of report books, etc., by department of agriculture.—As compensation for services performed under the provisions of §§ 106-24 to 106-26, the list taker or his assistants shall be paid an amount to be determined by the board of county commissioners of the county in which such services are performed. Upon receipt by the department of agriculture of the report books or forms, herein provided for, they shall be examined in order to determine whether or not they have been properly filled out in accordance with the provisions of §§ 106-24 to 106-26. Upon being satisfied that the information desired is in proper form, the tax su-

pervisor or other person charged with tax supervision delivering the same shall be receipted therefor. If report books or forms are not complete in accordance with the provisions of §§ 106-24 to 106-26, they shall be duly returned to such tax supervisor or person charged with his duties, in order that the same may be properly completed. (1921, c. 201, s. 3; 1941, c. 343; C. S. 4689(c).)

Editor's Note.—The 1941 amendment rewrote the section.

Art. 2. North Carolina Fertilizer Law of 1933.

§ 106-27. Title.—This article shall be known by the short title of "The North Carolina fertilizer law of one thousand nine hundred and thirty-three," as amended by the legislature of one thousand nine hundred and forty-one. (1933, c. 324, s. 1; 1941, c. 368.)

Editor's Note.—The 1941 amendment added the words "as amended, etc.," to this section and changed other sections under this article.

§ 106-28. Enforcing official.—This article shall be administered by the commissioner of agriculture of the state of North Carolina, hereinafter referred to as the "commissioner." (1933, c. 324, s. 2; 1941, c. 368.)

Editor's Note.—The 1941 amendment re-enacted this section without change.

§ 106-29. Definitions.—When used in this article:

(a) The word "person" includes individuals, partnerships, associations and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The term "manufacturer" means a person engaged in the business of preparing, mixing or manufacturing mixed fertilizers or fertilizer materials; and the term "manufacture" means preparation, mixing or manufacturing.

(d) The word "sell" or "sale" includes exchange.

(e) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, other recognized plant foods, or combinations of these ingredients in forms available to plants, which is or may be used with another such substance in the compounding of mixed fertilizers, or for direct application to the soil, excepting unmanipulated animal manures and vegetable products.

(f) The term "mixed fertilizer" means any combination or mixture of fertilizer materials designed and fitted for use in inducing crop yields or plant growth when applied to the soil.

(g) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trade mark, or other designation.

(h) The term "grade" means the minimum percentage of total nitrogen (N); phosphoric acid (P_2O_5) in available form (comprising the water and citrate soluble phosphoric acid) except as provided for in paragraph (e) of § 106-30; and available potash (K_2O). These are to be stated in this order, and when applied to mixed fertilizers, in whole numbers only.

(i) The term "official sample" means any sample of mixed fertilizer or fertilizer material registered under this article which is taken by an authorized inspector of the department of agriculture according to the methods prescribed under § 106-35, paragraphs (b), (c), (d), (e) and (f).

(j) The word "ton" means a ton of 2,000 pounds avoirdupois.

(k) The term "per cent" or "percentage" means the percentage by weight.

(l) The word "formula" as used in this article means a statement of all materials used in compounding the mixed fertilizer and the amount of each of such materials used in a ton, or a statement of the pounds or fractional parts of the nitrogen, available phosphoric acid and available potash that are derived from each fertilizer material used. When the formula of any mixed fertilizer is printed on a tag attached to the container this constitutes an open formula. An open formula shall express the quantity and grade of the crude stock materials used in making a fertilizer mixture. For example: 1000 lbs. superphosphate, 16% P_2O_5; 277 lbs. cotton seed meal, 5.76% N; 200 lbs. nitrate of soda, 16% N; 156 lbs. sulphate of ammonia, 20.5% N; 160 lbs. muriate of potash, 50% K_2O; and 207 lbs. limestone. (1933, c. 324, s. 3; 1937, c. 430, s. 1; 1941, c. 368.)

Editor's Note.—The 1941 amendment omitted subsections relating to the word "and" and the terms "filler" and "plant food," and made other changes.

§ 106-30. Registration.—(a) All manufacturers, dealers or agents who may desire to sell or offer for sale hereafter in this state any fertilizers or fertilizer materials shall register annually on or before the first day of December or before offering for sale with the commissioner of agriculture upon forms furnished by said commissioner the name of each brand and grade of fertilizer or fertilizer material which they may desire to sell or offer for sale in the state, either by themselves or their agents together with the name and address of the applicant, and the following information with respect to each brand, grade or analysis in the following order:

(1) Net weight of each package in pounds.

(2) Brand name and grade.

(3) Guaranteed analysis showing the minimum percentages of plant food and other information in the following order:

A. In mixed fertilizers: (Other than those branded for tobacco.)

Total nitrogen, per cent (whole numbers only): Provided, further that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

Water insoluble nitrogen, per cent of total, in multiples of five: Provided, this guarantee shall not be required in the case of nitrogen-potash top dressers.

Available phosphoric acid, per cent (whole numbers only);

Available potash, per cent (whole numbers only);

Whether the fertilizer is acid forming or non-acid forming;

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

B. In mixed fertilizers: (Branded for tobacco.)

Total nitrogen, per cent (whole numbers only):

Provided, further that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

(Optional) nitrogen in the form of nitrate, per cent of total in multiples of five;

Water insoluble nitrogen, per cent of total in multiples of five;

Available phosphoric acid, per cent (whole numbers only);

Available potash, per cent (whole numbers only); and the maximum percentage of chloride expressed as:

Chlorine, per cent.

Whether the fertilizer is acid forming or non-acid forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

C. In fertilizer materials: (if claimed).

Total nitrogen, per cent: Provided, further, that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

Available phosphoric acid, per cent;

Available potash, per cent;

Or other recognized plant foods, per cent.

(4) The name and address of the person guaranteeing the registration.

(5) The sources from which such nitrogen, phosphoric acid and potash are derived.

(6) Whether or not the brand will be sold with an open formula.

(b) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer.

(c) The person offering for sale or selling any brand of mixed fertilizer or fertilizer material shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(d) In the case of bone, tankage and other organic materials in which the phosphoric acid content is not shown by laboratory methods to be available but eventually becomes available in the soil, the phosphoric acid may be guaranteed as total phosphoric acid: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid.

(e) In no case, except in the case of unacidulated mineral phosphates and basic slag, shall the term total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(f) For the privilege of such registrations, the person engaged in the manufacture and sale of fertilizers and fertilizer materials shall pay to the commissioner of agriculture of the state of North Carolina at the time of offering the same for registration the sum of two dollars ($2.00) for each grade and brand name registered by each person shipping into or manufacturing fertilizer or fertilizer materials in this state and no grade and brand name shall be registered without the payment of said sum. The brand name registered by a person shall not be entitled to registration by another person and the person having first registered and used said brand name shall be entitled to it even should said brand name not be offered for current registration. The registration of all grades and brands of fertilizers or fertilizer materials shall expire on November thirtieth of the year for which they are registered. Brands that were registered during a previous year shall be required to be registered before they are again offered for sale in North Carolina: Provided that all persons heretofore registering fertilizer or fertilizer material with the commissioner of agriculture and having paid the registration fee required by chapter three hundred and twenty-four, Public Laws of one thousand nine hundred and thirty-three, shall be given credit on future registration fees required under this article for the unearned or unused portion of the fees so paid on a pro rata basis of the period covered by said fee.

(g) Every person proposing to manufacture or deal in mixed fertilizers and fertilizer materials shall, after filing the statement above provided for with the commissioner of agriculture, receive from the said commissioner a certificate stating that he has complied with the foregoing sections, which certificate shall be furnished by the commissioner without any charge therefor. The said certificate when furnished shall authorize the party receiving the same to manufacture for sale in this state, or to sell in this state, directly or through dealers or agents, the brands and grades named in said certificate. No person who has failed to pay the fee, to file the statement, and to receive the certificate of authority shall be authorized to manufacture or offer for sale in this state mixed fertilizers and fertilizer materials; and any person so manufacturing for sale in this state, or so dealing or selling without having paid the fee, filed the statement, and received the certificate, except dealers and agents selling, or offering for sale, fertilizers on which the fee has been paid by, and certificate issued to, the manufacturers as provided for in the preceding sections of this article, shall be guilty of a misdemeanor for each violation and shall be subject to a fine not exceeding five hundred dollars ($500.00). (1933, c. 324, s. 4; 1937, c. 430, s. 2; 1941, c. 368; 1943, c. 652, s. 1.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

The 1943 amendment inserted the proviso beginning in line twenty-eight.

§ 106-31. Marking.—(a) Each person who sells or offers for sale mixed fertilizer or fertilizer materials in this state shall associate with each shipment the information required by items (1) to (4), both inclusive, of paragraph (a) and by paragraph (d) of § 106-30. If shipped in bags, barrels or other containers commonly used, the brand name and either the grade or guaranteed analysis (total nitrogen, available phosphoric acid and available potash) shall be printed on the package. If more than one grade is sold under one brand name, the grade shall be printed on the package. Additional information required by this

section shall appear either on the package or on a tag, affixed at the end of the package and in the case of bags with ears, the tag, if used, shall be affixed between the ears.

(b) If shipped in bulk by rail, said information shall be printed on a suitable label which shall be fastened on the inside wall of the car near the door.

(c) If shipped in bulk by boat, truck, wagon, or other vehicle, said information shall be attached to the copy of the invoice delivered to the purchaser or other receiver.

(d) If shipped in packages weighing less than fifty pounds, said information shall be printed on the tag or container in which the material is delivered to the purchaser.

(e) If the fertilizer is registered for sale with an open formula it is required that a separate tag be attached to the container, which tag shall state only the formula, the brand name and the name and address of the person guaranteeing the registration.

(f) The statement on the open formula tag shall constitute a guarantee of the kinds, amounts, and analysis of fertilizer materials in the container to which the tag is attached.

(g) If the analysis of any brand of fertilizer sold or offered for sale with an open formula shall show that this statement is false, the commissioner may revoke the right to sell or offer for sale such brand with an open formula for a period of two years.

(h) Any manufacturer or other producer who shall have suffered three such revocations in any two year period shall not be permitted to register any brand with an open formula for two years following the last revocation.

(i) The tags, labels or certificates, when required by this section, shall be furnished by the manufacturer.

(j) Magnesium oxide (MgO), calcium oxide (CaO), and sulphur (S) may be claimed as ingredients in all mixed fertilizers, but when so claimed the minimum percentages of total magnesium oxide (MgO), total calcium oxide (CaO) and total sulphur (S) shall be guaranteed; excepting that the sulphur guarantees for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.

(k) Additional plant food, elements, compounds, or classes of compounds determinable by chemical control methods, may be guaranteed only by permission of the commissioner by and with the advice of the director of the North Carolina Experiment Station. When any such additional plant food, elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection, and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. The commissioner shall also fix penalties for failure to fulfill such guarantees. (1933, c. 324, s. 5; 1937, c. 430, s. 3; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

The cases annotated below were decided under the prior law.

Warranty of Contents.—Manufacturers and vendors of commercial fertilizers impliedly warrant that they contain the ingredients specified on the tags placed on the bags, according to the requirements of the statute. Swift & Company v. Aydlett, 192 N. C. 330, 135 S. E. 141.

Compliance with Statute Warranted.—When plaintiffs as manufacturers, dealers or agents sold to defendant commercial fertilizers, they must be held to have warranted that they had complied with the statute, and that the articles delivered, as commercial fertilizers were truthfully branded as required by the statute. Swift v. Etheridge, 190 N. C. 162, 167, 129 S. E. 453.

The rule of caveat emptor, as applied at common law in the sale of articles of personal property, is not applicable to the sale of commercial fertilizers in this State. Swift v. Etheridge, 190 N. C. 162, 164, 129 S. E. 453; Swift & Co. v. Aydlett, 192 N. C. 330, 135 S. E. 141.

The burden of proof is upon the manufacturer to show, in his action against the purchaser for the purchase price, that the goods were at least merchantable, and that the ingredients used in their manufacture were in accordance with the specifications upon the tags placed on the bags under the requirements of this section. Swift & Company v. Aydlett, 192 N. C. 330, 135 S. E. 141.

A waiver by the purchaser of any demand for damages on account of any deficiencies in the ingredients of fertilizers, except such as may be ascertained in the manner specified in the statute, is valid and enforceable under the present law. Armour Fertilizer Works v. Aiken, 175 N. C. 399, 95 S. E. 657.

Application.—If the contents of the bags or packages delivered to defendant by plaintiffs were not, in fact commercial fertilizers, of the analysis guaranteed on each bag or package, as required, there was no consideration for the note given for the purchase price of the articles bought by defendant, and plaintiffs are not entitled to recover on said note. Swift v. Etheridge, 190 N. C. 162, 167, 129 S. E. 453.

§ 106-32. Use of the term "high grade".—The words "high grade" shall not appear upon any tag, bag, or other container of any mixed fertilizer which contains, by the guaranteed analysis, a total of less than twenty per cent of available plant food (total nitrogen—available phosphoric acid—available potash). (1933, c. 324, s. 6; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted the word "tag" in this section and added the words in parentheses.

§ 106-33. Tonnage tax.—(a) Inspection Tax of Fertilizer; Tax Tags.—For the purpose of defraying expenses of the inspection and of otherwise determining the value of mixed fertilizers and fertilizer materials in this state, there shall be paid to the department of agriculture a charge of twenty-five cents per ton or one cent for each individual package containing fifty pounds net or less and more than five pounds on such mixed fertilizers and fertilizer materials, which charge shall be paid before a delivery is made to agents, dealers, or consumers in this state. On individual packages of five pounds or less, there shall be paid in lieu of the tonnage tax an annual registration fee of twenty-five dollars ($25.00) for each brand or grade offered for sale in packages of five pounds or less. Each bag, barrel, or other container of such mixed fertilizer or fertilizer material shall have attached thereto a tag to be furnished by the department of agriculture stating that all charges specified in this section have been paid, and the commissioner, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will insure the enforcement of this article. Whenever any manufacturer of mixed fertilizer or fertilizer materials shall have paid the charges required by this section, his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt the mixed fertilizer or fertilizer materials from an ad valorem tax.

(b) Issuance and Exchange of Tax Tags.—

The tax tags required under this section shall be issued each year by the commissioner and be sold to persons applying for the same at the tax rate provided in paragraph (a) of this section. Undetached tags left in the possession of persons registering mixed fertilizers or fertilizer materials at the end of any calendar year may be exchanged for tags of the succeeding year, on or before March first.

(c) Tax Tags on Shipments in Bulk.—If any manufacturer, dealer, agent or other seller of fertilizer shall desire to ship in bulk any mixed fertilizer or fertilizer materials, the said manufacturer or seller of fertilizer shall send with the bill of lading sufficient cancelled tax tags to pay the tax on the amount of goods shipped, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. (1933, c. 324, s. 7; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

The cases annotated below were decided under a prior law, old § 4702.

Action to Secure Tax Wrongfully Collected.—The Board of Agriculture is a department of the State Government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be sued in that respect. Lord, etc., Chemical Co. v. Board, 111 N. C. 135, 15 S. E. 1032.

Property Tax.—This section will not be so construed as to relieve manufacturers of fertilizers or fertilizing material, paying this inspection tax, from the payment of property tax required by the Constitution. Pocomoke Guano Co. v. Biddle, 158 N. C. 212, 73 S. E. 996.

§ 106-34. Inspection.—It shall be the duty of the commissioner, personally or by agents, duly authorized in writing, to make such inspection of mixed fertilizer or fertilizer material in this state, to have such samples taken, and to have such analyses made as in his judgment may be necessary to ascertain whether or not persons offering, selling or distributing mixed fertilizer or fertilizer materials are complying with the provisions of this article. (1933, c. 324, s. 8; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the word "materials" for the word "material" near the end of the section.

§ 106-35. Official sample, liability for deficiency or damage.—(a) Samples of mixed fertilizer or fertilizer material complying with the definition set forth in paragraph (i) of § 106-29 and taken as hereafter prescribed in paragraphs (b), (c), (d), (e) and (f) of this section shall constitute official samples.

(b) For the purposes of analysis by the commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the commissioner in accordance with §§ 106-30 and 106-31, the commissioner, or an official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of mixed fertilizer or fertilizer material. No sample shall be taken from less than five containers. If the lot comprises five (5) or more containers, portions shall be taken from each one up to a total of ten (10) containers. If the lot comprises from ten (10) to one hundred (100) containers, portions shall be taken from ten (10) containers. Of lots comprising more than one hundred (100) containers, portions shall be taken from ten (10) per cent of the total number of containers.

(c) In sampling mixed fertilizer or fertilizer materials, in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(d) In sampling, a core sampler shall be used that removes a core from the bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of mixed fertilizer or fertilizer material under the provision of this paragraph shall be placed in a tight container and shall be forwarded to the commissioner with proper identification marks.

(e) The commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling mixed fertilizers or fertilizer materials which shall have been adopted by the Association of Official Agricultural Chemists. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this article in lieu of those prescribed in paragraphs (b), (c) and (d) of this section.

(f) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(g) The commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and of § 106-36.

(h) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section and § 106-36 do not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this state during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods.

(i) In the trial of any suit or action wherein there is called in question the value or composition of any lot of mixed fertilizer or fertilizer material, a certificate signed by the fertilizer chemist and attested with the seal of the department of agriculture, setting forth the analysis made by the chemists of the department of agriculture, of any sample of said mixed fertilizer or fertilizer material, drawn under the provisions of this section or § 106-36 and analyzed by them under the provisions of the same, shall be prima facie proof that the fertilizer was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposi-

tion taken in said action in the manner prescribed by law for the taking of depositions. (1933, c. 324, s. 9; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

§ 106-36. Samples by purchaser or consumer.—Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(a) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(b) The sample shall be drawn in the presence of the manufacturer, seller or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders; Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the department of agriculture in taking samples and shall be drawn, mixed and divided as directed in paragraphs (b), (c), (d), (e) and (f) of § 106-35, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed in a separate, tight container, securely sealed, properly labeled, and one sent to the commissioner for analysis and the other to the manufacturer. A certified statement in a form which will be prescribed and supplied by the commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under the observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the commissioner. No sample may be taken under the provisions of this section except within thirty days after the actual delivery to the consumer.

(c) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the state as those drawn by an official inspector of the department as provided for in § 106-35. (1933, c. 324, s. 10; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

§ 106-37. Chemical analyses.—(a) The commissioner shall have the power at all times and in all places to have collected by an authorized inspector, samples of any mixed fertilizer or fertilizer material offered for sale in the state and to have the same analyzed.

(b) The official methods of analysis prescribed by the Association of Official Agricultural Chemists shall be followed in making the chemical analyses provided for in this section.

(c) If the state chemist is required by law to make analyses or determinations for any ingredients before the Association of Official Agricultural Chemists shall have adopted an official, or tentative, method for such determination, then the state chemist shall prescribe a method of analysis to be used and he shall send a copy of such methods to every manufacturer, whose brands are registered in this state, at least six months before such provisions of the law become effective. (1933, c. 324, s. 11; 1937, c. 430, s. 4; 1941, c. 368.)

Editor's Note.—The 1937 amendment added paragraph (c) to the section.

The 1941 amendment re-enacted this section practically without change.

§ 106-38. Plant food deficiency.—(a) The commissioner, in determining for administrative purposes whether or not any mixed fertilizer or fertilizer material is deficient in plant food, shall be guided solely by the official sample as defined in § 106-29, and as provided for in paragraphs (b), (c), (d), (e) and (f) of § 106-35 and the samples taken under the provisions of § 106-36.

(b) If the analysis shall show that any mixed fertilizer falls as much as five per cent and not more than ten per cent below the guaranteed analysis in the total value of the guaranteed nitrogen, available phosphoric acid and available potash, twice the value of such deficiency shall be assessed against the manufacturer, dealer, or agent who sold such fertilizer. If the fertilizer shall fall over ten per cent below the guaranteed analysis in the total value of the guaranteed nitrogen, available phosphoric acid and available potash, the penalty assessed shall be four times the value of the deficiency: Provided, that in no case shall the total assessed penalties exceed the value of the goods to which it applies.

If the analysis shall show that any fertilizer or fertilizer material falls short of the guaranteed analysis in any one ingredient, a penalty shall be assessed in accordance with the following tolerances and penalties:

(c) Total Nitrogen and/or Total Available Nitrogen.—A penalty of three times the value of the deficiency, if such deficiency is in excess of twenty points (which shall mean 0.20 of one per cent) on goods that are guaranteed two per cent nitrogen; twenty-five points (which shall mean 0.25 of one per cent) on goods that are guaranteed three per cent nitrogen; thirty-five points (which shall mean 0.35 of one per cent) on goods that are guaranteed four per cent; forty points (which shall mean 0.40 of one per cent) on goods that are guaranteed five per cent up to and including eight per cent; and fifty points (which shall mean 0.50 of one per cent) on goods guaranteed over eight per cent.

(d) Available Phosphoric Acid.—A penalty of three times the value of the deficiency, if such deficiency exceeds forty points (which shall mean 0.40 of one per cent) on goods guaranteed up to and including ten per cent; and fifty points (which shall mean 0.50 of one per cent) on goods guaranteed over ten per cent available phosphoric acid.

(e) Available Potash.—A penalty of three times the value of the deficiency, if such deficiency is in excess of twenty points (which shall mean 0.20 of one per cent) on goods that are guaranteed two per cent potash; thirty points (which shall mean 0.30 of one per cent) on goods guaranteed three

per cent of potash; forty points (which shall mean 0.40 of one per cent) on goods guaranteed four per cent; fifty points (which shall mean 0.50 of one per cent) on goods that are guaranteed four per cent up to and including eight per cent; and sixty points (which shall mean 0.60 of one per cent) on goods guaranteed from nine per cent to twenty per cent; and one hundred points (which shall mean 1.00 per cent) on goods guaranteed over twenty per cent.

(f) Chlorine.—If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than five-tenths (0.5) per cent, a penalty shall be assessed equal to ten per cent of the value of the fertilizer for each additional five-tenths (0.5) per cent of excess or fraction thereof.

(g) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five per cent (or one hundred pounds calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate equivalent, or fraction thereof in excess of the one hundred pounds allowed, may be assessed and paid as under paragraph (a) of this section.

(h) Calcium Oxide.—If the calcium oxide content guaranteed falls as much as one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton for each additional one-half unit or fraction thereof shall be assessed.

(i) Magnesium Oxide.—If the magnesium oxide content falls as much as five-tenths (0.5) per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each additional one-fourth per cent deficiency or fraction thereof.

(j) Sulphur.—If the sulphur content is found to be as much as one and one-half per cent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents per ton for each additional one-half unit or fraction thereof, shall be assessed; and in the case of mixed fertilizers branded for tobacco, if the maximum sulphur content shall exceed the guarantee by more than one and one-half per cent, a penalty of fifty cents per ton for each additional one-half unit or fraction there, shall be assessed.

(k) Water Insoluble Nitrogen.—A penalty of three times the value of the deficiency shall be assessed, if the deficiency shall exceed ten points (which shall mean 0.10 of one per cent) for goods guaranteed up to and including fifty-hundredths per cent (0.50%); twenty points (which shall mean 0.20 of one per cent) for goods guaranteed from five-tenths per cent to one per cent; thirty points (which shall mean 0.30 of one per cent) for goods guaranteed from one per cent to two per cent; and fifty points (which shall mean 0.50 of one per cent) for goods guaranteed above two per cent and up to and including five per cent and 100 points (which shall mean 1.00 per cent) tolerance above five per cent.

(l) Nitrate Nitrogen.—A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed ten points (0.10 of one per cent) for goods guaranteed up to and including five-tenths (0.50 per cent); fifteen points (0.15 of one per cent) for goods guaranteed from five-tenths (0.50 per cent) to one (1) per cent; twenty-five points (0.25 of one per cent) for goods guaranteed from one (1) per cent to two (2) per cent and thirty-five points (0.35 of one per cent) for goods guaranteed above two (2) per cent.

(m) Additional Plant Foods.—If any additional plant foods, elements or compounds are guaranteed, tolerances and penalties for same shall be set up by the commissioner.

(n) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from date of notice by the commissioner to the manufacturer, dealer or agent, receipts taken therefor, and promptly forwarded to the commissioner of agriculture: Provided, that penalties shall not be assessed for both deficiency in total value and deficiencies in individual ingredients, but whichever shall be determined to be the greater shall be assessed. If said consumers can not be found, the amount of penalty assessed shall be paid to the commissioner of agriculture who shall deposit the same into the department of agriculture fund, of which the state treasurer is custodian. Such sums as shall thereafter be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall be paid from said fund on order of the commissioner of agriculture, and may be used by the commissioner of agriculture as he may see fit for the purposes of promoting the agricultural program of the state. (1933; c. 324, s. 12; 1937, c. 430, s. 5; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted the present for the former section.

§ 106-39. Commercial value. — The approximate retail value per pound and per unit of the various ingredients of mixed fertilizers and fertilizer materials, namely: Nitrogen, phosphoric acid and potash, may be computed by the commissioner and be used to establish the relative value of the mixed fertilizers and fertilizer materials sold or offered for sale in this state. The commissioner is authorized to furnish such relative values to any persons engaged in the manufacture or sale of mixed fertilizers or fertilizer materials in this state upon application and to publish the same under the provisions of § 106-46. (1933, c. 324, s. 14; 1941, c. 368.)

Editor's Note.—This section as inserted by the 1941 amendment is the same as former § 4689(14) with the exception that the reference at the end was changed from § 4689(21) to § 4689(20), now G. S. § 106-46.

§ 106-40. Minimum plant food content; branding of low grade fertilizers.—No superphosphate, no fertilizer with a guarantee of two plant food ingredients, or no complete mixed fertilizer shall be sold or offered for sale for fertilizer purposes within this state which contains less than fourteen per cent of plant food (total nitrogen—available phosphoric acid—potash). This shall not apply to natural animal or vegetable products not mixed with other materials.

Any mixed fertilizer containing two plant food ingredients, or any mixed fertilizer containing less than sixteen units of plant food (total nitrogen—

available phosphoric acid—potash) shall be branded "low grade" and shall carry a "red tag" reading as follows:

"THIS IS A LOW GRADE FERTILIZER.

It costs too much per unit of nitrogen—available phosphoric acid and potash because it contains only fourteen or fifteen units (whichever the case may be) of these plant foods. You are paying too much for bagging, freight, labor, etc., on too much inert material." (1933, c. 324, s. 15; 1937, c. 430, s. 6; 1941, c. 368.)

Editor's Note.—The 1941 amendment substituted this section for former § 4689(15).

§ 106-41. Injurious fillers.—It shall be unlawful for any person to manufacture, offer for sale or sell in this state any mixed fertilizer or fertilizer material containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of deceiving or defrauding the purchaser. (1933, c. 324, s. 16; 1941, c. 368.)

Editor's Note.—This section as inserted by the 1941 amendment is the same as former § 4689(16).

§ 106-42. Materials containing unavailable plant food. — (a) It shall be unlawful for any person to offer for sale or to sell in this state for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(b) This section shall not apply to the substances mentioned in paragraph (a) when they have been treated or processed in such manner as to make available the plant food constituents contained therein. (1933, c. 324, s. 17; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(17) and omitted a former provision that the section should not apply to substances sold to manufacturers of fertilizers.

§ 106-43. Deception and fraud. — It shall be unlawful for any person to make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this state, or to use any misleading or deceptive trade mark or brand name in connection therewith. The commissioner is hereby authorized to refuse registration for any mixed fertilizer or fertilizer material with respect to which this section is violated. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive or fraudulent. (1933, c. 324, s. 18; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(18).

§ 106-44. Sales of materials to consumers.—Nothing in this article shall abridge the right of a consumer of mixed fertilizer or fertilizer materials to buy materials from any manufacturer or dealer for his own use and not for resale, provided the tonnage tax has been paid thereon, if subject thereto, and that the provisions of this article otherwise in respect to such materials have been complied with. (1933, c. 324, s. 19; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(19).

§ 106-45. Reports of shipments.—It is required of each person registering mixed fertilizers and fertilizer materials under this article that he furnish the commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this state. Said statement shall include all sales for the periods of January first to and including June thirtieth and of July first to and including December thirty-first of each year. The commissioner may, in his discretion, either invoke a penalty on, or cancel the registration of, any person failing to comply with this section if the above statement is not made within thirty days from date of notification. The commissioner, however, in his discretion, may grant a reasonable extension of time. (1933, c. 324, s. 20; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(20).

§ 106-46. Publications. — The commissioner is authorized to publish at such time and in such form as he may deem proper information concerning the production and use of mixed fertilizers and fertilizer materials, and shall publish an annual report which shall contain a statement of money received and expended from the sale of tax tags and appropriately classified statistics of fertilizer sales in this state. Reports of the department chemists' findings based on official samples of mixed fertilizer or fertilizer material sold within the state as compared with the guaranteed analyses registered under §§ 106-30 and 106-31 shall be published by the commissioner as promptly as possible after the completion of analyses, or at least annually. (1933, c. 324, s. 21; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(21).

§ 106-47. Regulations. — The board of agriculture, by and with the agreement of the director of the North Carolina Experiment Station, is empowered to adopt from time to time grades of mixed fertilizers which shall be sold in this state and to issue such rules and regulations and to set such standards as may be necessary for the enforcement of this article. The grades so adopted shall not be less than twenty-two nor more than thirty-five in number: Provided, that in case the United States government regulations restrict the number of grades outside these limits, the number of grades shall be that provided in such regulations. (1933, c. 324, s. 22; 1941, c. 368; 1943, c. 652, s. 2.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(22).

Prior to the 1943 amendment the number of grades were not to be less than thirty-five or in excess of fifty. The amendment added the provision relating to United States government regulations.

§ 106-48. Misdemeanors.—Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(a) The violation of any of the provisions of §§ 106-41, 106-42, or 106-43.

(b) The filing with the commissioner of any false statement of fact in connection with the regis-

tration under § 106-30 of any mixed fertilizer or fertilizer material.

(c) Forcibly obstructing the commissioner or any official inspector authorized by the commissioner in the lawful performance by him of his duties in the administration of this article.

(d) Knowingly taking a false sample of mixed fertilizer or fertilizer material for use under any provision of this article; or knowingly submitting to the commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any mixed fertilizer or fertilizer material sold or offered for sale in this state for the purpose of deceiving or defrauding such other person.

(e) The fraudulent tampering with any lot of mixed fertilizer or fertilizer material so that as a result thereof any sample of such mixed fertilizer or fertilizer material taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the commissioner.

(f) The delivery to any person by the fertilizer chemist or his assistants or other employees of the commissioner of a report that is wilfully false and misleading on any analysis of mixed fertilizer or fertilizer material made by the department in connection with the administration of this article.

(g) Selling or offering for sale in this state mixed fertilizer or fertilizer material without marking the same as required by § 106-31.

(h) Selling or offering for sale in this state mixed fertilizer or fertilizer material containing less than the minimum content required by § 106-40. (1933, c. 324, s. 23; 1941, c. 368.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(23).

§ 106-49. Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags.—(a) Forfeiture for Unauthorized Sale, Release from Forfeiture.—All fertilizers and fertilizer materials sold or offered for sale contrary to the provisions of this article as stated in paragraphs (a), (b), and (e) of § 106-30, and (a), (b), (c), (d), (e) and (g) of § 106-31 and § 106-32 shall be subject to seizure, condemnation, and sale by the commissioner. The net proceeds of such sale shall be placed to the credit of the state treasurer for the use of the department of agriculture. The commissioner, however, may, in his discretion, release the fertilizers so seized and condemned upon payment of the required tax or charge, a fine of ten dollars ($10.00), and all costs and expenses incurred by the department in any proceedings connected with such seizure and condemnation, and upon compliance with all other requirements of this article.

(b) Method of Seizure and Sale of Forfeiture.—Such seizure and sale shall be made under the direction of the commissioner by any officer or agent of the department. The sale shall be made at the courthouse door in the county in which seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand name or name of the goods, the quantity, and why seized and offered for sale.

(c) Sale without Tag; Misuse of Tag; Penalty; Forfeiture.—Every merchant, trader, manufacturer, broker, or agent who shall sell or offer for sale any mixed fertilizer or fertilizer material without having attached thereto such tags as are required by paragraphs (a) and (c) of § 106-33, or who shall use the required tags a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any such fertilizer, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, or offered for sale, or removed, said penalty to be recovered by the commissioner by suit brought in the name of the state, and any amount so recovered shall be paid, one-half to the informer and one-half to the state treasurer for the use of the department of agriculture. If any such fertilizer shall be condemned as provided by law, it shall be the duty of the commissioner to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients thereof to be put upon each bag, barrel, or package, and fix the commercial value at which it may be sold. It shall be unlawful for any person to sell or offer for sale or remove any such fertilizer, or for agent of any railroad or other transportation company to deliver any such fertilizer in violation of this section. Any person who shall sell or offer for sale or remove any fertilizer in violation of the provisions of this section shall be guilty of a misdemeanor.

(d) Deficiencies of Weight Made Good.—Any fertilizer which is found by an inspector of the department of agriculture to be short in weight, the manufacturer of said fertilizer shall within five days of official notice from the department of agriculture make good such deficiency and pay to the consumer a penalty equal to four times the value of the actual shortage. The commissioner in his discretion may allow reasonable tolerances for short weight due to loss through handling and transporting. (1933, c. 324, s. 24; 1941, c. 368; 1943, c. 652, s. 3.)

Editor's Note.—The 1941 amendment inserted this section in place of former § 4689(24).

The 1943 amendment struck out the word "not" formerly appearing in line ten of subsection (d) between the word "weight" and the word "due."

The cases annotated below were decided under the provisions of former C. S. § 4703, which section, with slight changes, is incorporated in this section as paragraph (c).

Constitutionality.—This section is not in conflict with the constitution. Goodwin v. Fertilizer Works, 119 N. C. 120, 25 S. E. 795.

The penalty is restricted to those who "shall sell or offer for sale" without complying with the terms of the statute. It has no application against the purchaser who buys for his own use. Johnson v. Carson, 161 N. C. 371, 77 S. E. 307.

Party Plaintiff.—Under this section the person suing for the penalty, and not the Department of Agriculture or the State, is the proper party plaintiff. Goodwin v. Fertilizer Works, 119 N. C. 120, 25 S. E. 795.

Judicial Notice of Violation of Section.—Courts will take judicial notice of the violation of the provisions of this article and upon allegation and proof thereof permit recovery, though not specially pleaded. Carson v. Bunting, 154 N. C. 530, 70 S. E. 923.

For sufficiency of indictment for the violation of this section, see State v. Oil Co., 154 N. C. 635, 70 S. E. 741.

§ 106-50. Sales and exchanges between manu-

facturers, etc.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of fertilizer or fertilizer materials to each other by importers, manufacturers or manipulators who mix fertilizer materials for sale, or as preventing the free and unrestricted shipments of fertilizers or fertilizer materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 368.)

Art. 3. Fertilizer Laboratories.

§ 106-51. Certification of fertilizer laboratories.—The commissioner of agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the commissioner of agriculture shall supply such information. (1933, c. 551.)

Art. 4. Insecticides and Fungicides.

§ 106-52. Rules and standards. — The department of agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this article. (1927, c. 53, s. 1.)

§ 106-53. Registration. — Before any manufacturer or dealer shall sell, offer or expose for sale in this State any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum per cent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in its manufacture and the weight of the packages in which the material is packed. The words "paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this article, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases. (1927, c. 53, s. 2.)

§ 106-54. Labels to be affixed.—Every lot, package or parcel of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language clearly and truly certifying

(a) the net weight of the lot, package or parcel;

(b) the name, brand or trademark;

(c) the name and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;

(d) the minimum per cent of each and every toxic chemical or compound present.

(e) the specific name of each active ingredient used in its manufacture. (1927, c. 53, s. 3.)

§ 106-55. Refusal and cancellation of registration.—The Commissioner shall have the power to refuse to register any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trademark, which would be misleading or deceptive. Should any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide be registered in the State and it is afterward discovered that such registration is in violation of any of the provisions of this article, the Commissioner shall cancel such registration. (1927, c. 53, s. 4.)

§ 106-56. Registration fee; expiration of registration certificate; renewal.—All manufacturers or distributors, for the purpose of defraying the expenses connected with the enforcement of this article, before selling, offering or exposing for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides and fungicides, shall pay annually to the department of agriculture a registration fee of ten dollars ($10.00) for each and every brand of the aforementioned insecticides and fungicides registered as required under § 106-53. All certificates of registration shall expire on the thirty-first day of December next following the date of issuance and shall be subject to renewal upon receipt of annual registration fees. (1927, c. 53, s. 5; 1939, c. 284, s. 1.)

Editor's Note.—This section was so changed by the 1939 amendment that a comparison here is not practical.

§ 106-57. Certificates entitling manufacturers or distributors to sell; unlawful sale, etc. — To manufacturers or distributors who have duly registered their brands and have paid registration fees on paris green, calcium arsenate, lead arsenate or other insecticides and fungicides in compliance with the requirements of this article, there shall be issued by the department of agriculture certificates which shall entitle said manufacturers or distributors to sell all duly registered brands until the expiration of such certificates as provided under § 106-56. When any manufacturer or distributor shall have duly complied with the provisions of this article, no other agency representing such manufacturer or distributor shall be required to register or pay registration fees on such brands as have been duly registered. It shall be unlawful for any manufacturer or distributor, or their agents to sell, offer or expose for sale in this state any of the aforementioned insecticides or fungicides which have not been duly registered and for which annual registration fees have not been paid. (1927, c. 53, s. 6; 1939, c. 284, s. 1.)

Editor's Note.—Prior to the 1939 amendment this section provided for tax stamps.

§ 106-58. Requirement of identifying color or medium.—For the purpose of safeguarding the legitimate uses of paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides and to prevent the poisoning of man or animal by confusion with or mixing with foods and feeds, either by accident or intent, it shall be required as a qualification for registration that all such aforesaid insecticides and fungicides which are likely to be confused with or which are not readily apparent when mixed with such foods or feeds, shall bear or contain some identifying added color or medium to differentiate them from, or to

show their presence when contained in such foods or feeds; provided that no commodity intended for insecticidal, fungicidal or similar purposes which is already developed, or new products for these purposes which may appear from time to time shall be excluded from registration where there is not available or has not been developed a suitable identifying color or medium; and, provided that in the absence of a suitable identifying color or medium, the commissioner shall have authority himself or through representatives designated by him to co-operate with manufacturers and distributors in the development of suitable safe guards; final decision, with due right of appeal, resting in the discretion of the board of agriculture. (1927, c. 53, s. 7; 1929, c. 196, s. 1; 1939, c. 284, s. 1.)

Editor's Note.—Prior to the 1939 amendment this section exempted sales in small packages from the requirement of tax stamps. Section 4 of the amendatory act repealed the 1929 act.

§ 106-59. Statement mailed; what shown.—Every manufacturer and dealer who has registered paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for sale within the state of North Carolina shall mail to the commissioner on forms provided by the commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (1927, c. 53, s. 8; 1933, c. 233; 1939, c. 284, s. 4.)

Editor's Note.—Public Laws of 1933, chapter 233, which substituted the word "poisonous" for the word "other" between the words "any" and "insecticide", was repealed by the 1939 amendment.

§ 106-60. Entrance for inspection or sampling; analysis.—The Commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said Commissioner or deputy or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. Where a method of analysis is required before the association of official agricultural chemists has adopted an official or tentative one, and pending appearance of an official method by the association of official agricultural chemists, such methods as may be available or may be developed, subject to approval by the board of agriculture, may be used; provided that such method upon being used shall be immediately available for use and checking to all persons, firms or corporations concerned, and results from such methods shall be subject to a reasonable period of consideration and hearings before any proceedings based upon them are instituted. (1927, c. 53, s. 9; 1939, c. 284, s. 2.)

Editor's Note.—The 1939 amendment added the last sentence.

§ 106-61. Use of stamp a second time; adulterated and misbranded articles; injunction.—It shall be unlawful for any manufacturer or distributor to sell, offer or expose for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides or fungicides which are adulterated or misbranded within the meaning of this article. Any paris green, calcium arsenate, lead arsenate and any other insecticide or fungicide shall be deemed to be adulterated if its strength or purity fall below the professed standard or quality under which it is sold; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it be in any way depreciated or be in departure from the true and honest value represented. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel, or in any printed advertising matter issued by the manufacturer or dealer that registered paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be the duty of the Attorney-General when requested by the Commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or non-resident, from manufacturing or selling or soliciting orders for the sale of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this article, which injunction may be issued without bond or advance cost. (1927, c. 53, s. 10; 1939, c. 284, s. 3.)

Editor's Note.—The 1939 amendment substituted the first two sentences above in lieu of the former first sentence.

§ 106-62. Seizure of articles.—Any paris green, calcium arsenate or any other insecticide or fungicide sold, offered or exposed for sale within this State in violation of any provisions of the article shall be liable to seizure at the instance of the Commissioner. Upon complaint being filed by the Commissioner in person or by duly authorized deputy, with any district judge or a justice of the peace, describing the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide and the place where it is believed paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is sold, offered or exposed for sale in violation of the law, such district judge or justice of the peace shall issue his warrant directing the sheriff or any of his deputies to search such place, and if the law is being violated to seize the paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide found there in violation of the law, and if the admission into such place is refused, the officer executing said warrant is hereby authorized to force open the same. If it shall appear at the hearing before the district judge or a justice of the

peace, who issued said writ, that the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide was sold, exposed or offered for sale in violation of any provisions of this article, said paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide shall be condemned and delivered to an officer or agent of the Commissioner, to be destroyed or to be sold at his discretion. The sale shall be made at the court-house in the county in which the seizure is made. Said paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide shall be sampled and subjected to analysis if necessary or tagged, or branded and otherwise brought into compliance with the requirements of this article, before being sold. The Commissioner, however, may, in his discretion, release the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide seized or condemned upon the payment of the required tax or charge and all costs and expenses incurred in any proceedings connected with such seizure and condemnation, and upon compliance with all other requirements of this article. (1927, c. 53, s. 11.)

§ 106-63. Copy of analysis in evidence.—A copy of the analysis made by any chemist of the Department of Agriculture of any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this article. (1927, c. 53, s. 12.)

§ 106-64. Articles in transit. — Nothing contained in this article shall interfere with paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall it apply to the delivery of materials to manufacture paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes. (1927, c. 53, s. 13.)

§ 106-65. Violation of article.—Any manufacturer or dealer violating any provision or section in this article, or any rule, regulation or standard of the Department of Agriculture promulgated under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1927, c. 53, s. 14.)

Art. 5. Seed Cotton and Peanuts.

§ 106-66. Sale of seed-cotton or peanuts.—If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the state to allege and prove that the defendant bought or received the seed-cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (Rev., s. 3812; 1887, c. 199; 1905, cc. 201, 523; 1929, c. 281, s. 1; C. S. 5083.)

Editor's Note.—As to constitutionality of statute similar to this section, see State v. Moore, 104 N. C. 714, 10 S. E. 143.

§ 106-67. Traveling seed-cotton buyers must report; failure a misdemeanor.—Any person engaged in traveling from house to house or from place to place buying or trading for seed-cotton shall keep a correct record of the name and postoffice address of each person from whom he buys or with whom he trades for seed-cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed-cotton, showing the name and postoffice address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1919, c. 43; C. S. 5084.)

Art. 6. Cotton-Seed Meal.

§ 106-68. Cotton-seed meal defined; inspection tax.—Cotton-seed meal is a product of the cotton seed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cotton-seed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; 1939, c. 286; C. S. 4704.)

Editor's Note.—The 1939 amendment substituted "twenty-five" for "twenty" in regard to amount of tax.

§ 106-69. Bags to be branded with specified particulars.—All cotton-seed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

1. Cotton-seed meal (with brand and grade).
2. Weight of package.
3. Ammonia and protein.
4. Name and address of manufacturer. (1917, c. 242, s. 2; C. S. 4705.)

§ 106-70. Grades and standards established.—No person, firm, or corporation shall offer for sale any cotton-seed meal except as provided in § 106-69, graded and classed as follows:

1. Prime cotton-seed meal by analysis must contain at least seven and one-half per cent of am-

monia or thirty-eight and fifty-six one-hundredths per cent of protein.

2. Good cotton-seed meal by analysis must contain at least seven per cent of ammonia, or thirty-six and no one-hundredths per cent of protein.

3. Ordinary cotton-seed meal by analysis must contain at least six and one-half per cent of ammonia, or thirty-three and forty-four hundreths per cent of protein. (1917, c. 242, s. 3; C. S. 4706.)

The purpose of these sections is to promote agriculture by insuring the sale of fertilizers containing plant food in certain proportions and of sufficient quality and quantity and to protect those who cultivate the soil from imposition and fraud. State v. Faulkner, 175 N. C. 787, 789, 95 S. E. 171.

§ 106-71. Rules to enforce statute; misdemeanor.—The board of agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person wilfully violating any of the regulations made by the board of agriculture in connection with the provisions of this article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture.—Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cotton-seed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cotton-seed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the commissioner of agriculture by suit brought in the name of the state, and any amount so recovered shall be paid one-half to the informant and one-half to the state treasurer for the use of the department of agriculture. If any such cotton-seed meal shall be condemned, as provided by law, it shall be the duty of the department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cotton-seed meal, or for any agent of any railroad or other transportation company to deliver any such cotton-seed meal in violation of this section. (1917, c. 242, s. 4; C. S. 4708.)

What Constitutes "Unlawful Removal." — Unlawful removal relates to those who "sell or offer for sale any cotton-seed meal without having the proper tags attached," and not the farmer, for whose protection the statutes were enacted, so as to make him liable for removing from the depot bags of cotton-seed meal, to be used under his crops, and which had been bought by and shipped him for that purpose. Johnson v. Carson, 161 N. C. 372, 77 S. E. 307.

§ 106-73. Sales contrary to article a misdemeanor.—Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cotton-seed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S. 4709.)

In General. — The fact that neither knowledge of the defect nor an intent to defraud is made an element in the criminal offense is strong reason for confining the statute to the manufacturer, who should be held to have knowledge of the composition of the fertilizer he offers for sale, and to the owner, not a manufacturer, and his agent with authority to sell, who have the opportunity to test the fertilizer before they sell it. State v. Faulkner, 175 N. C. 787, 790, 95 S. E. 171.

For violation of this section, see State v. Oil Co., 154 N. C. 635, 70 S. E. 741.

§ 106-74. Forfeiture for unauthorized sale; release from forfeiture.—All cotton-seed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the commissioner of agriculture. The net proceeds from such sale shall be placed in the general fund of the department and accounted for upon its books. The commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S. 4710.)

§ 106-75. Method of seizure and sale on forfeiture.—Such seizure and sale shall be made under the direction of the commissioner of agriculture by an officer or agent of the department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S. 4711.)

§ 106-76. Collection and analysis of samples.—The department of agriculture shall have the same authority and powers for taking and analyzing samples of cotton-seed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cotton-seed meal as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S. 4712.)

§ 106-77. Sales below guaranteed quality; duties of commissioner.—When the commissioner of agriculture shall be satisfied that any cotton-seed meal is five per cent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cotton-seed meal shall fall as much as ten per cent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the commissioner, have purchased the said meal; and the commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer

shall resist such collection or payment, the commissioner shall immediately publish the analysis and the facts in the bulletin and in such newspapers in the state as he may deem necessary. (1917, c. 242, s. 7; C. S. 4713.)

§ 106-78. Adulteration prohibited.—It shall be unlawful for any manufacturer to adulterate cotton-seed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S. 4714.)

Art. 7. Pulverized Limestone and Marl.

§ 106-79. Board of agriculture authorized to make and sell lime to farmers.—The North Carolina board of agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the state, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the state at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S. 4715.)

§ 106-80. Convict labor authorized.—With the approval of the governor, when requested by the board of agriculture, the chairman of state highway and public works commission may furnish a superintendent with a squad of able-bodied convicts, not to exceed fifty, to do such work as the commissioner, with the authority of the board, may deem necessary to mine, prepare, load and dispose of the material. The board shall pay the state quarterly such amount as shall be agreed upon by the chairman of state highway and public works commission and the board of agriculture for their work, out of the proceeds of the sales, and the state shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; 1933, c. 172, s. 18; C. S. 4716.)

Art. 8. Sale, etc., of Agricultural Liming Material, etc.

§ 106-81. Regulation of sale, etc., of agricultural liming material, etc.—All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this article," or as "said materials", to be sold, offered, or exposed for sale in this state, shall be subject to regulation as provided by the following sections of this article. (1941, c. 275, s. 1.)

§ 106-82. Registration of brands by manufacturers and vendors.—Every manufacturer or vendor proposing to sell, offer or expose for sale in this state, the materials coming under this article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this state, register with the commissioner of agriculture, on forms to be furnished by said commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subsections:

(a) Net weight when sold in packages.

(b) A brand or trade name truly descriptive of the product.

(c) The guaranteed analysis showing:

(1) In case of agricultural liming materials; the minimum per cent of calcium expressed as calcium carbonate ($CaCO_3$) and of magnesium expressed as magnesium carbonate ($MgCO_3$) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "Calcium Carbonate Equivalent" and "Neutralizing Equivalent," for the purpose of this article, shall mean one and the same thing. Fineness shall be determined by screens complying with the specifications of the United States Bureau of Standards.)

(2) In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subsection (c) (1) of this section, but including also the minimum per cent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four percent, and the guarantee for said potash content shall be in whole numbers only.)

(3) In case of land plaster, the minimum per cent of calcium sulfate ($CaSO_4$).

(d) The name and address of the manufacturer or vendor guaranteeing the registration.

(e) In case of combinations of materials from different sources, the source, chemical form, and minimum per cent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labelling.—All of the said materials sold, offered, or exposed for sale in this state shall have attached thereto, or be accompanied by a plainly printed statement giving the information as required under § 106-82, subsections (a), (b), (c), (d) and (e). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; license certificates.—(a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this article, there shall be paid, by the manufacturers or vendors, to the department of agriculture, for each brand or grade of said materials registered as required under § 106-82, an annual registration fee of five dollars ($5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said ma-

terials sold in this state, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents per ton; for agricultural liming material with potash, twenty-five cents per ton; and for land plaster, five cents per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the department of agriculture, stating that all charges specified in this article have been paid, and the commissioner of agriculture, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the commissioner of agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

(d) To manufacturers or vendors of the materials covered in this article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the commissioner of agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this state the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4.)

§ 106-85. Report of sales.—In addition to the statement required under § 106-82, each manufacturer or vendor of the materials covered in this article shall, on or before the first day of February of each year, file with the department of agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this state, during the last preceding year. License for the sale of said materials within this state shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ 106-86. Administration; inspections, sampling and analysis.—It shall be the duty of the commissioner of agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public. For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this article. (1941, c. 275, s. 6.)

§ 106-87. Deficiencies; refunds to consumers.—Should any of the materials coming under this article be found, by procedures authorized thereunder, to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency by the commissioner of agriculture, shall, within ninety days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash", excepting potash deficiency of the latter, if the deficiency be five per cent or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of forty points (which shall mean 0.40 of one per cent) on goods guaranteed four per cent; fifty points (which shall mean 0.50 of one per cent) on goods that are guaranteed five per cent up to and including eight per cent; and sixty points (which shall mean 0.60 of one per cent) on goods guaranteed nine per cent and up to and including twenty per cent; and one hundred points (which shall mean 1.00 per cent) on goods guaranteed over twenty per cent; and in case of land plaster, for deficiencies in excess of one per cent, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the commissioner of agriculture for deposit with the state treasurer to the credit of the department of agriculture, where said refund shall be held for payment to the proper consumer upon order of said commissioner. Where the consumer to whom the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the department of agriculture for expenditure by said commissioner in promoting the agricultural program of the state. (1941, c. 275, s. 7.)

§ 106-88. Violations and penalties.—Any person or persons selling, offering or exposing for sale in this state any of the materials covered in this article, without first having registered said materials, paid the fees required, secured the required license, and otherwise complied with the requirements of this article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the first offense and not less than one hundred dollars for each subsequent offense. (1941, c. 275, s. 8.)

§ 106-89. Certified analysis as evidence.—In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this article, a certified statement of the analysis made by the chemists of the department of agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

§ 106-90. Revocation of licenses; seizure of materials.—The commissioner of agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said article. (1941, c. 275, s. 10.)

§ 106-91. Regulations and standards.—The commissioner of agriculture, under the authority of the board of agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of the materials covered in this article as are consistent with the purpose of the article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the state board of agriculture and the director of the North Carolina Experiment Station, to formulate and prescribe such definitions and standards as may be required for said purpose. (1941, c. 275, s. 11.)

§ 106-92. Construction of article.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of the materials coming under this article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 275, s. 12.)

Art. 9. Commercial Feeding Stuffs.

§ 106-93. Packages to be marked with statement of specified particulars.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this state shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (1909, c. 149, s. 1; C. S. 4724.)

Implied Warranty.—Under the provisions of this section and sections 106-95 and 106-100, there is an implied warranty that foodstuff sold for cattle is reasonably fit for the purpose intended, and that it is not composed of harmful or deleterious substances that will produce injury or death to the cattle fed therewith. Poovy v. International Sugar Co., 191 N. C. 722, 133 S. E. 12.

§ 106-94. Weight of packages prescribed.—All concentrated commercial feeding stuffs, except that in bags or packages of five pounds or less, shall be in standard weight bags or packages of ten, twenty-five, fifty, seventy-five, one hundred, one hundred and twenty-five, one hundred and fifty, one hundred and seventy-five, and two hundred pounds. (1909, c. 149, s. 1; 1943, c. 225, s. 1; C. S. 4725.)

Editor's Note.—The 1943 amendment inserted the exception clause and added "ten" to the list of weights. Section 6 of the amendatory act, which also amended §§ 106-96, 106-102 and 106-106 and inserted §§ 106-97.1 and 106-102.1, provides that the act shall not repeal or nullify any of the provisions of the Uniform Weights and Measures Act [§§ 81-1 et seq.], or any rules and regulations promulgated pursuant thereto.

§ 106-95. "Concentrated commercial feeding stuffs" defined.—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock, poultry and other animals, except hays, straws, and corn stover, when the same are not mixed with other materials, nor shall it apply to the whole seeds or grains of cereals when not mixed with other materials. (1909, c. 149, s. 2; 1939, c. 354, s. 1; C. S. 4726.)

Editor's Note.—The 1939 amendment made this section applicable to "other animals".

§ 106-96. Copy of statement and sample filed for registration.—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this state any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the commissioner of agriculture a copy of the statement required in § 106-93, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the commissioner of agriculture an annual registration fee of one dollar ($1.00), payable at the time of registration: Provided, that for each brand of commercial feeding stuff marketed in packages of five pounds or less, there shall be paid to the commissioner of agriculture an annual registration fee of twenty-five dollars ($25.00): Provided, further, that manufacturers, importers, jobbers, agents, or sellers who pay the twenty-five dollars ($25.00) registration fee prescribed by the above provision on any feeding stuff, shall not be liable for the tonnage fee, prescribed by § 106-99, on the feeding stuff on which said twenty-five dollar ($25.00) fee is paid.

All registration fees are payable at the time of registration, and shall be payment in full of regis-

tration fees through December thirty-first of the year in which paid. All such feeds must be registered anew each year. (1909, c. 149, s. 3; 1939, c. 354, s. 2; 1943, c. 225, s. 2; C. S. 4727.)

Editor's Note.—The 1939 amendment added the second sentence as it appeared prior to the 1943 amendment, which added the provisos thereto. The latter amendment also added the second paragraph. See note to § 106-94.

§ 106-97. Agent released by statement of manufacturer.—When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by § 106-96, no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement. (1909, c. 149, s. 4; C. S. 4728.)

§ 106-97.1. Registrants required to furnish commissioner with statement of tonnage sold in this state.—Each person registering feeding stuff under this article shall furnish the commissioner of agriculture with a written statement of the tonnage of each grade or brand of feed sold by him in this state. This statement shall include all sales for the periods from January first to and including December thirty-first of each year. If the above statement is not made within thirty days from the date of notification by the commissioner, he may, in his discretion, invoke a penalty of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) on, or cancel the registration of, any person failing to so comply. The commissioner, however, in his discretion, may grant a reasonable extension of time. (1943, c. 225, s. 3.)

Cross Reference.—See note to § 106-94.

§ 106-98. Power to refuse or to cancel registration.—The commissioner of agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the board of agriculture. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the commissioner of agriculture shall have the power to cancel such registration. (1909, c. 149, s. 5; C. S. 4729.)

§ 106-99. Inspection tax on feeding stuffs; tax tags.—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in this article, shall pay to the commissioner of agriculture an inspection tax of twenty-five cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this state, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid: Provided, whenever any concentrated commercial feeding stuff, as herein above defined, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same: Provided, that the inspection tax of twenty-five cents per ton shall not apply to whole seeds and grains when not mixed with other materials. It is further provided that, upon demand, said inspection tags or stamps shall be redeemed by the department issuing said tags or stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said tags or stamps shall be returned for redemption within the time fixed by the board of agriculture: Provided further, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale. The commissioner of agriculture is hereby empowered to prescribe the form of such tax tags or stamps. (1909, c. 149, s. 6; 1939, c. 286; C. S. 4730.)

Editor's Note.—The 1939 amendment substituted "twenty-five" for "twenty" in two places, with reference to amount of tax.

Feeding Stuff below Grade and without Tags.—Upon a purchase of feeding stuff, below grade and without tags it is the duty of the purchaser to do what he reasonably can to lessen his loss, and the measure of his damages is the difference in value of the goods as it actually is and which it should have been under his contract, and such other expenses as were actually incurred by him in handling it. Jennette & Co. v. Hay, etc., Co., 158 N. C. 156, 157, 73 S. E. 884.

§ 106-100. Sale unauthorized by article or below grade; forfeiture; release from forfeiture.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this state, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, and the proceeds from said sales shall be covered into the state treasury for the use of the department executing the provisions of this article. The commissioner of agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the department of agriculture in any proceed-

ings connected with such seizure and withdrawal. (1909, c. 149, s. 7; C. S. 4731.)

§ 106-101. Method of seizure and sale on forfeiture.—Such seizure and sale shall be made under the direction of the commissioner of agriculture or an officer of the department of agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. (1909, c. 149, s. 7; C. S. 4732.)

§ 106-102. Collection and analysis of sample.—The commissioner of agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this state under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the department of agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in § 106-93, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample differs within reasonable limits only from the statement (prescribed in § 106-93) appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Rev., s. 3808; 1909, c. 149, s. 9; 1943, c. 225, s. 4; C. S. 4733.)

Editor's Note.—The 1943 amendment rewrote the last proviso. See note to § 106-94.

§ 106-102.1. Misbranding; penalty; payable to purchaser; value of feed; deficiencies of weight.—If the analysis shall show that any feed bearing a guaranteed analysis of twenty-four per cent protein or less falls as much as five per cent (five per cent of the guarantee) and not more than ten per cent (ten per cent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over ten per cent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency.

If the analysis shall show that any feed bearing a guaranteed analysis of more than twenty-four per cent protein falls as much as two per cent (two per cent of the guarantee) and not more than four per cent (four per cent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over four per cent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency. If the analysis shall show that any feed is deficient in fat by more than fifty hundredths per cent (one half unit), the penalty shall be twice the value of the deficiency.

If the fiber content of any lot of feed shall exceed the maximum guarantee by more than two per cent (two units), a penalty shall be assessed equal to ten per cent of the value of the feed.

If the microscopic analysis reveals that the feed is mislabeled, the commissioner may, in his discretion, assess a penalty equal to ten per cent of the value of the feed.

The minimum penalty under any of the foregoing provisions shall in no case be less than three dollars ($3.00), regardless of the value of the deficiency.

Within sixty days from the date of notice by the commissioner to the manufacturer, guarantor, dealer, or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the commissioner of agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the commissioner of agriculture who shall deposit the same in the department of agriculture fund, of which the state treasurer is custodian. Such sums as shall thereafter be found to be payable to consumers on lots of feed against which penalties were assessed shall be paid from said fund on order of the commissioner of agriculture. After a twelve months' period such sums as have not been paid to consumers on lots of feed against which said penalties were assessed may be used by the commissioner of agriculture as he may see fit for the purpose of promoting the agricultural program of the state.

The approximate retail value per pound and per unit of the various guarantees shall be computed by the commissioner and be used to establish the relative value of the feed sold or offered for sale in this state. The commissioner is authorized to furnish, upon application, such rela-

tive values to any persons engaged in the manufacture or sale of feed in this state.

If any feed is found by an inspector of the department of agriculture to be short in weight, the manufacturer or guarantor of said feed shall, within ten days of official notice from the department of agriculture, make good such deficiency and pay to the consumer a penalty equal to four times the value of the actual shortage. The commissioner, in his discretion, may allow reasonable tolerances for short weight due to loss through handling and transporting. (1943, c. 225, s. 5.)

Cross Reference.—See note to § 106-94.

§ 106-103. Rules and standards to enforce article.—The board of agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor. (Rev., s. 3808; 1909, c. 149, s. 9; C. S. 4734.)

§ 106-104. Sales without tag; misuse of tag; counterfeiting tag.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this state any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, labels, or tags as required by the provisions of this article, or who shall use the required tax stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, shall be guilty of a violation of the provisions of this article. (1909, c. 149, s. 10; C. S. 4735.)

§ 106-105. Refusal to comply with the article or hindering its enforcement.—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions. (Rev., s. 3827; 1903, c. 325, s. 8; 1909, c. 149, s. 11; C. S. 4736.)

§ 106-106. Violation of article a misdemeanor.—Any manufacturer, importer, jobber, agent or dealer who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, in the discretion of the court. (1909, c. 149, s. 12; 1943, c. 225, s. 5a; C. S. 4737.)

Editor's Note.—The 1943 amendment rewrote this section. See note to § 106-94.

§ 106-107. Notice of charges to accused; hearing before commissioner.—Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture. (1909, c. 149, s. 13; C. S. 4738.)

§ 106-108. Commissioner to certify solicitor and furnish analysis.—If it appears that any of the provisions of this article have been violated the commissioner of agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. (1909, c. 149, s. 13; C. S. 4739.)

§ 106-109. Solicitor to prosecute violations.—It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases prescribed. (1909, c. 149, s. 14; C. S. 4740.)

§ 106-110. Certificate of analyst as evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 149, s. 13; C. S. 4741.)

Art. 10. Mixed Feed Oats.

§ 106-111. Unlawful to sell mixed feed oats unless ground.—It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars. (1931, c. 106.)

Art. 11. Stock and Poultry Tonics.

§ 106-112. Application and affidavit for registration.—Before any condimental, patented, proprietary or trade-marked "stock or poultry tonic," "regulator," "conditioner," or "vermicide" or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial" or other "medicinal" properties for domestic animals or poultry, either is sold or offered for sale in this state, by sample or otherwise, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale shall file with the commissioner of agriculture an application for registration on a form to be furnished by said commissioner, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trademark under which said preparation or preparations will be sold, and a statement of the ingredients of said preparation, together with a

labeled package of said preparation showing claims made for same, which labeling shall not be changed during the year for which the registration is made without consent of the commissioner of agriculture. The commissioner of agriculture shall decline to register a preparation that is injurious to the health of domestic animals or poultry, or that conflicts with the requirements of the North Carolina Food, Drug, and Cosmetic Law, or that the name, trade-mark, or label under which the preparation is sold may mislead or deceive the purchaser in any way, or that any statements, designs, or devices on the label or package regarding the substances contained therein are not true and correct, or that any claims made for the feeding, condimental, tonic, or medicinal value are false or misleading in any particular. (1909, c. 556, s. 1; 1943, c. 226, s. 1; C. S. 4742.)

Editor's Note.—The 1943 amendment rewrote this section. **Note Uncollectible for Noncompliance.**—Where a note is given in consideration of the sale of a foodstuff or "conditioner" coming within the provisions of this section, requiring the seller to file with the Commissioner of Agriculture a statement of his purpose, a duly verified certificate as to its qualities, for registration, with a labeled package, section 106-113 requiring a fee for registration, section 106-114 making a noncompliance a misdemeanor, and section 106-119 declaring the legislation designed to protect the public from deception and fraud, and these requirements have not been complied with by the seller, the note is uncollectible against the purchaser or maker. Miller v. Howell, 184 N. C. 119, 113 S. E. 621.

§ 106-113. Registration fee.—For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "regulators," "conditioners," "vermicides," and similar preparations defined in § 106-112, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the commissioner of agriculture during the month of January in each year, said fees to be used by the commissioner of agriculture for executing the provisions of this article. (1909, c. 556, s. 2; 1943, c. 226, s. 2; C. S. 4743.)

Editor's Note.—The 1943 amendment made this section applicable to vermicides.

§ 106-114. Sale of unregistered tonics a misdemeanor. — Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trademarked "stock or poultry tonic," "regulator," "conditioner," "vermicide," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by § 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the commissioner of agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars ($50.00) for the first offense and in the sum of one hundred dollars ($100.00) for each subsequent offense. (1909, c. 556, s. 3; 1943, c. 226, s. 3; C. S. 4744.)

Editor's Note.—The 1943 amendment made this section applicable to vermicides.

§ 106-115. Notice of violation charged; hearing before commissioner.—Whenever the commissioner of agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture. (1909, c. 556, s. 4; C. S. 4745.)

§ 106-116. Issuance of "stop sale" orders by commissioners; confiscation or sale of products.—If it appears that any of the provisions of this article have been violated, the commissioner of agriculture or his authorized representative is hereby authorized to issue a "stop sale" order which shall prohibit further sale of any product offered in violation of this article until the law has been complied with or said violation has otherwise been legally disposed of. The commissioner of agriculture or his authorized representative is further authorized to confiscate and seize any product sold or offered for sale in violation of this article and shall have the authority to sell said product if it can be made to conform to this article or to destroy same if it cannot be made to conform with this article. Such sale shall be made at the courthouse door in the county in which the seizure is made, after 30 days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the state treasurer for the use of the department of agriculture. (1909, c. 556, s. 4; 1941, c. 199, s. 1; C. S. 4746.)

Editor's Note.—Prior to the 1941 amendment this section related to duty of commissioner to notify solicitor of violation of article and to furnish analysis.

§ 106-117. Prosecution of violations.—If any person, firm or corporation shall violate any provision of this article, it shall be the duty of the commissioner of agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court of competent jurisdiction in the district where the violation occurred. (1909, c. 556, s. 5; 1941, c. 199, s. 2; C. S. 4747.)

Editor's Note.—Prior to the 1941 amendment this section provided that solicitor should prosecute violations.

§ 106-118. Certificate of analyst as evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 556, s. 4; C. S. 4748.)

§ 106-119. Purpose of article.—This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this state, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trade-marked "stock or poultry tonics," "regulators," "conditioners," "vermicides," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in

the sale of these specific products. (1909, c. 556, s. 6; 1943, c. 226, s. 4; C. S. 4749.)

Editor's Note.—The 1943 amendment made this section applicable to vermicides.

Art. 12. Food, Drugs and Cosmetics.

§ 106-120. Title of article.—This article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. L. Rev. 400.

§ 106-121. Definitions.—For the purpose of this article—

(a) The term "commissioner" means the commissioner of agriculture; the term "department" means the department of agriculture, and the term "board" means the board of agriculture.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(e) The term "device" (except when used in paragraph (k) of this section and in §§ 106-122, subsection (j), 106-130, subsection (f), 106-134, subsection (c) and 106-137, subsection (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such terms shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.) (1939, c. 320, s. 2.)

§ 106-122. Certain acts prohibited.—The following acts and the causing thereof within the state of North Carolina are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of §§ 106-131 or 106-135.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by § 106-140.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of § 106-125.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 106-135, or that such drug complies with the provisions of such section. (1939, c. 320, s. 3.)

This section applies to the adulteration of foods kept for sale. It has no application, therefore, to a controversy involving certain preservation powders for fruits. Smith v. Alphin, 150 N. C. 425, 64 S. E. 210.

§ 106-123. Injunctions restraining violations. — In addition to the remedies hereinafter provided the commissioner of agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 106-122; irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 106-124. Violations made misdemeanor.—(a) Any person who violates any of the provisions of § 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in county jail for not more than six months or a fine of not more than two hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment in county jail for not more than twelve months, or a fine of not more than four hundred dollars, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 106-122, subsection (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the commissioner of agriculture to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the state of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5.)

Civil Liability.—Impure and dangerous articles of food, causing death of purchaser, subjects the seller to liability in a civil action for damages. Ward v. Sea Food Co., 171 N. C. 33, 87 S. E. 958.

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.—(a) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of any recorder's, county, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and

expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labelled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the department of agriculture that the article is no longer in violation of this article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the department of agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6.)

§ 106-126. Prosecutions of violations.—It shall be the duty of any solicitor of a recorder's county, or superior court to whom the commissioner of agriculture reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the commissioner of agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (1939, c. 320, s. 7.)

§ 106-127. Report of minor violations in discretion of commissioner.—Nothing in this article shall be construed as requiring the commissioner of agriculture to report for the institution of proceedings under this article, minor violations of this article, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 106-128. Establishment of reasonable standards of quality by board of agriculture.—Whenever in the judgment of the board of agriculture such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the secretary of the United States department of agriculture under authority conferred by section four hundred one (401) of the Federal Act. (1939, c. 320, s. 9.)

Editor's Note.—See Smith v. Alphin, 150 N. C. 425, 64 S. E. 210.

§ 106-129. Foods deemed to be adulterated.—A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 106-132; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin: Provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States department of agriculture. (1939, c. 320, s. 10.)

Editor's Note.—See Smith v. Alphin, 150 N. C. 425, 64 S. E. 210.

§ 106-130. Foods deemed misbranded.—A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board of agriculture.

(f) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 106-128, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided by § 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by § 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board of agriculture.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board of agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: Provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture: Provided, further, that for the purpose of complying with the provisions of this article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common use in this state, shall be deemed sufficient labeling and no paper label shall be necessary. (1939, c. 320, s. 11.)

§ 106-131. Permits governing manufacture of foods subject to contamination with micro-organisms.—(a) Whenever the commissioner of agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality in this state, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the commissioner as provided by such regulations.

(b) The commissioner of agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the commissioner of agriculture shall have access to any factory or establishment, the operator of which holds a permit from the commissioner of agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Regulations by board of agriculture as to use of deleterious substances.—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of § 106-129, subsection (a); but when such substance is so required or cannot be so avoided, the

board of agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of clause (2) of § 106-129, subsection (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) § 106-129, subsection (a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1939, c. 320, s. 13.)

§ 106-133. Drugs deemed to be adulterated.—A drug or device shall be deemed to be adulterated—

(a) (1) If it consists in whole or in part of any filthy, putrid or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States department of agriculture.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States department of agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor. (1939, c. 320, s. 14.)

§ 106-134. Drugs deemed misbranded.—A drug or device shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board of agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, of sulphonmethane; or any chemical derivative of such substances, which derivative has been by the board after investigation, found to be, and by regulations under this article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenedtidin, amidopyrine, antipyrine atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the board of

agriculture shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the board of agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(h) If it has been found by the department of agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board of agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the commissioner of agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is a drug sold at retail for use by man and contains any quantity of aminopyrine, barbituric acid, cinchophen, dinitrophenol, or sulfanilamide; unless it is sold on a written prescription signed by a member of the medical, dental or veterinary profession who is licensed by law to administer such drug, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession.

(l) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if—(1) such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. (1939, c. 320, s. 15.)

§ 106-135. Regulations for sale of new drugs. —(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section five hundred and five of the Federal Act, or (2) when not subject to the Federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the commissioner of agriculture an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the commissioner may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (2) of this section shall become effective on the sixtieth day after the filing thereof, except that if the commissioner of agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only"; or (2) to a drug sold in this state at any time prior to the enactment of this article or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or (3) to any drug which is licensed under the virus, serum, and toxin Act of July first, one thousand nine hundred and two (U. S. C. one thousand nine hundred and thirty-four ed. title forty-two, chapter four).

(d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the commissioner of agriculture. (1939, c. 320, s. 16.)

Cross Reference.—See 52 Stat. 1040 (1938), 21 U. S. C. A. §§ 301-392 for Federal Food, Drug, and Cosmetic Act.

§ 106-136. Cosmetics deemed adulterated. — A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not ap-

ply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States department of agriculture. (1939, c. 320, s. 17.)

§ 106-137. Cosmetics deemed misbranded.—A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board of agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading. (1939, c. 320, s. 18.)

§ 106-138. False advertising.—(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

§ 106-139. Regulations by board of agriculture.—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the board of agriculture, except that the commissioner of agriculture is hereby authorized to promulgate regulations under § 106-131. The board is hereby authorized to make the regulations promulgated under this article conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this article shall be conducted by the commissioner of agriculture or such officer, agent, or employee as the commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina board of pharmacy, and a representative duly designated by the North Carolina board of health shall sit with the commissioner of agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of § 106-134, subsections (d), (f), (g), and (h); and in all cases of hearings and/or investigations, under § 106-134, subsections (d), (f), (g), and (h) and under § 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the board of pharmacy and the board of health for approval.

(d) Before promulgating any regulation contemplated by §§ 106-128; 106-130, subsection (j); 106-131; 106-134, subsections (d), (f), (g), and (h), or 106-138, subsection (b), the commissioner of agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board of agriculture (which date shall not be prior to ninety days after its promulgation, except such regulations as may be promulgated under § 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for

drugs shall, prior to promulgation by the board of agriculture be submitted to the board of pharmacy and the board of health for approval. (1939, c. 320, s. 20.)

§ 106-140. Further powers of commissioner of agriculture for enforcement of article.—The commissioner of agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose: (1) of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this article are being violated, and (2) to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the commissioner of agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated. (1939, c. 320, s. 21.)

§ 106-141. Appointment of inspectors. — (a) In the appointment of any drug inspector in carrying out the provisions of this article, the commissioner of agriculture shall confer with the North Carolina board of pharmacy.

(b) The commissioner of agriculture is authorized to conduct the examinations and investigations for the purposes of this article through officers and employees of the department or through any health, food or drug officer or employee of the state, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the department of agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22.)

§ 106-142. Publication of reports of judgments, decrees, etc.—(a) The commissioner of agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The commissioner of agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner of agriculture from collecting, reporting, and illustrating the results of the investigations of the department. (1939, c. 320, s. 23.)

§ 106-143. Article construed supplementary.—Nothing in this article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the state board of health, or any local health department, in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, fin fish, or other foods, or food products, or the production, handling, or processing thereof; but this article shall be construed to be in addition thereto. (1939, c. 320, s. 24½.)

§ 106-144. Exemptions.—Meats and meat products subject to Federal Meat and Inspection Act approved March four, one thousand nine hundred and seven, as amended, are exempted from the provisions of this article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24⅔.)

§ 106-145. Effective date.—This article shall be in full force and effect from and after January first, one thousand nine hundred and forty: Provided, that the provisions of § 106-139 shall become effective on April 3, 1939 and thereafter the commissioner of agriculture is authorized hereby to conduct hearings, and the board is authorized to promulgate regulations which shall become effective on and after the effective date of this article as the board shall direct. (1939, c. 320, s. 25.)

Art. 13. Canned Dog Foods.

§ 106-146. Labeling of canned dog food required.—Every can of dog food sold, offered or exposed for sale within this state shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the can (provided, that all canned dog foods shall be in cans of one-half pound, or one pound, or multiples of one pound); the name, brand or trade mark under which the article is sold; the name and address of the manufacturer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, all three constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (1939, c. 307, s. 1; 1941, c. 290, s. 1.)

Editor's Note.—The 1941 amendment made provision for cans of one-half pound. Prior to the amendment the percentage of moisture was one of the constituents of the required statement.

For comment on the 1939 enactment, see 17 N. C. Law Rev. 329.

§ 106-147. "Canned dog food" defined.—The term "canned dog food" shall be held to include any article of food, packed in cans or hermetically sealed containers, and used for food for dogs or cats. (1939, c. 307, s. 2.)

§ 106-148. Registration of copies of labels with commissioner of agriculture.—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this state any canned dog food, shall, for each and every canned dog food bearing a distinguishing name or trademark, file for registration with the commissioner of agriculture a copy of the statement required in § 106-146, giving in addition the percentage of moisture contained in said products, and accompany said statement, upon request, by a

sealed can containing at least one pound of said dog food. (1939, c. 307, s. 3; 1941, c. 290, s. 2.)

Editor's Note.—The 1941 amendment inserted the provision relating to percentage of moisture.

§ 106-149. Power of commissioner of agriculture to refuse or revoke registration upon failure to comply with regulations.—The commissioner of agriculture shall have the power to refuse the registration of any canned dog food under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the board of agriculture. Should any canned dog foods be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the commissioner of agriculture shall have the power to cancel such registration. (1939, c. 307, s. 4.)

§ 106-150. Annual registration fee; tax stamps.—Upon registration of each brand or kind of dog food, the manufacturer, agent or distributor thereof shall pay to the commissioner of agriculture an annual registration fee of five dollars ($5.00) payable at the time of registration, and thereafter on or before the last day of June of each year. Furthermore, each such manufacturer, agent or distributor shall pay to the commissioner of agriculture an inspection tax at the rate of two cents for each carton of forty-eight cans and shall affix to each such carton a stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid. Said stamps shall be redeemed by the department issuing said stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said stamps shall be returned for redemption within the time fixed by the board of agriculture. (1939, c. 307, s. 5.)

§ 106-151. Samples for analysis.—The commissioner of agriculture, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any canned dog food, and shall have power and authority to open any package containing or supposed to contain any canned dog food, and to take therefrom, in the manner hereinafter prescribed, samples for analysis, upon tender and full payment of the selling price of said sample. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such samples. (1939, c. 307, s. 6.)

§ 106-152. Adoption of standards, etc.—The board of agriculture is empowered to adopt standards for canned dog foods and such rules and regulations as may be necessary for the enforcement of this article. (1939, c. 307, s. 7.)

§ 106-153. Confiscation and sale by commissioner of agriculture in event of violation.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any canned dog food, as defined in § 106-147, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any canned dog food which contains substantially a smaller percentage of crude protein or crude fat or a larger percentage of crude fiber or moisture than certified to be contained, or who shall adulterate any canned dog food with foreign substances, of little or no food value, or with injurious substances, shall be guilty of a violation of this article, and the lot of canned dog food in question shall be subject to seizure, condemnation and sale by the commissioner of agriculture, and the proceeds from said sales shall be covered into the state treasury for the use of the department executing the provisions of this article. Such seizure and sale shall be made under the direction of the commissioner of agriculture by an officer of the department of agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after advertisement in some newspaper published or circulating in such county. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale. The commissioner of agriculture, however, may in his discretion release the canned dog food so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such seizure and withdrawal. (1939, c. 307, s. 8.)

§ 106-154. Failure to use tax stamps or improper use of stamps.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribute in this state any canned dog food without having attached thereto or furnished therewith tax stamps, as required by the provisions of this article, or who shall use the required tax stamps a second time to avoid the payment of the tax, or any manufacturer, importer, jobber, agent or dealer who shall counterfeit or use a counterfeit of such tax stamps, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 9.)

§ 106-155. Failure to comply with requirements.—Any manufacturer, importer, jobber, agent or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent or dealer person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 10.)

§ 106-156. Violations made misdemeanor.—Any manufacturer, importer, jobber, agent or dealer or who shall violate any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense, nor more than two hundred dollars for each subsequent offense. (1939, c. 307, s. 11.)

§ 106-157. Notification by commissioner as to violations.—Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard,

under such rules and regulations as may be prescribed by the commissioner and the board of agriculture, and if it appears that any of the provisions of this article have been violated the commissioner of agriculture shall certify the facts to the solicitor of the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1939, c. 307, s. 12.)

§ 106-158. Prosecution of violations.—It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any canned dog foods now in the hands or in the stock of any dealer or manufacturer. (1939, c. 307, s. 13.)

Art. 14. State Inspection of Slaughterhouses.

§ 106-159. Application for permit.—Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. Investigation of sanitary conditions; issuance of permit.—It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ 106-161. Municipalities, inspection of meats.—Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

§ 106-162. Fees for inspection.—The officials of municipalities or counties in which such inspection is maintained, shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ 106-163. Inspection conducted by veterinarian.—No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ 106-164. Number of permit to identify meats; revocation of permit.—To each establishment complying with the provisions of this article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ 106-165. Carcasses marked when inspected.—All meat carcasses inspected and passed in accordance with this article shall be branded with a rubber stamp bearing the number of the establishment and the words "N. C. Inspected and Passed." (1925, c. 181, s. 7.)

§ 106-166. Rules and regulations for inspection; power of commissioner.—The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this article. (1925, c. 181, s. 8.)

§ 106-167. Failure of butchers to keep record misdemeanor.—If any butcher shall fail to keep a book of registration and register the ear-mark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall apply only to the counties of Rockingham, Bertie, Edgecombe, Halifax, Martin, Orange, Pitt, Wilson, Wayne, Jones, Warren, Johnston, Richmond, Northhampton, Franklin, Craven, Chowan, Harnett, and Gates, and Warsaw township in Duplin county. (Rev., s. 3803; 1889, c. 318; 1895, c. 363; 1891, c. 38; 1891, c. 557; 1893, c. 116; 1903, c. 82; 1905, c. 31; 1909, c. 865, s. 1; C. S. 5099.)

§ 106-168. Local: Sales of calves for veal.—It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty

of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander, Ashe, Cherokee, Clay, Franklin, Gaston, Lee, Madison, McDowell, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915, c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification.—Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghany: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Buncombe: Pub. Loc. 1919, c. 191; Durham: 1915, c. 155; Lincoln: Pub. Loc. 1919, c. 159; Haywood, Macon, Swain, Graham and Jackson: Pub. Loc. 1297, c. 472; Transylvania: Pub. Loc. 1919, c. 191; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

Art. 15. Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned.—All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than one thousand beef cattle are slaughtered per annum, or more than ten thousand hogs or swine are slaughtered per annum, or more than five hundred sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; that said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection—Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

Cross Reference. — As to veterinaries, licensing, etc., generally, see §§ 90-179 et seq.

Editor's Note.—For a discussion of meat inspection, the right to destroy, due process of law, and damages for the destruction of meat which was really fit for human consumption, see 3 N. C. Law Rev. 27. The act is summarized in 3 N. C. Law Rev. 149.

§ 106-170. Fees for inspection.—The charges for said inspection shall be as follows: twenty-five cents for each and every beef cattle or cow inspected; ten cents for each and every hog inspected, and ten cents for each and every sheep inspected; ten cents for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in §§ 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ 106-171. Veterinary not available; who to inspect.—Should no regularly licensed veterinary surgeon be available for the purposes of this article, then the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ 106-172. Collection of fees; remuneration of inspector.—The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ 106-173. Slaughter houses, etc., under federal inspection, exempt from provisions of state inspection laws.—The provisions of §§ 106-159 to 106-172 shall not be applicable to any slaughter house or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughter house or meat packing plant is operated under federal inspection pursuant to the provisions of the meat inspection act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

Art. 16. Bottling Plants for Soft Drinks.

§ 106-174. Specifications of places of manufacture and sale.—Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the product therein produced. (1935, c. 372, s. 1.)

§ 106-175. Soft drink defined.—The term "soft drink" as used herein shall include all soda waters, orangeade, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same. (1935, c. 372, s. 2.)

§ 106-176. Establishment and equipment kept clean; containers sterilized. — The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean sanitary condition; all vessels, receptacles, uten-

sils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily, all bottles and other containers used must be sterilized in caustic soda or alkali solution in not less than three per cent alkali or other solution of the equivalent sterilizing effect as prescribed by the rules and regulations adopted by the board of agriculture. (1935, c. 372, s. 3; 1937, c. 232.)

Editor's Note.—The 1937 amendment inserted the words "or other solution of the equivalent sterilizing effect."

§ 106-177. Protection from contamination.—Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies, other insects and filthy products, and, as far as may be necessary, from all other foreign or injurious contamination. (1935, c. 372, s. 4.)

§ 106-178. Refuse removed daily.—All refuse and other waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (1935, c. 372, s. 5.)

§ 106-179. Syrup room screened.—The doors, windows and other openings of the syrup room used for the preparation of soft drinks by bottling establishments shall be fitted with wire screens of not coarser than fourteen-mesh wire gauze and the door or doors shall be fitted with self-closing screens. (1935, c. 372, s. 6.)

§ 106-180. Washroom and toilet.—Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (1935, c. 372, s. 7.)

§ 106-181. Use of deleterious substances prohibited.—The use of soap bark or any other substance deleterious to health in soft drinks is prohibited, and the container must bear the name of the material and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8.)

§ 106-182. Enforcement by commissioner of agriculture; inspectors; obstruction a misdemeanor.—It shall be the duty of the commissioner of agriculture to enforce the provisions of this article. The food inspectors or experts of the department of agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector or expert of the department in the performance of his duty in connection with this article shall be guilty of a violation thereof. (1935, c. 372, s. 9.)

§ 106-183. Violation of article a misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1935, c. 372, s. 10.)

§ 106-184. Bottler's inspection fee.—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the commissioner of agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter. (1935, c. 372, s. 11.)

Art. 17. Marketing and Branding Farm Products.

§ 106-185. Establishment of standard packages, etc., authorized.—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and state brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; 1921, c. 140; C. S. 4781.)

§ 106-186. Power to employ agents and assistants.—The board of agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S. 4782.)

§ 106-187. Board of agriculture to investigate marketing of farm products.—It shall be the duty of the board of agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States department of agriculture. (1919, c. 325, s. 3; C. S. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc.—After investigation, and from time to time as may be practical and advisable, the board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a state brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the congress of the United States, shall forthwith, as far

as applicable, be established or prescribed and promulgated as the official standard or requirement in this state: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (1919, c. 325, s. 4; C. S. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this state any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." The board of agriculture, or the commissioner of agriculture, and their authorized agents, are authorized to issue "stop sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this state any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; 1943, c. 483; C. S. 4785.)

Editor's Note.—The 1943 amendment added the last sentence of the first paragraph.

§ 106-190. Inspectors or graders authorized; revocation of license.—The board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S. 4786.)

§ 106-191. Appeal from classification. — The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S. 4787.)

§ 106-192. Certificate of grade prima facie evidence.—A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified.—Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the state or of any county or municipality thereof. (1919, c. 325, s. 9; C. S. 4789.)

§ 106-194. Inspection and sampling of farm products authorized.—Agents and employees are authorized from time to time to ascertain the amount of any farm products in this state, to inspect the same in the possession of any person engaged in the business of marketing them in this state, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing-house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C. S. 4790.)

§ 106-195. Rules and regulations; how prescribed.—The board of agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the secretary of agriculture of the United States, prescribed under any act of congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S. 4791.)

§ 106-196. Violation of article or regulations a

misdemeanor.—Any person who violates any provision of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who willfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S. 4792.)

Art. 18. Shipper's Name on Receptacles.

§ 106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.—Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the state, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S. 5087.)

Art. 19. Trademark for Standardized Farm Products.

§ 106-198. Adoption, design and copyright of trademark, etc.—The board of agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality in keeping with standards to be set up by the board governing its use. The board of agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ 106-199. Regulation of use of trademark.—The trademark may be used only in the manner prescribed by the board of agriculture and under the rules and regulations to be laid down by the board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the board consistent with §§ 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the department of agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the board for the product. (1941, c. 155, s. 2.)

§ 106-200. License for use of trademark.—Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the commissioner of agriculture. The commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the board concerning its use. The board of agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this article and to carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ 106-201. Licensing of providers of approved designs; furnishing list of growers, etc.—To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina state trademark, the following regulations shall be established:

(a) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the commissioner of agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the commissioner's approval as to their construction, adaptability and practicability for the use planned. The commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the board of agriculture.

(b) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations within the state licensed to use the trademark. The approved provider shall immediately report to the commissioner of agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(c) The commissioner of agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ 106-202. Violation made misdemeanor.—Any person, firm or corporation who knowingly violates any of the provisions of this article or any of the rules and regulations promulgated under it by the board of agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

Art. 20. Standard Weight of Flour and Meal.

§ 106-203. Standard-weight packages for corn products; violation a misdemeanor.—It shall be

unlawful for any person or persons to pack for sale, or offer for sale in this state, any corn meal, grits, hominy, or corn flour, except in bags or packages containing by standard net avoirdupois weight one pound, two pounds, three pounds, four pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, and one hundred pounds, or multiples of one hundred pounds, respectively. Each bag or package shall have plainly and legibly printed or marked thereon the net weight of contents thereof, in pounds, avoirdupois, and such weights shall be a true and correct statement thereof: Provided, that the provisions of this section shall not apply to the retailing of meal direct to customers from bulk stock, when purchased and delivered by actual weight or measure, or to exchange of corn for meal by mills grinding for toll. Any violation of this section shall be a misdemeanor and, upon conviction, the offender shall be fined not less than twenty-five dollars nor more than five hundred dollars. (1919, c. 74, ss. 2, 3; C. S. 4794.)

Cross References.—As to similar statutes regulating the sale of grits, meal, and flour, see §§ 81-67 to 81-70. As to act establishing uniform weights and measures generally, see §§ 81-1 to 81-22.

§ 106-204. Flour to be sold in standard-weight and stamped packages.—It shall be unlawful for any person to pack for sale, sell, or offer for sale in this state, flour, except in packages containing by standard weight twelve pounds, twenty-four pounds, forty eight pounds, ninety-eight pounds, or one hundred and ninety-six pounds of flour, with the weight plainly stated on the outside of the package. This section is not applicable to the retailing of flour direct to customers, nor to the packing or selling of flour in packages less than one-eighth of a bushel. (1909, c. 555, s. 3; 1911, c. 145; 1915, c. 10; C. S. 4795.)

Cross References.—As to similar section regulating the sale of flour, see § 81-69.

§ 106-205. Inspections to enforce article.—The board of agriculture shall cause to be made from time to time, under rules and regulations to be prescribed by them in accordance with the provisions of this article, such inspections or examinations as may be necessary to determine whether the provisions of this article have been violated. (1909, c. 555, s. 4; C. S. 4796.)

§ 106-206. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from such inspection or examination that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the fact to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the inspector, under oath, who made the examination. (1909, c. 555, s. 4; C. S. 4797.)

§ 106-207. Violation of article a misdemeanor.—Any person or persons violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment in the discretion of the court except as otherwise provided in § 106-203. (1909, c. 555, s. 5; C. S. 4798.)

§ 106-208. Forfeiture for unauthorized sale; release from forfeiture.—Meal or flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article: Provided, that the commissioner of agriculture may in his discretion order the release of the meal or flour seized when the owner of same shall offer to pack it in accordance with the provisions of §§ 106-203 and 106-204 in this article, and it shall appear to the satisfaction of the commissioner that said owner did not intend to violate the provisions of the law. (1909, c. 555, s. 5; C. S. 4799.)

§ 106-209. Rules to enforce article.—The board of agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this article. (1909, c. 555, s. 6; C. S. 4800.)

Art. 21. Artificially Bleached Flour.

§ 106-210. Collection and analysis of samples; publication of results.—For the purpose of regulating the labeling and sale of artificially bleached flour, the board of agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the state obtained, and shall cause same to be analyzed or examined by the state food chemist or other experts of the department of agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The board of agriculture is hereby authorized to make such publication of the results of the examination, analysis, and so forth as they may deem proper. (1917, c. 249, s. 1; C. S. 4801.)

§ 106-211. Entry to secure samples.—The food inspectors of the department of agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (1915, c. 278, s. 2; C. S. 4802.)

§ 106-212. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1915, c. 278, s. 3; C. S. 4803.)

§ 106-213. Label for artificially bleached flour.—Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached." (1915, c. 278, s. 4; C. S. 4804.)

§ 106-214. Statement required to be filed before sale.—Before any artificially bleached flour shall be offered for sale in this state the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this state shall file with the commissioner of agri-

culture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (1915, c. 278, s. 5; C. S. 4805.)

§ 106-215. Inspection fee for registering brands.—For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the state, the manufacturer, dealer, or agent registering same shall pay to the commissioner of agiculture an inspection fee of fifteen dollars, and during the month of January in each year, or before such flour is offered for sale in the state, said fees to be used by the board and commissioner of agriculture for executing the provisions of this article. (1917, c. 249, s. 2; C. S. 4806.)

§ 106-216. Violation of article a misdemeanor.—Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in § 106-213, or who shall violate any of the provisions of the article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court. (1915, c. 278, s. 7; C. S. 4807.)

§ 106-217. Forfeiture for unauthorized sale; release from forfeiture.—The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into treasury for use in executing the provisions of this article: Provided, that the commissioner of agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the department in the seizure of the same, and upon compliance with the requirements of this article, when it shall appear to the commissioner that said owner did not intend to violate the law. (1915, c. 278, s. 7; C. S. 4808.)

§ 106-218. Seller to furnish samples on payment.—Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the board of agriculture to secure same, and who shall apply for such sample. (1915, c. 278, s. 8; C. S. 4809.)

§ 106-219. Refusing samples or obstructing article a misdemeanor.—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of § 106-218, or any person who shall wilfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court. (1915, c. 278, s. 8; C. S. 4810.)

Art. 22. Inspection of Bakeries.

§ 106-220. Sanitary condition of rooms; drainage; toilets.—Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water closet shall be well ventilated and kept in a sanitary condition. (1921, c. 173, s. 1; C. S. 7251(k).)

§ 106-221. Tables, shelves, and implements; refuse; sleeping rooms.—All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The work rooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (1921, c. 173, s. 2; C. S. 7251(l).)

§ 106-222. Employees; sitting or lying on tables; cleanliness.—No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning the work of preparing or mixing the ingredients, or after using toilet or water closet, every person engaged in the preparation or handling of bakery products shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (1921, c. 173, s. 3; C. S. 7251(m).)

§ 106-223. Use of tobacco.—No person shall use tobacco in any form in any bakery or bread manufacturing plant where bread or other bakery products are manufactured or stored. (1921, c. 173, s. 3a; C. S. 7251(n).)

§ 106-224. Ingredients and materials.—All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or

contaminated, or which may render the product unwholesome or unfit for food. (1921, c. 173, s. 4; C. S. 7251(o).)

§ 106-225. Adulterants; stale products; infections.—No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale. All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as "rope" or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel keeper to bakery or distributor after same has been in stock where it may have been subject to contamination, and no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (1921, c. 173, s. 5; 1925, c. 286; C. S. 7251(p).)

Editor's Note. — The last two sentences were added by the 1925 amendment.

§ 106-226. Department of agriculture to enforce law; examination of plant and products.—It shall be the duty of the department of agriculture to enforce this article, and the board of agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all bakeries or storage rooms where bakery products are made, stored, or kept, and any person who shall prevent or attempt to prevent any duly authorized expert in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1921, c. 173, s. 6; C. S. 7251(q).)

§ 106-227. Closing of plant; report of violation of article to solicitor.—If it shall appear from examination that any provision of this article has been violated, the commissioner of agriculture shall have authority to order the bakery or place closed until the law has been complied with. If the owner or operator of same refuses or fails to comply with the law, the commissioners shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 173, s. 7; C. S. 7251(r).)

§ 106-228. Regulations; establishment; violation.—The board of agriculture is authorized to establish such regulations, not in conflict with this article, as may be necessary to make provisions of this article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this article. (1921, c. 173, s. 8; C. S. 7251(s).)

§ 106-229. Inspection fee.—For the purpose of defraying expenses incurred in the enforcement of this article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this state shall pay to the commissioner of agriculture during the month of May of each year, an inspection fee of ten dollars.

Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; 1937, c. 281; C. S. 7251(t).)

Editor's Note.—The 1937 amendment added the provision at the end of this section.

§ 106-230. Violation of article a misdemeanor.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 173, s. 10; C. S. 7251(u).)

§ 106-231. Inspectors.—The inspectors who shall carry out the provisions of this article shall be the same inspectors who shall be sent out by the department of agriculture to inspect bottling works and general food inspections. (1921, c. 173, s. 10a; C. S. 7251(v).)

§ 106-232. Article supplemental to municipal ordinances.—Nothing in this article shall have the effect of repealing or rendering void ordinances upon this subject now in force in any municipality in North Carolina, but this article shall be construed to be supplemental and in addition thereto. (1921, c. 173, s. 11; C. S. 7251(w).)

Art. 23. Oleomargarine.

§ 106-233. Definitions.—(a) The word "person" shall mean person, firm, or corporation, either principal or agent.

(b) Any word used shall indicate the singular or plural as the case demands.

(c) The word "oleomargarine" shall mean: all substance heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef extracts, suet, lard, lard oil, fish oil, or fish fat, vegetable oil, annato, and other coloring matter, intestinal fat and offal fat, if (first) made in imitation or semblance of butter, or (second) calculated or intended to be sold as butter or for butter, or (third) churned, emulsified, or mixed in cream, milk, water, or other liquid and containing moisture in excess of one per centum of common salt. This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments or spices: salad dressings, mayonnaise dressings, or mayonnaise products. (1931, c. 229, s. 1.)

§ 106-234. Sale of colored oleomargarine prohibited.—It shall be unlawful to sell, offer for sale, or merchandise in any manner whatsoever oleomargarine which is of a yellow color in imitation or semblance of butter as defined in § 106-235. (1931, c. 229, s. 2.)

§ 106-235. License to sell uncolored oleomargarine. — Every person desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell, oleomargarine not made or colored so as to look like butter, shall make application for a license to do so in such form as

prescribed by the State Commissioner of Agriculture, but this provision shall not apply to any person engaged in the retail sale of oleomargarine.

If the said application is satisfactory to the State Commissioner of Agriculture, there shall be issued to the applicant a license authorizing him to engage in the manufacture or sale of oleomargarine, which shall not contain any color or ingredient that causes it to resemble yellow butter, for which said license the applicant shall pay: If a wholesaler or distributor, the sum of seventy-five dollars ($75.00) annually for each separate plant or establishment operated or maintained in this State by such wholesaler or distributor. The said license fees shall be collected by the State Department of Agriculture, and covered into the State Treasury as a part of the Agricultural Fund. This license shall not authorize the manufacture, sale, exposing for sale, or having in possession with intent to sell any oleomargarine made or colored so as to look like yellow butter as herein provided. For the purpose of this article oleomargarine or articles or products in semblance of butter shall be deemed to look like and be in semblance of or in imitation of butter or a shade of butter when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in terms of Lovibond tintometer scale, or its equivalent.

All licenses shall expire on the thirty-first day of December of each year. (1931, c. 229, s. 3; 1939, c. 282, ss. 1, 2.)

Editor's Note.—The 1939 amendment added the exception to the first paragraph. It omitted in the second paragraph the license required of a manufacturer, and changed the provision as to license of wholesaler or distributor.

§ 106-236. Display of signs.—It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine not in imitation of yellow butter which is not marked and distinguished by the word oleomargarine on the outside of each tub, package, or parcel. A placard with the words, OLEOMARGARINE SERVED HERE, printed in Gothic letters one inch long, shall be displayed in some conspicuous place in each dining-room, cafe, hotel, or wherever oleomargarine is served to the public as a food. The provisions of this section shall not apply to boarding houses. A boarding house is defined as being any person or establishment selling or offering for sale meals under contract, only on a daily basis or multiple of days. (1931, c. 229, s. 4; 1939, c. 282, s. 3.)

Editor's Note.—The 1939 amendment added the last two sentences.

§ 106-237. Article enforced by Commissioner of Agriculture.—This article shall be administered and enforced by the State Department of Agriculture, which shall prescribe necessary rules and regulations therefor. Any license which is issued under the terms and conditions prescribed in § 106-235 can be revoked by the State Commissioner of Agriculture upon the submission to him of evidence that this article has been violated by the holder of such license. (1931, c. 229, s. 5.)

§ 106-238. Penalties. — Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation, who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court. (1931, c. 229, s. 6.)

Art. 24. Excise Tax on Certain Oleomargarines.

§ 106-239. Tax imposed; rules and regulations; penalties; disposition of proceeds.—There is hereby imposed an excise tax of ten cents per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: Cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the state department of agriculture.

The state department of agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the state department of agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the state department of agriculture for the enforcement of this section. (1935, c. 328).

Art. 25. Sale of Eggs.

§ 106-240. Regulation of marketing and branding of eggs.—The regulation of marketing and branding eggs shall be only as authorized under the provisions of this article and of §§ 106-185 to 106-196. (1939, c. 193.)

§ 106-241. Containers of cold storage eggs required to be labeled as such.—Any person, firm or corporation offering for sale cold storage eggs either wholesale or retail, shall cause crates containing the eggs or any other type of container to be stamped or printed with the words "Cold Storage Eggs." (1939, c. 291, s. 1.)

§ 106-242. Restaurant, etc., menu or card required to show cold storage eggs.—Any hotel, restaurant, inn, or any other establishment serving cold storage eggs to the public shall cause to be written on their menu, or printed on a card, "Cold Storage Eggs." (1939, c. 291, s. 2.)

§ 106-243. Labelling of invoices.—Every person selling eggs which have been in storage thirty days or more, either within or without the state, to a retail store, hotel, restaurant, inn, or any other establishment shall furnish an invoice with

the wording "Cold Storage Eggs." A copy of such invoice shall be kept on file by the person selling and the one buying at their respective places of business for a period of sixty days and shall be available and open for inspection at all reasonable times by the department of agriculture. (1939, c. 291, s. 3.)

§ 106-244. Examination of eggs by commissioner of agriculture, etc., authorized.—In all cases the final determination as to the meeting of the above requirements shall be made by candling. In carrying out the provisions of this article, the commissioner of agriculture, his employees, or agents are authorized to enter on any business day, during the usual hours of business, any store, warehouse, market or place where eggs are sold or offered for sale and to make such examination as is necessary to determine the class of eggs sold or offered for sale. (1939, c. 291, s. 4.)

§ 106-245. Violations made misdemeanor.—Any person wilfully or intentionally violating the provisions of this article shall be guilty of a misdemeanor and shall be fined or imprisoned within the discretion of the court. (1939, c. 291, s. 5.)

Art. 26. Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation enjoined; wash rooms and toilets, living and sleeping rooms; animals.—For the protection of the health of the people of the state, all places where ice-cream, frozen custard, milk sherbet, sherbet, water ices, and other similar frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows, or other openings. (1921, c. 169, s. 1; 1933, c. 431, s. 1; C. S. 7251(a).)

Local Modification.—Mecklenburg and Cabarrus: 1933, c. 431, s. 5; Burke and Catawba: 1939, c. 294.

Editor's Note.—Public Laws of 1933, c. 431, made this section applicable to frozen custard, milk sherbet, etc.

§ 106-247. Cleaning and sterilization of vessels and utensils.—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice-cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C. S. 7251(b).)

§ 106-248. Purity of products.—All cream, ice-cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the board of agriculture provided for in § 106-253, and whole milk, sweet cream, and ice cream mix shipped into this state from other states shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing grade or standard of quality of product. (1921, c. 169, s. 3; 1933, c. 431, s. 2; C. S. 7251(c).)

Editor's Note.—Public Laws 1933, c. 431, added the last clause of the section relating to products shipped into the state.

§ 106-249. Receivers of products to clean utensils before return.—Every person, company, or corporation who shall receive milk, cream, or ice-cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S. 7251(d).)

§ 106-250. Correct tests of butter fat; tests by board of agriculture.—Creameries and factories that purchase milk and cream from producers of same on a butter-fat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this article. The board of agriculture, under regulations provided for in § 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S. 7251(e).)

§ 106-251. Department of agriculture to enforce law; examinations.—It shall be the duty of the department of agriculture to enforce this article, and the board of agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice-cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the department in the performance of his duty in connection with this article shall be guilty of a violation of the article. (1921, c. 169, s 6; C. S. 7251(f).)

§ 106-252. Closure of plants for violation of article; certificate to sclicitor of district.—If it shall appear from the examinations that any provision of this article has been violated, the commissioner of agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of place refuses or fails to comply with the order, law, or regulations, the commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 169, s. 7; C. S. 7251(g).)

§ 106-253. Standards of purity and sanitation.—The board of agriculture is authorized to make

such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. (1921, c. 169, s. 8; 1933, c. 431, s. 3; C. S. 7251(h).)

Editor's Note.—Public Laws 1933, c. 431, added the clause "to make such definitions and."

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice-cream factory where ice cream, frozen custard, milk sherbet, sherbet, water ices and/or other similar frozen food products are made or stored or cheese factory or creamery in this state that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the commissioner of agriculture during the month of July of each year an inspection fee of twenty dollars ($20), and each maker of ice-cream, frozen custard, milk sherbet, sherbet, water ices, and/or other similar frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the commissioner of agriculture an inspection fee of five dollars ($5) during the month of July of each year. (1921, c. 169, s. 9; 1933, c. 431, s. 4; C. S. 7251(i).)

Editor's Note.—Public Laws of 1933, c. 431, made this section applicable to frozen custards, milk sherbets, etc.

§ 106-255. Violation of article a misdemeanor; punishment.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S. 7251(j).)

Art. 27. Records of Purchases of Milk Products.

§ 106-256. Annual reports to dairy division by creameries, milk distributing plants, etc.—Every person, firm or corporation owning or operating a milk processing plant, creamery, milk distributing or cream buying station in this state, where milk or cream is received, shall file on or before April first of each year, upon blanks furnished, a report to the dairy division of the state department of agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream.—Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records, otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the commissioner of agriculture. (1939, c. 327, s. 2.)

§ 106-258. Individual plant records treated as confidential.—Any individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be published or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. Failure to comply with provisions of article made misdemeanor.—Any person, firm or corporation owning or operating a creamery, cheese plant, condensed milk plant, ice cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

Art. 28. Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined.—Wherever the word "milk" appears hereinafter in this article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk. (1941, c. 162, s. 1.)

§ 106-261. Reports to commissioner of agriculture as to milk purchased and sold.—Every person, firm, or corporation that purchases milk on a classification basis and/or that purchases both inspected and uninspected milk for processing and distribution and sale in North Carolina shall, not later than the twenty-fifth of each month following the month such business is carried on, furnish information to the commissioner of agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which this milk was distributed or sold. Such reports shall include all milk purchased from producers and/or purchased, sold, or transferred between plants, distributors, affiliates and subsidiaries. (1941, c. 162, s. 2.)

§ 106-262. Powers of commissioner of agriculture.—The commissioner of agriculture shall have the power:

(a) to require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was disposed;

(b) to designate any area of the state as a natural marketing area for the sale of milk;

(c) to set up the classifications of milk that may be necessary to properly carry out and enforce the provisions of this article for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given. (1941, c. 162, s. 3.)

§ 106-263. Distribution of milk in classification higher than that in which purchased.—It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the

local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by commissioner.—For the purpose of administering this article the commissioner of agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the state, and may take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this article. The commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful.—It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000.00), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7.)

Art. 29. Inspecting, Grading, and Testing Milk and Dairy Products.

§ 106-267. Inspecting, grading, and testing milk products by department of agriculture.—The state department of agriculture shall have full power to make and promulgate rules and regulations for the dairy division of the department of agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this state; to regulate the manner of testing the same not inconsistent with the standard methods as promulgated by the American public health association, and of all inspections which may be lawfully made except those relating to public health and sanitation, in the handling, treatment, and sale of the said milk products, and such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the commissioner of agriculture on this subject, and may license Babcock testers and revoke license.

The commissioner of agriculture shall be given authority to inspect all Babcock testers, glassware, and scales, as provided for in these regulations, and condemn such as are not found accurate and in good repair. He shall visit either in person, or by a deputy, all creameries, cheese factories, milk depots, etc., where milk and cream, and milk products are sold in this state, as often as may be necessary, and shall supervise in any practical way, the work of all licensed testers as provided for in this section.

The commissioner of agriculture and his deputies shall be authorized and empowered to make such tests as are necessary to settle disputes when called upon by either buyer or seller of milk, cream, or other dairy products where such disputes arise over dissatisfaction regarding weight or tests of dairy products. Such tests shall be regarded as correct, and shall be used as a basis for settlement in such disputes. (1933, c. 550, ss. 1-3.)

§ 106-268. Misbranding milk or cream prohibited.—It shall be unlawful for any person, firm, association or corporation to sell or offer for sale in any city, county, or other unit of local government which has adopted the public health service milk ordinance, or within one mile of the boundaries thereof, milk or cream in any container, bottle, or can bearing any legend, letter or symbol likely to be misleading, or indicating that such milk or cream has been graded, unless said milk or cream does conform in every respect with the requirements of said public health service milk ordinance. Any person violating the provisions of this section is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $50.00, nor less than $10.00. (1933, c. 343, s. 1.)

Art. 30. Farm Crop Seed Improvement Division.

§ 106-269. Creation and purpose; election of director.—There is hereby created in the Agricultural Extension Service of the State College of Agriculture and Engineering a division to be known as the Farm Crop Seed Improvement Division, and it shall be the duty and function of this division to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. The Director of said Division shall be selected as the heads of other divisions of the State College of Agriculture and Engineering are selected and said division shall have the necessary cooperation of all other members of the college staff of said State College of Agriculture and Engineering for the proper carrying out of the purposes of this article. (1929, c. 325, s. 1.)

§ 106-270. State board of farm crop seed improvement.—The Governor, the Commissioner of Agriculture and the Dean of the School of Agriculture of the State College of Agriculture and Engineering, are hereby created a State Board of Farm Crop Seed Improvement. (1929, c. 325, s. 2.)

§ 106-271. Powers of Board.—The said board shall have control, management and supervision of the production, distribution and certification of pure-bred crop seeds under the provisions of this article. (1929, c. 325, s. 3.)

§ 106-272. Co-operation of other departments with Board; rules and regulations; fees for certification.—In so far as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively co-operate with the said Board in carrying out the purpose of this article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this article. (1929, c. 325, s. 4.)

§ 106-273. North Carolina Crop Improvement Association.—For the purpose of carrying out more fully the provisions of this article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

§ 106-274. Certification of crop seeds.—For the purposes of this article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ 106-275. False certification of pure-bred crop seeds made misdemeanor.—It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ 106-276. Supervision of certification of crop seeds.—Certification of crop seeds in so far as it concerns the origin, adaptation, variety name, variety purity and quality shall be subject to the supervision of the director of the Division of Farm Crop Seed Improvement. Certification of crop seeds in so far as it concerns germination and purity tests shall be subject to the supervision of the State Department of Agriculture. The North Carolina Crop Improvement Association may certify any crop seeds when the certification thereof shall have been approved by both the director of the Division of Farm Crop Seed Improvement and by the State Department of Agriculture. (1929, c. 325, s. 7.)

Art. 31. North Carolina Seed Law.

§ 106-277. Short title.—This article shall be known by the short title of "The North Carolina Seed Law." (1941, c. 114, s. 1.)

§ 106-278. Administration.—This article shall be administered by the commissioner of agriculture of the state of North Carolina hereinafter referred to as the "commissioner." (1941, c. 114, s. 2.)

§ 106-279. Definitions.—When used in this article:

a. The word "person" includes a person, firm, partnership, corporation, company, society, association, trustee, or receiver.

b. The term "agricultural seeds" shall include the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural or field seeds, and mixtures of such seeds.

c. The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds.

d. The term "inert matter" includes sand, dirt, chaff, and other foreign substances, and broken seed incapable of germination.

e. The term "weed seeds" shall mean the seeds of all plants generally recognized within this state as weeds, and shall include noxious weed seed.

f. Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and "secondary noxious weed seeds," which are defined in (1) and (2) of this subsection:

(1) "Primary noxious weed seeds" are the seeds of perennial weeds such as not only reproduce by seed but also spread by underground roots or stems, and which when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.

(2) "Secondary noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice.

g. The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

h. The term "grower" shall mean any person who produces directly as landlord, tenant, sharecropper, or lessee, the seed sold.

i. The term "dealer" shall mean any person not classified as a "grower," selling or offering for sale any seeds for planting purposes, and shall include any person who has seed grown under contract for resale for planting purposes.

j. The term "hybrid" as applied to field corn, sweet corn, or popcorn seed shall represent the first generation of a cross involving one, two, three, or four different inbred lines of corn or their combinations. An "inbred line" is a line of corn that has been developed as a result of not less than five generations of controlled self-fertil-

ization or the equivalent. (1941, c. 114, s. 3; 1943, c. 203, s. 1.)

Editor's Note.—The 1943 amendment added subsection j.

§ 106-280. Attachment of seed analysis tags to containers of seeds for sale; information required on tags.—Each container of agricultural or vegetable seeds weighing ten (10) pounds or more which is sold, offered for sale, or exposed for sale within this state for planting purposes, shall have attached thereto a North Carolina seed analysis tag purchased from the department of agriculure, for one cent each, and in case such seed are shipped into this state said tag shall be secured by the person shipping such seed into the state before shipment to agent, retailer or other person, on which is plainly written or printed the following information:

a. For Agricultural Seeds:

(1) Lot number or other identification.

(2) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of five per cent (5%) of the whole and the percentage by weight of each. Where more than one component is required to be named the word "mixture" or "mixed" shall be associated with the name on the label.

(3) Origin, if known; if unknown, so stated.

(4) Percentage by weight of agricultural seeds other than those required to be named on the label.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of all weed seeds.

(7) The name and approximate number per pound of secondary noxious weed seeds when present singly or collectively in excess of the tolerances prescribed in the rules and regulations under this article.

(8) For each named agricultural seed.

(a) Percentage of germination exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine such percentages.

(9) Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale. Provided that the provisions of (2), (4), (5), (6), and (7) of subsection "a" of this section shall not apply to cotton, corn, and tobacco except the name of kind or kind and variety, shall be shown as required in (2).

(10) All hybrid corn seed shall have plainly written or printed on the tag or label the name and/or number by which the hybrid is commonly designated.

b. For Vegetable Seeds:

(1) Name of kind and variety of seeds.

(2) For seeds on which the germination equals or exceeds the standards last adopted under the rules and regulations of this article the words "NORTH CAROLINA STANDARD" may be used in lieu of the actual germination.

(3) For seeds which germinate less than the standard last established by the commissioner and board of agriculture under this article:

(a) Percentage of germination exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) Calendar year and month the test was completed to determine such percentages.

(d) The words "BELOW STANDARD."

(4) The name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale: Provided, that in cases where the required analysis and other information regarding the seed is present on the seedsman's label or tag, accompanied by the official North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis" or other words to that effect, the provisions of this section shall be deemed to have been complied with, and undefaced tags or labels of the previous year may be exchanged for tags or labels of the current year. Provided, further, that no tag or label shall be required, unless requested, on seeds sold directly to, and in the presence of, the consumer and taken from a bag or container properly labeled in accordance with the provisions of this section, but this shall in no way exempt from the analysis given on the tag or label attached to such container.

c. For vegetable seeds in containers of less than ten (10) pounds which germinate less than the standards last adopted by the commissioner and board of agriculture the actual germination shall be shown.

d. Provided, that the official tag or label of the North Carolina Crop Improvement Association shall be considered a "North Carolina seed analysis tag" when fees applicable to said tag have been paid to the department of agriculture. (1941, c. 114, s. 4; 1943, c. 203, s. 2.)

Editor's Note.—The 1943 amendment added subdivision (10) under subsection a.

§ 106-281. Prohibited acts.—It shall be unlawful:

a. For any person within this state to sell, offer or expose for sale any seed defined in this article for seeding purposes:

(1) Unless the test to determine the percentage of germination shall have been completed within a nine-month period exclusive of the calendar month in which the test was completed prior to sale or exposure for sale.

(2) Not labeled in accordance with the provisions of this article, or having a false or misleading label: Provided that the provisions of § 106-280 shall not apply to seed consigned to or in storage in a seed cleaning or processing establishment for cleaning or processing when each lot of such seed is labeled "to be cleaned or processed," or to seed being sold by a grower to a dealer. Provided further that any labeling or other representation which may be made with respect to such seed shall be subject to this article.

(3) Any seeds containing primary noxious weed seeds, subject to tolerances prescribed in the rules and regulations under this article.

b. For any person within this state:

(1) To detach, alter, deface or destroy any label provided for in this article or to alter or substitute seed in a manner that may defeat the purposes of this article.

(2) To hinder or obstruct in any way any authorized person in the performance of his duties under this article.

(3) To fail to comply with an order of the commissioner or his authorized agent to withdraw from

sale any seed which do not comply with the requirements of this article.

(4) To sell, offer, or expose for sale any hybrid corn seed that has not been recorded with the commissioner annually giving the pedigree of the hybrid and the name of the person who developed each inbred line involved in the cross. (1941, c. 114, s. 5; 1943, c. 203, s. 3.)

Editor's Note.—The 1943 amendment added subdivision (4) of subsection b.

§ 106-282. Authority of commissioner and his agents.—For the purpose of carrying out the provisions of this article, authority is hereby delegated to the commissioner or his authorized agents:

a. To sample, inspect, make analysis of and test agricultural and vegetable seeds transported, sold, offered or exposed for sale within this state for seeding purposes, at such time and place and to such extent as he may deem necessary to determine whether or not this article has been complied with.

b. To adopt and prescribe, by and with the advice of the board of agriculture, rules and regulations governing the methods of sampling, inspecting, making analyses, testing and examining agricultural and vegetable seeds, and to make regulations governing tolerances allowed in the administration of this article; also to adopt grades and standards for seeds and to name noxious weed seeds.

c. To issue "stop sale" orders which shall prohibit further sale of any lot of seed which the commissioner or his authorized agent has reason to believe is being offered or exposed for sale in violation of any of the provisions of this article, until the law has been complied with, or said violation otherwise legally disposed of.

d. To establish and maintain a seed laboratory with adequate facilities and personnel for such inspecting, sampling, and testing as may be necessary for the efficient enforcement of this article.

e. To publish or cause to be published at intervals information covering the findings of the seed laboratory.

f. To withdraw from sale seed not having a reasonable viability or that are extremely impure, or that are of distinct low quality otherwise, notwithstanding they may be properly labeled, when such withdrawal is in the interest of normal crop production.

g. To make rules and regulations under which any person, of this state shall have the privilege of having samples of seed tested free of charge in the state seed laboratory.

h. To record annually the hybrid corn seed which has been tested the previous year in the official variety tests of the North Carolina Agricultural Experiment Station in the section or sections of the state where it is to be offered for sale. The commissioner by and with the advice of the director of the North Carolina Agricultural Experiment Station may refuse to record any hybrid seed corn which has been shown to be inferior. (1941, c. 114, s. 6; 1943, c. 203, s. 4.)

Editor's Note.—The 1943 amendment added subsection h.

§ 106-283. Sources of funds for expenses; licensing of seed dealers; inspection stamps.—For the purpose of providing a fund to defray the expenses of the inspection, examination, and analysis prescribed in this article:

a. Each seed dealer selling, offering or exposing for sale in, or export from, this state any agricultural, vegetable, or flower seeds, other than packet or package seeds, for seeding purposes, shall register with the department of agriculture the name of such dealer and shall obtain a license annually on January first of each year, and shall pay for such license as follows:

(1) Twenty-five dollars ($25.00), if a wholesaler, or a wholesaler and retailer.

(2) Ten dollars ($10.00), if a retailer with sales in excess of one hundred dollars ($100.00) for the calendar year. Each branch of any wholesaler or retailer shall be required to obtain a retail license.

(3) One dollar ($1.00), if a retailer at a permanent location with sales not in excess of one hundred dollars ($100.00). Provided, that if and when the seed sales for the calendar year shall exceed one hundred dollars ($100.00), application must be made for a ten dollar ($10.00) license, credit to be given for the one dollar ($1.00) license previously secured: Provided, further that no owner or operator of any harvester or threshing machine operating on a share basis and selling only the seed obtained in this manner shall come under the provisions of this section.

b. A one dollar ($1.00) inspection stamp shall be purchased from the department of agriculture for each seventy-two (72) dozen packets or packages of vegetable or flower seeds, or fraction thereof. The said stamp shall be secured by the producer, grower, jobber or other person, firm or corporation shipping such seed into the state before shipment to agent or retailer, and shall be furnished to said agent or retailer for attachment to display case: Provided, also, that any producer, grower, jobber or other person, firm or corporation, residing within this state shall secure said stamp before furnishing any such seed to any agent or retailer within the state for resale. The said stamp or stamps shall be attached to the display case before the seed are offered or exposed for sale, and shall expire at the end of the calendar year for which issued: Provided further that in cases where package seed of one kind or variety are offered or exposed for sale in boxes or display cases not in excess of three dozen packages, a ten cent stamp shall be purchased from the department of agriculture and attached to said box or display case. (1941, c. 114, s. 7.)

§ 106-284. Violations made misdemeanor; prosecutions; release of seeds after compliance.—Every violation of the provisions of this article shall be deemed a misdemeanor and punishable by a fine not to exceed five hundred dollars ($500.00), and if the commissioner shall find, upon examination, analysis, or test, that any person has violated any of the provisions of this article, he or his duly authorized agent or agents may institute proceedings in a court of competent jurisdiction against such person; or the commissioner, in his discretion, may report the results of such examination to the attorney general, together with sworn statement of the analyst, duly acknowledged, and such other evidence of such violation as he shall deem necessary. Said sworn statement shall be admitted as evidence in any court of this state in any proceeding instituted under this article; but, upon a motion of the

accused, such analyst shall be required to appear as a witness and be subject to cross-examination: Provided, however, that no prosecution for violation of this article, if such violations are based on tests or analyses, shall be instituted except in the manner following: When the commissioner of agriculture finds that this article has been violated, as shown by test, examination or analysis, he shall give notice to the person responsible for labeling the seeds, designating a time and place for a hearing. This hearing shall be private, and the person or firm involved shall have the right to introduce evidence, either in person, or by agent or attorney. If, after said hearing, or without said hearing, in case said person fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he shall proceed as herein provided. Moreover, it shall be the duty of the attorney general, or, in his discretion, he may act through the attorney of the county or city in which such violation has occurred, to institute proceedings at once against the person charged with such violations: Provided, such proceedings for violations shall be instituted according to the laws of this state: Provided, further that when the provisions of this article have been fully complied with regarding any seeds which have been withdrawn from sale, or have been ordered by the commissioner to be disposed of for other than seeding purposes, the commissioner, may in his discretion, release the same for sale upon the payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such withdrawal. (1941, c. 114, s. 8.)

Art. 32. Linseed Oil.

§ 106-285. Inspection and analysis authorized.—For the purpose of protection of the people of the state from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the board of agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the state obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the department of agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this article or is otherwise offered for sale in violation of this article. (1917, c. 172, s. 1; C. S. 4832.)

§ 106-286. "Raw" and "boiled" linseed oil defined.—The term "raw linseed oil" as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term "boiled linseed oil" as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than two hundred and twenty-five degrees Fahrenheit. (1917, c. 172, s. 2; C. S. 4833.)

§ 106-287. "Adulterated" linseed oil defined.—For the purpose of this article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopœia for the year nineteen hundred. (1917, c. 172, s. 3; C. S. 4834.)

§ 106-288. Sale of prohibited products; statement required of dealer.—No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the state shall file with the commissioner of agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this article. (1917, c. 172, s. 4; C. S. 4835.)

§ 106-289. Drying agents; label to state name and percentage.—Boiled linseed oil which has been heated to a temperature of not less than two hundred and twenty-five degrees Fahrenheit may contain drying agents not to exceed four per cent by volume, provided that the name and per cent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same: and Provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the board of agriculture under this article. (1917, c. 172, s. 5; C. S. 4836.)

§ 106-290. Compounds, imitations, and substitutes regulated.—Nothing in this article shall be construed to prohibit the sale of compound linseed oil, or imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be: and Provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the board of agriculture under this article. (1917, c. 172, s. 6; C. S. 4837.)

§ 106-291. Containers to be marked with specified particulars.—Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this state, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in bold-face capital letters that meet the regulations prescribed by the board of agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also

bear the name and address of the manufacturer or jobber of such oil. (1917, c. 172, s. 7; C. S. 4838.)

§ 106-292. Entry for samples authorized.—The inspectors or agents of the department of agriculture, authorized to make inspection under this article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products. (1917, c. 172, s. 8; C. S. 4839.)

§ 106-293. Refusing samples or obstructing article forbidden.—Every person who offers for sale or delivers to a purchaser any article named in this article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the department in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1917, c. 172, s. 8; C. S. 4840.)

§ 106-294. Violations of article a misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense and for each subsequent offense in the discretion of the court. (1917, c. 172, s. 9; C. S. 4841.)

§ 106-295. Forfeiture for unauthorized offer; disposal of proceeds.—The oil offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article. (1917, c. 172, s. 9; C. S. 4842.)

§ 106-296. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from the inspection or other examination of oils that any of the provisions of this article have been violated, besides the action above provided for, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1917, c. 172, s. 10; C. S. 4843.)

§ 106-297. Solicitor to prosecute.—It shall be the duty of the solicitor to prosecute such cases for fines and penalties provided for in this article in courts of competent jurisdiction. (1917, c. 172, s. 10; C. S. 4844.)

§ 106-298. Inspection tax.—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article there shall be paid to the commissioner of agriculture an inspection tax of one-half cent per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this state. (1917, c. 172, s. 11; C. S. 4845.)

§ 106-299. Tax tags.—Each can, barrel, tank, or other container of oils named in this article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this article have been paid; and the commissioner of agriculture, with the advice and consent of the board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil. (1917, c. 172, s. 11; C. S. 4846.)

§ 106-300. Refilling containers and misuse of tags prohibited.—The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tag or stamp a second time shall constitute a violation of this article. (1917, c. 172, s. 12; C. S. 4847.)

§ 106-301. Rules to enforce article; misdemeanor.—The board of agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this article, and a violation of the said rules or regulations shall constitute a violation of this article. (1917, c. 172, s. 13; C. S. 4848.)

§ 106-302. Dealer released by guaranty of wholesaler.—No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this article. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this state, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular manufacturer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid. (1917, c. 172, s. 14; C. S. 4849.)

Art. 33. Adulterated Turpentine.

§ 106-303. Sale of adulterated turpentine misdemeanor.—If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned for thirty days. (Rev., s. 3830; 1897, c. 482; C. S. 5089.)

Art. 34. Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of live-stock quarantine.—Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any and all kinds of live stock from any state where there is known to prevail contagious or infectious diseases among the live stock of such state. (1915, c. 174, s. 1; C. S. 4871.)

§ 106-305. Proclamation of infected feedstuff quarantine.—Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any hay, feedstuff, or other article dangerous to live stock as a carrier of infectious or contagious disease from any state where there is known to prevail contagious or infectious disease among the live stock of such state. (1915, c. 174, s. 2; C. S. 4872.)

§ 106-306. Rules to enforce quarantine.—Upon such proclamation being made, the commissioner of agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the live stock in this state. (1915, c. 174, s. 3; C. S. 4873.)

Cross Reference.—See also, § 106-22, paragraph 3.

Cattle Ticks.—The regulation of a quarantine district laid off and enforced in pursuance of section 106-22, par. 3, and this section, for the eradication of ticks on cattle is a reasonable and valid regulation. State v. Hodges, 180 N. C. 751, 105 S. E. 417.

§ 106-307. Violation of proclamation or rules.—Any person, firm, or corporation violating the terms of the proclamation of the governor, or any rule or regulation made by the commissioner of agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1915, c. 174, s. 4; C. S. 4874.)

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.—The North Carolina department of agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the commissioner of agriculture. (1943, c. 640, s. 1.)

§ 106-307.2. Reports of infectious disease in livestock to state veterinarian.— All persons practicing veterinary medicine in North Carolina shall report promptly to the state veterinarian the existence of any contagious or infectious disease in livestock. (1943, c. 640, s. 2.)

§ 106-307.3. Quarantine of infected or inoculated livestock.—Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease shall be quarantined by the state veterinarian or his authorized representative in accordance with regulations promulgated by the state board of agriculture. All livestock that are inoculated with a product containing a living virus or organism shall be quarantined by the person inoculating same at the time of inoculation in accordance with regulations promulgated by the state board of agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer virus or serum vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3.)

Cross Reference.—See § 106-401.

§ 106-307.4. Livestock brought into state.—All livestock transported or otherwise brought into this state shall be in compliance with regulations promulgated by the state board of agriculture. (1943, c. 640, s. 4.)

Cross Reference.—See § 106-400.

§ 106-307.5. Appropriations for control of hog cholera, etc.—For the purpose of carrying out the provisions of §§ 106-307.1 to 106-307.6, the sum of twelve thousand and five hundred dollars ($12,500.00) is hereby appropriated for the year one thousand nine hundred and forty-three-forty-four, and twelve thousand and five hundred dollars ($12,500.00) for the year one thousand nine hundred and forty-four-forty-five, to come from the General Fund, which shall be in addition to any other funds appropriated for the control of hog cholera and other animal diseases. (1943, c. 640, s. 5.)

§ 106-307.6. Violation made misdemeanor.—Any person, firm or corporation who shall violate any provisions set forth in sections 106-307.1 to 106-307.4 or any rule or regulation duly established by the state board of agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1943, c. 640, s. 6.)

Part 2. Foot and Mouth Disease.

§ 106-308. Appropriation to combat the disease.—If the foot and mouth disease shall occur or seem likely to appear in this state and the agricultural department has no funds available to immediately meet the situation in coöperation with the United States department of agriculture, the state treasurer, upon the approval of the governor, shall set aside out of funds not otherwise appropriated such sum as the governor shall deem necessary and who will notify the treasurer of the amount, to be known as the foot and mouth appropriation, to be used by the state agricultural department in the work of preventing or eradicating this disease.

The same shall be paid only for work in this connection upon warrants approved by the commissioner of agriculture. (1915, c. 160, s. 1; C. S. 4875.)

§ 106-309. Disposition of surplus funds.—If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the state treasurer shall return such part of the appropriation as is not expended to the general fund, and the commissioner of agriculture shall furnish the governor an itemized statement of the money expended, and all moneys set aside out of the state funds and used for the purpose of eradicating said disease under the provisions of this article shall be paid back to the state funds by the department of agriculture

out of the first funds received by said agricultural department available for such purpose. (1915, c. 160, s. 2; C. S. 4876.)

Part 3. Hog Cholera.

§ 106-310. Burial of hogs dying natural death required.—It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten for each offense, at the discretion of the court. (1915, c. 225; C. S. 4877.)

§ 106-311. Hogs affected with cholera to be segregated and confined.—If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that they shall not have access to any ditch, canal, branch, creek, river or other water-course which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3297; 1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1903, c. 106; 1899, c. 47; 1913, c. 120; C. S. 4490.)

§ 106-312. Shipping hogs from cholera-infected territory. — It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S. 4491.)

§ 106-313. Price of serum to be fixed.—The department of agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S. 4878.)

Cross Reference.—As to purchase for resale by department of agriculture, see § 106-307.1.

§ 106-314. Manufacture and use of serum and virus restricted.—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the state department of agriculture, or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the state department of agriculture or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the state unless and until permission has been given in writing by the state veterinarian for such distribution, sale or use. Said permission to be canceled by the state veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S. 4879.)

Local Modification.—Currituck: 1943, c. 199; Edgecombe: 1933, c. 139; Hyde: 1943, c. 693; Nash: 1935, cc. 67, 222; Pasquotank: 1943, c. 358; Pitt: 1935, c. 352; Tyrrell: 1943, c. 693; Wilson: 1933, c. 58.

Cross Reference.—As to purchase for resale by department of agriculture, see § 106-307.1.

§ 106-315. Written permit from state veterinarian for sale, use or distribution of hog cholera virus, etc.—No hog cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the state unless permission has been given in writing by the state veterinarian for such distribution, sale, or use, said permission to be cancelled by the state veterinarian when he deems same necessary: Provided, that the provisions of this section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1939, c. 360, s. 5.)

Local Modification.—Currituck: 1943, c. 199; Hyde: 1943, c. 693; Pasquotank: 1943, c. 358; Tyrrell: 1943, c. 693.

§ 106-316. Counties authorized to purchase and supply serum.—If the county commissioners of any county in the state deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the state department of agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the state veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S. 4881.)

§ 106-317. Regulation of transportation or importation of hogs into state.—To prevent the spread of hog cholera or other contagious or infectious hog disease in the state of North Carolina, it is hereby declared to be unlawful to transport or import, into this state any hog from any other state or territory for any purpose whatsoever, except upon the certificate of a duly licensed practicing veterinarian in the county or corresponding territorial district where the shipment originated that such hog is not infected with cholera or other contagious or infectious hog disease and is not

transported or imported from a locality in which hog cholera or other contagious or infectious hog disease is prevalent; said certificate shall be issued within ten days prior to inspection: Provided, §§ 106-317 to 106-322 shall not apply to hogs brought into this state for immediate delivery to recognized slaughter houses intended for immediate slaughter and hogs destined to public livestock markets operating under the supervision of the department of agriculture, but the burden shall be on the person transporting said hogs to prove the fact that such hogs are so destined: Provided, further, that the presentation of a way bill of lading on any shipment of hogs being transported by a common carrier shall satisfy this burden. (1941, c. 373, s. 1.)

§ 106-318. Veterinarian's certificate subject to inspection by police officers, etc. — Until delivery of any such hog, the owner or agent in charge shall at all times have in his possession said certificate of the licensed veterinarian and, upon request, he shall produce it for inspection by any police officer or inspection agent of this state or any county thereof. (1941, c. 373, s. 2.)

§ 106-319. Burial of hogs dying in transit.—It shall be the duty of any owner or agent having in charge any hog being transported or imported, into this state who shall, before delivery, lose a hog by any form of natural or unnatural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of said hog. (1941, c. 373, s. 3.)

§ 106-320. Duty of county commissioners to provide for inspections. — It shall be the duty of the county commissioners of each county of the state of North Carolina to provide sufficient and adequate inspection of hogs transported or imported into said county from any other state or territory, and to examine into the authenticity and sufficiency of the certificate of the veterinarian, and to refuse admittance into the county of any hog not certified as provided by §§ 106-317 to 106-322. (1941, c. 373, s. 4.)

§ 106-321. Violation of sections 106-317 to 106-322 made misdemeanor.—Any person violating the provisions of §§ 106-317 to 106-322 shall be guilty of a misdemeanor. (1941, c. 373, s. 5.)

§ 106-322. Effect of sections 106-317 to 106-322. —Sections 106-317 to 106-322 shall not repeal article 34, chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease.—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and para-tuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the state veterinarian is authorized, within his discretion, to agree on the part of the state, in the case of cattle destroyed for Bang's disease and tuberculosis, and para-tuberculosis to pay one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the state be more than twelve dollars and fifty cents for any grade animal nor more than twenty-five dollars for any pure-bred animal. In the case of horses or mules destroyed for glanders to pay one-half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; 1929, c. 107; 1939, c. 272, ss. 1, 2; C. S. 4882.)

Cross Reference.—As to provision that failure to kill animal affected with glanders constitutes a misdemeanor, see § 106-404.

Editor's Note.—The 1939 amendment made this section applicable to Bang's disease. Prior to the amendment the maximum payments mentioned in the proviso were twenty-five and fifty dollars, respectively.

§ 106-324. Appraisal of cattle affected with Bang's disease and tuberculosis.—Cattle affected with Bang's disease and tuberculosis and para-tuberculosis shall be appraised by three men—one to be chosen by the owner, one by the United States bureau of animal industry, and one by the state veterinarian. If the United States bureau of animal industry is not represented, then the appraisers shall be chosen, one by the owner, one by the state veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; 1929, c. 107; 1939, c. 272, s. 1; C. S. 4883.)

Editor's Note.—The 1939 amendment inserted the words "Bang's disease and" in the first line.

§ 106-325. Appraisal of animals affected with glanders; report.—Animals affected with glanders shall be appraised by three men—one to be chosen by the owner, one to be chosen by the state veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the state veterinarian, and a copy sent to the state veterinarian at once. (1919, c. 62, s. 3; C. S. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to state veterinarian; contents.—Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the state veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the state veterinarian: Provided, that the state veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States department of agriculture. (1919, c. 62, s. 4; 1939, c. 272, ss. 1, 3; C. S. 4885.)

Editor's Note.—The 1939 amendment made this section applicable to cattle with Bang's disease, and added the proviso.

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis.—Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the state veterinarian to be marketed, shall market the cattle within thirty days and shall obtain from the purchaser a report in triplicate. One copy to be sent to the state veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; 1939, c. 272, s. 1; C. S. 4886.)

Editor's Note.—The 1939 amendment made this section applicable to cattle with Bang's disease.

§ 106-328. Report on salvage.—When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the state veterinarian, in triplicate shall be made, signed by the owner and the United States bureau of animal industry or state inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S. 4887.)

§ 106-329. Compensation when killing ordered.—Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the state veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the state veterinarian. (1919, c. 62, s. 7; C. S. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens.—When animals have been destroyed pursuant to this article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed.—Expense for the care and feeding of animals held for slaughter shall not be paid by the state. (1919, c. 62, s. 9; C. S. 4890.)

§ 106-332. Disinfection of stockyards by owners.—Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States bureau of animal industry or state veterinarian. (1919, c. 62, s. 10; C. S. 4891.)

§ 106-333. Payments made only on certain conditions.—No payments shall be made for any animal slaughtered in the following cases:

1. If the owner does not disinfect premises, etc., as directed by an inspector of the United States bureau of animal industry or the state veterinarian.
2. For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
3. Animals reacting to a test not approved by the state veterinarian.
4. Animals belonging to the United States.
5. Animals brought into the state in violation of the state laws and regulations.
6. Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.
7. Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the state.
8. Animals which have not been within the state of North Carolina for at least one hundred and twenty days prior to the discovery of the disease.
9. Where owner does not use reasonable care in protecting animals from disease.
10. Where owner has failed to submit the necessary reports as required by this article.
11. Any unregistered bull. (1919, c. 62, s. 11; 1939, c. 272, s. 4; C. S. 4892.)

Editor's Note.—The 1939 amendment added subsection 11.

§ 106-334. Owner's claim for indemnity supported by reports.—The owner must present his claim for indemnity to the state veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the state or United States bureau of animal industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; 1939, c. 272, s. 1; C. S. 4893.)

§ 106-335. State veterinarian to carry out provisions of article; how moneys paid out.—The state veterinarian is authorized, himself or by his representative, to do all things specified in this article. All moneys authorized to be paid shall be paid from the state treasury on warrants approved by the auditor, and the state treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S. 4894.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test.—All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S. 4895(a).)

§ 106-337. Animals to be branded.—All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T", not less than two inches high, and promptly report the same to the state veterinarian. (1921, c. 177, s. 2; C. S. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk.—The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the state veterinarian, and then only in accordance with his instructions. The milk from said animals must

not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S. 4895(c).)

§ 106-339. Seller liable in civil action.—Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S. 4895(d).)

Cross Reference.—See also, §§ 14-364, 106-403, 106-404.

§ 106-340. Responsibility of owner of premises where sale is made.—When cattle are sold or otherwise disposed of in this state by a nonresident of this state, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the department of agriculture. (1921, c. 177, s. 5; C. S. 4895(e).)

§ 106-341. Sale of tuberculin.—No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S. 4895(f).)

§ 106-342. Notice to owner of suspected animals; quarantine.—When the state veterinarian receives information, or has reason to believe that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the state veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the state veterinarian within ten days after said notice, then the state veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the state veterinarian have been complied with, and the quarantine canceled by the state veterinarian. (1921, c. 177, s. 7; C. S. 4895(g).)

§ 106-343. Appropriations by counties; elections.—The several boards of county commissioners in the state are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to coöperate effectively with the state and federal departments of agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in ten days after said appropriation is voted, one-fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in §§ 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and coöperative tuberculosis eradication shall be taken up with the state and federal departments of agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S. 4895(h).)

§ 106-344. Petition for election if commissioners refuse coöperation; order; effect.—If the board of commissioners of any county should exercise their discretion and refuse to coöperate as set out in § 106-343, then if a petition is presented to said board by one-fifth of the qualified voters of the county requesting that an election be held as provided in § 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in § 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall coöperate with the state and federal governments as herein provided. (1921, c. 177, s. 9; C. S. 4895(i).)

§ 106-345. Importation of cattle.—Whenever a county board shall coöperate with the state and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S. 4895(j).)

§ 106-346. Amount of appropriation. — When coöperative tuberculosis eradication shall be taken up in any county as provided for in §§ 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one-half of the expense of said coöperative tuberculosis eradication. (1921, c. 177, s. 11; C. S. 4895(k).)

§ 106-347. Qualified veterinarian.—The words "qualified veterinarian" which appear in §§ 106-336 to 106-350 shall be construed to mean a veterinarian approved by the state veterinarian and the chief of the United States bureau of animal industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S. 4895(l).)

§ 106-348. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S. 4895(m).)

§ 106-349. Violation of law a misdemeanor.—Any person or persons who shall violate any provision set forth in §§ 106-336 to 106-350, or any rule or regulation duly established by the state board of agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S. 4895(n).)

§ 106-350. Sale of affected animals a felony.—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in § 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the state prison. (1921, c. 177, s. 15; C. S. 4895(o).)

Part 6. Cattle Tick.

§ 106-351. Systematic dipping of cattle or horses.—Systematic dipping of all cattle or horses infested with or exposed to the cattle tick, (Margaropus annulatus) shall be taken up in all counties or portions of counties that shall at anytime be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the state veterinarian acting under the authority as hereinafter provided in §§ 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the state board of agriculture not in conflict with §§ 106-351 to 106-363. (1923, c. 146, s. 1; C. S. 4895(p).)

Editor's Note.—It is said in 1 N. C. Law Rev. 301, that this statute reinforces sections 106-22 and 106-306.

§ 106-352. Counties not embraced in quarantine zones.—If it shall be determined by the state veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the county commissioners of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the state veterinarian. (1923, c. 146, s. 3; C. S. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost.—The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the state veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the state veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of §§ 106-351 to 106-363, except §§ 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S. 4895(s).)

§ 106-354. Local state inspectors; commissioned as quarantine inspectors; salaries, etc.—The state veterinarian shall appoint the necessary number of local state inspectors to assist in systematic tick eradication, who shall be commissioned by the commissioner of agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the services of any of said inspectors is not satisfactory to the state veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; 1925, c. 275, s. 6; C. S. 4895(t).)

Editor's Note.—The only effect of the 1925 amendment was to strike a provision appropriating a sum not to exceed $50,000 with which to pay the salaries of state inspectors.

§ 106-355. Enforcement of compliance with law.—If the county commissioners shall fail, refuse or neglect to comply with the provisions of §§ 106-351 to 106-363, the state veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of §§ 106-351 to 106-363. (1923, c. 146, s. 6; C. S. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.—Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every fourteen days in a vat properly charged with arsenical solution as recommended by the United States bureau of animal industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the state board of agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (Margaropus annulatus) in such county or counties. (1923, c. 146, s. 7; C. S. 4895(v).)

§ 106-357. Service of notice.—Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner.—Cattle, horses or mules infested with or exposed to the cattle tick (Margaropus annulatus) the owner or owners of which, after five days written notice from a quarantine inspector of such animals as is provided for in § 106-357, shall fail or refuse to dip such animals regularly every fourteen days in a vat properly charged with arsenical solution, as recommended by the United States bureau of animal industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien.—Any expense incurred in the enforcement of § 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff

of the county after twenty days advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within twelve months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S. 4895(y).)

§ 106-360. Duty of sheriff.—It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of §§ 106-351 to 106-363 and the regulations of the North Carolina department of agriculture. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S. 4895(z).)

§ 106-361. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S. 4895(aa).)

§ 106-362. Penalty for violation.—Any person, firm or corporation who shall violate any provisions set forth in §§ 106-351 to 106-363 or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall willfully fail to comply with any provision of §§ 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S. 4895(bb).)

§ 106-363. Damaging dipping vats a felony.—Any person or persons who shall wilfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than ten years in the state prison. (1923, c. 146, s. 14; C. S. 4895(cc).)

Part 7. Rabies.

§ 106-364. Definitions. — The following definitions shall apply to §§ 106-364 to 106-387:

(a) The term "dog" shall mean dogs of any sex.

(b) The term "vaccination" shall be understood to mean the administration of anti-rabic vaccine approved by the department of agriculture, containing not less than twenty percent (20%) of fixed virus material, non-virulent and potent as shown by the required tests of the United States bureau of animal industry. (1935, c. 122, s. 1.)

§ 106-365. Annual vaccination of all dogs.—In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of every dog to have same vaccinated annually by a rabies inspector in accordance with the provisions of §§ 106-364 to 106-387. And it shall be the further duty of the owner of said dog to properly restrain same and to assist the rabies inspector in administering the vaccine. (1935, c. 122, s. 2; 1941, c. 259, s. 2.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment inserted at the beginning of this section the words: "In all counties where a campaign of vaccination is being conducted."

§ 106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians.—It shall be the duty of the county health officers of the several counties, and in those counties where health officers are not employed, it shall be the duty of the board of county commissioners, to appoint, subject to the approval and confirmation of the commissioner of agriculture of North Carolina, a sufficient number of rabies inspectors to carry out the provisions of §§ 106-364 to 106-387. In the appointment of rabies inspectors preference shall always be given to graduate licensed veterinarians and said veterinarians may be appointed to carry out the provisions of §§ 106-364 to 106-387 in the entire county. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience can demonstrate the ability to perform the duties required under §§ 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3.)

Local Modification.—Davie: 1937, c. 255. Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment substituted the above for the former section.

§ 106-367. Time of vaccination.—The vaccination of all dogs in the counties shall begin annually on April first and shall be completed within ninety (90) days from the date of beginning the vaccination in the several counties. (1935, c. 122, s. 4.)

§ 106-368. Publication of notice of date of vaccination; duty of owner.—The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the court house and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

Editor's Note.—The 1941 amendment substituted the words "rabies inspector" for "department of agriculture."

§ 106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.—The state

department of agriculture shall purchase the proper rabies vaccine provided for in §§ 106-364 to 106-387 and supply same to the rabies inspector at a cost of not to exceed fifty cents per dose. and a uniform metal tag, serially numbered and suitably lettered and to show the year issued. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5.)

Editor's Note.—The 1941 amendment raised the cost of vaccine and made other changes.

§ 106-370. Notice to sheriff of each county and his duty to assist.—The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of §§ 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

Editor's Note.—The 1941 amendment substituted the words "rabies inspector" for the words "department of agriculture."

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.—When the rabies inspector has carried out the provisions of §§ 106-364 to 106-387 as to § 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in § 106-369. If such dogs are found the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in § 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of §§ 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

§ 106-372. Fee for vaccination; dog tax credit; penalty for late vaccinations.—The rabies inspector shall collect from the owner of each dog vaccinated as provided for in § 106-368, not more than seventy-five cents for each dog, the same to be credited on the dog tax when certificate of vaccination is presented to the sheriff or tax collector of said county. Any owner who fails to have his dog vaccinated at the time the rabies inspector is in the township in which the owner resides as provided in § 106-368, shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector the additional sum of twenty-five cents to be retained by him for each dog treated: Provided, that in cases where dogs are vaccinated in accordance with § 106-371, the total charge for such treatment shall not exceed seventy-five cents, only fifty cents of which shall be credited on such dog tax. (1935, c. 122, s. 9; 1941, c. 259, s. 7.)

Local Modification.—Edgecombe, Nash and Wilson: 1941, c. 259, s. 7. Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment struck out the former section and inserted the above in lieu thereof.

§ 106-373. Vaccination of dogs after annual vaccination period.—It shall be the duty of the owner of any dog born after the annual vaccination of dogs in his county or any dog that was not six months old at the time of said annual vaccination to take the same when six months old to a rabies inspector for the purpose of having same vaccinated. The fee charged in such cases by the rabies inspector shall not exceed seventy-five cents per animal. (1935, c. 122, s. 10, c. 344; 1941, c. 259, s. 8.)

Local Modification.—Edgecombe, Nash and Wilson: 1941, c. 259, s. 8. Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment raised the fee from fifty to seventy-five cents.

§ 106-374. Vaccination and confinement of dogs brought into state.—All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies.—The county health officer may declare quarantine against rabies in any designated district when in its judgment this disease exists to the extent that the lives of persons are endangered and all dogs in said district shall be confined on the premises of the owner or in a veterinary hospital: Provided a dog may be permitted to leave the premises of the owner if on leash or under the control of its owner or other responsible person. (1935, c. 122, s. 12; 1941, c. 259, s. 9.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment substituted the words "county health officer" for the words "department of agriculture."

§ 106-376. Killing stray dogs in quarantine districts. — When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any police officer or deputy sheriff shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated.—Every animal having rabies, and every animal known to have been bitten by another animal having rabies, shall be killed immediately by its owner or a peace officer: Provided that if any animal known to have been bitten by a dog having rabies, but which has not developed the disease, shall have been vaccinated in accordance with §§ 106-364 to 106-387 before being bitten, such animal shall be closely confined until it shall have been determined by the rabies inspector or a registered veterinarian that the animal has rabies, before it shall be required to be killed. (1935, c. 122, s. 14.)

§ 106-378. Confinement of suspected dogs.— Every person who owns or has possession of an

animal which is suspected of having rabies or which has symptoms of or has been exposed to the disease, shall confine such animal at once in some secure place for at least three weeks and until released by a rabies inspector for the purpose of determining whether such animal has the disease. (1935, c. 122, s. 15, c. 344; 1941, c. 259, s. 10.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-379. Dogs having rabies to be killed; heads ordered to a laboratory.—Every animal, after it has been determined that it has rabies, shall be killed at once by a peace officer or its owner, and the head of every animal suspected of having rabies which may have died shall be properly prepared and sent at once to the laboratory approved by the state board of health. (1935, c. 122, s. 16.)

§ 106-380. Notice to county health officer and rabies inspector when person bitten; confinement of dog.—When a person has been bitten by a dog or animal, which has rabies or which is suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to immediately notify the county health officer and give their names and addresses; and the owner of person having such dog or animal in his possession or under his control shall immediately notify the rabies inspector and shall securely confine said animal on his premises or surrender it to a veterinary hospital for inspection and observation. After the preliminary examination and observation the animal may be released in the custody of the owner to be kept under quarantine and observation for twenty-one (21) days, and until released by the rabies inspector, if the animal is found not to have rabies. (1935, c. 122, s. 17; 1941, c. 259, s. 11.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment substituted the words "county health officer" for the words "department of agriculture."

§ 106-381. Confinement or leashing of vicious dogs.—When an animal becomes vicious, and a menace to the public health the owner of such animal or person harboring or having such animal in his possession shall not permit such animal to run at large unless on leash in the care of a responsible person, or muzzled with a proper fitting muzzle, securely fastened to prevent such animal from biting a person or another animal. (1935, c. 122, s. 18.)

§ 106-382. Administration of law in cities and larger towns; coöperation with sheriffs.—In towns or cities with a population of five thousand (5000), or more, the responsibility for assistance in the enforcement of §§ 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of §§ 106-364 to 106-387 to co-operate with the sheriff of any county in the carrying out of the provisions of §§ 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ 106-383. Regulation of content of vaccine; doses.—Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold or offered for sale unless said rabies vaccine shall contain not less than twenty percent (20%) of fixed virus material and be non-virulent and potent as shown by the required tests of the United States bureau of animal industry. Said rabies vaccine shall be recommended in doses of not less than five (5) c. c. each for dogs and other small animals; relatively larger doses being recommended for larger animals. (1935, c. 122, s. 20.)

§ 106-384. Law declared additional to other laws on subject.—The provisions of §§ 106-364 to 106-387 shall not be construed to repeal or change any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of §§ 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of §§ 106-364 to 106-387 in which §§ 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ 106-385. Violation made misdemeanor.—Any person who shall violate any of the provisions of §§ 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten ($10.00) dollars or more than fifty ($50.00) dollars, or to imprisonment of not less than ten (10) days or more than thirty (30) days in the discretion of the court. (1935, c. 122, s. 23.)

§ 106-386. Present dog tax limited.—No county, city or town shall levy any additional taxes on dogs other than the tax now levied. (1935, c. 122, s. 24.)

§ 106-387. Disposition of funds.—Any money collected under the provisions of §§ 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Bang's Disease.

§ 106-388. Animals affected with, or exposed to Bang's disease, declared subject to quarantine, etc.—It is hereby declared that the disease of animals known as Bang's disease, contagious abortion, abortion disease, bovine infectious abortion, or Bang's bacillus disease, is of a contagious and infectious character, and animals affected with, or exposed to, or suspected of being carriers of said disease shall be subject to quarantine and the rules and regulations of the department of agriculture. (1937, c. 175, s. 1.)

§ 106-389. "Bang's disease" defined; co-operation with federal department of agriculture. — Bang's disease shall mean the disease wherein an animal is infected with the Bang bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with

Bang's disease if it reacts to a seriological test, or if the Bang bacillus has been found in the body or its secretions or discharge, or if it has been treated with a live culture of the Bang bacillus. The control and eradication of Bang's disease in the herds of the state shall be conducted as far as the funds of the department of agriculture will permit, and in accordance with the rules and regulations made by the said department. Said department of agriculture is hereby authorized to co-operate with the United States department of agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2.)

§ 106-390. Blood samples; diseased animals to be branded and quarantined; sale, etc.—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the state veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the state veterinarian. (1937, c. 175, s. 3.)

§ 106-391. Civil liability of vendors.—Any person or persons who knowingly sell or otherwise dispose of, to another, an animal affected with Bang's disease shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4.)

Cross References.—For similar section, see § 106-339. For criminal provisions, see § 14-364.

§ 106-392. Sales by non-residents.—When cattle are sold, or otherwise disposed of, in this state, by a non-resident of this state, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-399 and the regulations of the department of agriculture. (1937, c. 175, s. 5.)

§ 106-393. Duties of state veterinarian; quarantine for failure to comply with recommendations.—When the state veterinarian receives information, or has reason to believe that Bang's disease exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the state veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the state veterinarian within ten days after said notice, then the state veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined. Said quarantine shall remain in effect until the said recommendations of the state veterinarian have been complied with and the quarantine is canceled by the state veterinarian. (1937, c. 175, s. 6.)

§ 106-394. Co-operation of county boards of commissioners.—The several boards of county commissioners in the state are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to co-operate effectively with the state and federal departments of agriculture in the eradication of Bang's disease in their respective counties. (1937, c. 175, s. 7.)

§ 106-395. Compulsory testing. — Whenever a county board shall co-operate with the state and federal governments, as provided for in §§ 106-388 to 106-399, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle, and no cattle, except for immediate slaughter, shall be brought into the county unless accompanied by a proper test chart and health certificate issued by a qualified veterinarian, showing that the cattle have passed a proper test for Bang's disease. (1937, c. 175, s. 8.)

§ 106-396. "Qualified veterinarian" defined. — The words "qualified veterinarian" shall be construed to mean a veterinarian approved by the state veterinarian and chief of the United States bureau of animal industry for the testing of cattle intended for interstate shipment. (1937, c. 175, s. 9.)

§ 106-397. Authority to promulgate and enforce rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-399 and for the effective control and eradication of Bang's disease. (1937, c. 175, s. 10.)

§ 106-398. Violation made misdemeanor.—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-399, or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of §§ 106-388 to 106-399, shall be guilty of a misdemeanor. (1937, c. 175, s. 11.)

§ 106-399. Punishment for sales of animals known to be infected.—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with Bang's disease, except as provided for in §§ 106-388 to 106-399, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars and not more than two hundred dollars, or imprisoned for a term of not less than thirty days or more than two years. (1937, c. 175, s. 12.)

Part 9. Control of Livestock Diseases.

§ 106-400. Permit from state veterinarian for sale, transportation, etc., of animals affected with disease.—No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the state any animal or animals affected with a contagious or infectious disease, except upon a written permit of the state

veterinarian and in accordance with the provisions of said permit. The state veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the state for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of §§ 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of §§ 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of §§ 106-400 to 106-405 in a place to be determined by the state veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this state in violation of federal laws or regulations shall be handled in accordance with the provisions of §§ 106-400 to 106-405. (1939, c. 360, s. 1.)

Cross Reference.—See § 106-307.4.

§ 106-401. Notice of quarantine; removal of quarantine.—The state veterinarian, or his authorized representative, is hereby authorized to quarantine any animal or animals affected with, exposed to, or injected with any material capable of producing a contagious or infectious disease, and to give public notice of such quarantine by posting or placarding the entrance to or any part of the premises on which the animals are held with a suitable quarantine sign, said animal or animals to be maintained by the owner or person in charge, as provided for in §§ 106-400 to 106-405, at the owner's expense. No animal or animals under quarantine shall be moved from the premises except upon a written permit from the state veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official notice from the state veterinarian and shall not be cancelled until the sick and dead animals have been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2.)

Cross Reference.—See § 106-307.3.

§ 106-402. Confinement and isolation of diseased animals required.—Any animal or animals affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal or animals in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3.)

§ 106-403. Disposition of dead animals and fowls.—It shall be the duty of the owner or person in charge of any animals or fowls that die from any cause and the owner, lessee, or person in charge of any land upon which any animals or fowls die, to bury the same to a depth of at least three feet beneath the surface of the ground, or to completely burn said animals or fowls, within twenty-four hours after the death of said animals or fowls, or to otherwise dispose of the same in a manner approved by the state veterinarian. It shall be unlawful for any person to remove the carcasses of dead animals or fowls from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. (1919, c. 36; 1927, c. 2; 1939, c. 360, s. 4; C. S. 4488.)

§ 106-404. Animals affected with glanders to be killed. — If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3296; Code, s. 2489; 1891, c. 65; 1881, c. 368, s. 8; C. S. 4489.)

Cross Reference.—As to compensation for killing diseased animals, see §§ 106-323 et seq.

§ 106-405. Violation made misdemeanor. — Any person or persons who shall knowingly and willfully violate any provisions of §§ 106-400 to 106-405 shall be guilty of a misdemeanor. (1939, c. 360, s. 6.)

Local Modification.—Macon: 1939, c. 360, s. 7.

Art. 35. Public Livestock Markets.

§ 106-406. Permits for public livestock markets; restraining order for certain violations.—Any person, firm or corporation operating a public livestock market within the state of North Carolina shall be required to obtain from the commissioner of agriculture a permit authorizing the operation of such market. Application for a permit shall be made on forms furnished by the commissioner of agriculture and shall show full name and address of all persons having financial interest in the market, name of the officers, manager and person in charge, the name under which the market will operate, location, and facilities for holding and segregating animals, and such other information as the commissioner of agriculture may require. Upon the filing of the application on the forms prescribed and the giving of bond as required in this article, the commissioner of agriculture shall issue and deliver to the applicant a permit authorizing the operation of the market, which permit may be revoked by the state board of agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the livestock market shall have been given ten days' notice of the alleged violation and an opportunity to be heard relative thereto by the state board of agriculture.

If any person, firm, or corporation shall operate a public livestock market in violation of the provisions of this article, or the rules and regulations promulgated by the state board of agriculture, or shall fail to comply with the provisions of the article, or rules and regulations promulgated thereunder, a temporary restraining order may be issued by a judge of the superior court upon application by the commissioner of agriculture, and the judge of the superior court shall have the same power and the authority as in any other injunction proceeding, and the defendant shall have the same rights, including the right of appeal, as in any

other injunction proceeding heard before the superior court. (1941, c. 263, s. 1; 1943, c. 724, s. 1.)

Editor's Note.—The 1943 amendment added the second paragraph and rewrote the first.

§ 106-407. Bonds required of operators; exemptions as to permits and health requirements.—The commissioner of agriculture shall require the operator of said livestock market to furnish a bond acceptable to the commissioner of agriculture of two thousand dollars ($2,000.00) to secure the performance of all obligations incident to the operation of the livestock market, including prompt payment of proceeds for purchase or sale of livestock: Provided, that said bond shall not be required by a livestock market association organized under a law which requires such association to be bonded or a market operating under the Federal Packers and Stockyards Act. A livestock market where horses and mules are sold exclusively, or a market that sells only finished livestock that are shipped for immediate slaughter, shall be exempt from the health requirements of this article, as set forth in §§ 106-409 and 106-410 and shall not be required to secure a permit as provided for in § 106-406. (1941, c. 263, s. 2.)

§ 106-408. Marketing facilities prescribed; records of purchases and sales.—All public livestock markets operating under this article shall have proper facilities for handling livestock, which shall include proper pens for holding and segregating animals, properly protected from weather; an adequate water supply; satisfactory scales if animals are bought, sold, or exchanged by weight, said scales to be approved by the North Carolina division of weights and measures; and such other equipment as the commissioner of agriculture may deem necessary for the proper operation of the market. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected at least weekly in accordance with the regulations issued in accordance with this article. Said market shall keep a complete permanent record showing from whom all animals are received and to whom sold, the weight, if purchased or sold by weight, the price paid and the price received, such record to be available to the commissioner of agriculture or his authorized representative. (1941, c. 263, s. 3.)

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale. — No cattle except those for immediate slaughter shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved by the commissioner of agriculture, showing that such animals are apparently healthy and come directly from a herd all of which animals in the herd have passed a negative test for Bang's disease within twelve months prior to the date of sale, or that said animal or animals have passed a satisfactory test for Bang's disease made within thirty days prior to sale and such other tests and vaccinations as the commissioner of agriculture may require. Every such animal shall be identified by an approved numbered ear tag and description. A copy of said certificate shall be kept on file by the market. No test for Bang's disease shall be required on steers and all cattle less than six months of age, but such animals shall be subject to all other provisions of this article. All cattle removed from any public livestock market for immediate slaughter shall be identified in an approved manner and the person removing same shall sign a form in duplicate showing number of cattle, their description, where same are to be slaughtered or resold for slaughter. Said cattle shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles cattle for immediate slaughter only, and said cattle shall be used for immediate slaughter only. No market operator shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, ss. 2.)

Editor's Note.—The 1943 amendment added the last two sentences and rewrote the third sentence from the end.

§ 106-410. Health certificates for swine removed for nonslaughter purposes; identification; information form; bill of sale.—No swine, except those for immediate slaughter, shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved by the commissioner of agriculture, showing that such animals are apparently healthy and that they have received a proper dose of anti-hog cholera serum not more than twenty-one days or a proper dose of serum and virus not less than thirty days prior to the date of sale, and such other vaccinations as may be required by the commissioner of agriculture. All such swine shall be identified by an approved, numbered ear tag and descriptions which shall be entered on the health certificate. A copy of said certificate shall be kept on file by the market. All swine removed from any public livestock market for immediate slaughter shall be identified by a distinguishing paint mark or by other methods approved by the commissioner of agriculture and the person removing same shall sign a form in duplicate showing number of hogs, their description, where same are to be slaughtered or resold for slaughter. Said swine shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles swine for immediate slaughter only and said swine shall be used for immediate slaughter only. No market operator shall allow the removal of any swine from a market in violation of this section. (1941, c. 263, s. 5; 1943, c. 724, s. 3.)

Editor's Note.—The 1943 amendment added the last two sentences and rewrote the third sentence from the end.

§ 106-411. Regulation of use of livestock removed from market.—Any person or persons who shall remove from a public livestock market any cattle swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for slaughter in accordance with this article and the regulations issued in accordance with same. The owner of said animals shall be charged with the responsibility of having said animals slaughtered and shall be liable for all damages resulting from diverting them to other uses or failing to have them slaughtered, in addition to the criminal liability imposed in this article. (1941, c. 263, s. 6; 1943, c. 724, s. 4.)

Editor's Note.—The 1943 amendment rewrote portions of this section.

§ 106-412. Admission of animals to market; quarantine of diseased animals; sale prohibited; regulation of trucks, etc.—No animal known to be affected with a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the commissioner of agriculture or his authorized representative. All animals affected with or exposed to any contagious or infectious disease of animals or any animal that reacts to a test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon permission of the commissioner of agriculture or his authorized representative, and for immediate slaughter only. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said cost shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7.)

§ 106-413. Sale, etc., of certain diseased animals prohibited; application of article; sales by farmers.—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease or that the owner or person in charge has reason to believe are so affected, except upon permission of the commissioner of agriculture or his authorized representatives and for immediate slaughter only. The provisions of this article requiring inspection, testing, vaccination, paint marking, identication with an ear tag and health certificate issued by a qualified veterinarian shall apply to all animals sold or offered for sale on any public highway, right of way, street, or within one-half mile of any public livestock market, or other public place: Provided, that this provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the state of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health.—No cattle, swine, or other livestock affected with a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this state except upon written permission of the commissioner of agriculture or his authorized representative for immediate slaughter only to a designated slaughter point. The burden of proof to establish the health of any animal transported on the public highways of this state, sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with a contagious or infectious disease knowingly, or who has reasons to believe that the animal is so affected, shall be liable for all damages resulting from such sale or trade. (1941, c. 263, s. 9.)

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The commissioner of agriculture is hereby authorized to collect a fee of twenty-five dollars ($25.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless cancelled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals. (1941, c. 263, s. 10.)

§ 106-416. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this article. (1941, c. 263, s. 11.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this article shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6.)

Editor's Note.—The 1943 amendment inserted at the end of the first sentence the provision as to punishment.

§ 106-418. Exemption from health provisions.—The health provisions of this article shall not apply to no-sale cattle offered for sale by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina. (1941, c. 263, s. 12½.)

Art. 36. Crop Pests.

§ 106-419. Crop pest commission.—The board of agriculture shall be the crop pest commission. (1909, c. 90, s. 1; C. S. 4896.)

§ 106-420. Powers and duties of commission; establish regulations.—The board of agriculture shall, from time to time, as it may deem necessary, prepare and publish a list of dangerous crop pests, known to be within the state, or liable to be introduced, and shall also publish methods for exterminating such pests as it may deem capable of being economically exterminated, for repressing such as cannot be economically exterminated, and for preventing their spread within the state. It may also adopt regulations not inconsistent with the laws or constitutions of this state and of the United States, for preventing the introduction of dangerous crop pests from without the state, and for governing common carriers in transporting plants liable to harbor such pests to and from the state; which regulations shall have the force of law. Any violation of any such regulations shall be a misdemeanor,

and the person violating the same shall upon conviction be fined or imprisoned in the discretion of the court. (Rev., s. 3980; 1897, c. 264, s. 2; 1909, c. 90, s. 1; C. S. 4897.)

Cross Reference.—See also, § 106-22, paragraph 5.

§ 106-421. Crop pests declared nuisance; method of abatement.—No person shall knowingly and wilfully keep upon his premises any plant infested by any dangerous crop pest, listed and published as such by the board of agriculture, or permit dangerous weed pests to mature seed or otherwise multiply upon his land, except under such regulations as the board of agriculture may prescribe. All such infested plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the board of agriculture, take such measures as may be prescribed to eradicate such pests. If such action is not taken, or is improperly executed within ten days after such notification, the board of agriculture shall cause such premises to be freed from such pests by the best available method. The cost of such work shall be a lien upon the premises, and may be recovered, together with cost of action, before any court having jurisdiction. The notice shall be written and mailed to the usual or known address, or left at the ordinary place of business of the owner or his agent. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infested plant or crop, when done by the order of the board of agriculture. (Rev., s. 3981; 1897, c. 264, s. 3; 1909, c. 90, s. 1; C. S. 4898.)

§ 106-422. Right to enter and inspect premises.—Whenever the board of agriculture has reason to suspect that any pest, listed as dangerous, exists in any portion of the state, it shall cause an investigation to be made by some person capable of determining the specific identity of such pest, and, if it be found to exist, the board of agriculture shall further appoint a competent person as its agent to inspect such infested premises, and to take such measures for treating the same as the board may direct. Any duly authorized agent of the board of agriculture shall have authority to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year. (Rev., s. 3982; 1897, c. 264, s. 4; 1909, c. 90, s. 1; C. S. 4899.)

§ 106-423. Preventing inspection or hindering execution of article a misdemeanor.—If any one shall seek to prevent inspection of his premises as provided in § 106-422, or shall otherwise interfere with any agent of the commission, or board of agriculture while in performance of his duties under § 106-422, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each offense, or may be imprisoned for not less than ten nor more than thirty days. (Rev., s. 3713; 1907, c. 876; C. S. 4900.)

Art. 37. Cotton Grading.

§ 106-424. Federal standards recognized.—The standards or grades of cotton established or which may be hereafter established by the secretary of agriculture by virtue of acts of congress shall be recognized as the standards in transactions by and between citizens of this state in transactions relating to cotton. (1915, c. 23, s. 1; C. S. 4901.)

§ 106-425. Duplicates of federal samples may be used. — The commissioner of agriculture shall obtain from the secretary of agriculture a duplicate of each of these samples as represent cotton produced in this state for the use of the citizens of the state who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S. 4902.)

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.—The North Carolina department of agriculture shall have authority to employ expert cotton graders to grade cotton in this state under such rules and regulations as they may adopt. The above institutions may seek the aid of the United States department of agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S. 4903.)

§ 106-427. County commissioners to coöperate.—Any board of commissioners of any county in North Carolina is authorized and empowered to coöperate with either, or both, of the above-named institutions in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S. 4904.)

§ 106-428. Grading done at owner's request; grades as evidence.—The expert graders employed by either of the above-named institutions, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the secretary of agriculture by virtue of any act of congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this state. (1915, c. 175, s. 3; C. S. 4905.)

§ 106-429. Grader's certificate admissible as evidence.—In the event of any dispute or trial pending in any of the courts of this state, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the state, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S. 4906.)

Art. 38. Marketing Cotton and Other Agricultural Commodities.

§ 106-430. Purpose of law.—In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern sys-

tem whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the state of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; 1941, c. 337, s. 1; C. S. 4925(a).)

Editor's Note.—Prior to the 1941 amendment this section applied only to cotton.

The 1941 act, amending several sections of this article and inserting § 106-431, provides that its provisions shall not apply to the storage of tobacco in any form.

Proper Parties in Action to Enforce Section. — The governor of the state, the State Board of Agriculture, and the state warehouse superintendent are proper parties plaintiff in action against the members of the State Tax Commission to require them to provide and enforce the machinery for the collection of the tax provided by this article. Bickett v. Tax Commission, 177 N. C. 433, 99 S. E. 415.

For a full discussion of the purpose and application of the former sections, see Bickett v. Tax Commissions, 177 N. C. 433, 99 S. E. 415.

Cited in Lacy v. Indemnity Co., 193 N. C. 179, 136 S. E. 359; Champion Shoe Machinery Co. v. Sellers, 197 N. C. 30, 32, 147 S. E. 674.

§ 106-431. Definition of "other agricultural commodities." — The term "other agricultural commodities" as used in this article shall mean such agricultural commodities other than cotton as shall be designated by the board of agriculture, through rules and regulations adopted pursuant to this article, as suitable to be stored in the warehouses operating under this article. (1941, c. 337, s. 1½.)

§ 106-432. Board of agriculture administers law, makes rules, appoints superintendent. — The provisions of this article shall be administered by the state board of agriculture, through a suitable person to be selected by said board, and known as the state warehouse superintendent. In administering the provisions of this article the board of agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; 1941, c. 337, s. 2; C. S. 4925(b).)

Editor's Note.—Prior to the 1941 amendment this section applied only to cotton.

§ 106-433. Employment of officers and assistants. — The board of agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties. (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S. 4925(c).)

§ 106-434. Bonds of superintendent and employees.—The person named as state warehouse superintendent shall give bond to the state of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the state, to be approved as other bonds for state officers. The superintendent shall, to safeguard the interests of the state, require bonds from other employees authorized in § 106-433 in amounts as large at least as he may find ordinary business experience in such matters would suggest as ample. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S. 4925(d).)

Liability for Loss as Affected by Negligence.—The larceny or loss of the cotton from a warehouse through no fault of the warehouseman does not relieve the warehouseman's bond of liability for a warehouseman is an insurer. Lacy v. Hartford Acci., etc., Co., 193 N. C. 179, 181, 136 S. E. 359.

Fraudulent Negotiation of Warehouse Receipt. — Where the superintendent of a warehouse delivers cotton, takes the endorsed receipts and instead of cancelling them negotiates a loan for his own benefit pledging the receipts as collateral, this is a clear breach of his duty for which an action on his bond will lie. Lacy v. Globe Indemnity Co., 189 N. C. 24, 126 S. E. 316.

§ 106-435. Fund for support of system; collection and investment.—In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a state warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June thirty, one thousand nine hundred and twenty-two, twenty-five (25) cents shall be collected through the ginner of the bale and paid into the state treasury, to be held there as a special guarantee or indemnifying fund to safeguard the state warehouse system against any loss not otherwise covered. The state tax commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the state treasury to the credit of the state warehouse system. Not less than ten per centum of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgages to aid and encourage the establishment of warehouses operating under this system, such investments to be made by the board of agriculture with the approval of the governor and attorney-general: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than ten years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the state board of agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of §§ 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S. 4925(e).)

Constitutionality of Taxation under Section. — The tax, contemplated under this section, being uniform upon those of the class designated, and being laid upon a trade, whether that of cotton ginning or farming, is within the au-

thority conferred on the Legislature to further "tax trades," etc., and is constitutional. Bickett v. Tax Commissions, 177 N. C. 433, 99 S. E. 415.

Loss Due to Failure to Issue Receipt Not Recoverable from State Treasurer.—A recovery may not be had against the State Treasurer out of the fund accumulated under this section, for a loss resulting to plaintiff by failure of a warehouse to issue official receipts for cotton to plaintiff as agreed, the receipts having been issued to the holder of a lien against the cotton and the warehouse having refused delivery of the cotton to plaintiff upon his demand, since the purpose of the act is to make warehouse receipts acceptable as collateral, and plaintiff is not the holder of the receipts. Northcutt v. People's Bonded Warehouse Co., 206 N. C. 842, 175 S. E. 165. [This case construes this section as it stood before the 1921 revision, but is applicable in its present form.]

Recovery on Bond.—Where a warehouse superintendent fraudulently negotiates spent warehouse receipts and the bona fide holder thereof recovers from the indemnifying fund provided by this section, the state may recover on the bond of the superintendent. The bond is the fund primarily liable. Lacy v. Globe Indemnity Co., 189 N. C. 24, 126 S. E. 316.

§ 106-436. Registration of gins; gin records and reports; payment of tax.—If the special levy authorized by § 106-446 is made, it shall be the duty of the commissioner of agriculture to require the registration of all gins operating within the state, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars ($5) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the state in a civil action to be brought by the state commissioner of agriculture in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions. Each person, firm, partnership, or corporation operating a gin shall keep a record, on forms furnished or approved by the commissioner of agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in § 106-435 to the state at least once every thirty days after beginning operation, and shall send a true copy of the report to the commissioner of agriculture. (1921, c. 137, s. 6; C. S. 4925(f).)

§ 106-437. Qualifications of warehouse manager.—No man shall be employed as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the state warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S. 4925(g).)

§ 106-438. Warehouse superintendent to accept federal standards. — The state warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S. 4925(h).)

§ 106-439. Duties of superintendent; manner of operating warehouse system.—The state warehouse superintendent shall have the power to lease for stated terms property for the warehousing of cotton and other agricultural commodities: Provided, no rent shall be paid until the operating expenses of each such warehouse so leased shall have been paid from the income of the warehouse so leased, and in no case shall the state be responsible for any rent except from the income of such warehouse so leased in excess of operating expenses; and said superintendent shall fix the terms upon which private or corporate warehouses may obtain the benefits of state supervision and operation. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the state for operation under the terms of this article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the state board of agriculture. The violation of such rules by any officer of the system shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from such state management; and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to § 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; 1941, c. 337, s. 3; C. S. 4925(i).)

Editor's Note.—The 1941 act amended this section to read as set out above.

§ 106-440. Power of superintendent to sue or to be sued; liability for tort.—The said superintendent shall also have the power to sue, or to be sued, in the courts of this state in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the county of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S. 4925(j).)

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts. — When agricultural commodities other than cotton have been stored in warehouses operated under this article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the board of agriculture, acting under the provisions of §§ 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the board of agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or state classifier and legally weighed. Official negotiable receipts of the form and design approved by the board of agriculture shall be issued for such cotton under the seal and in the name of the state of North Carolina, stating the location of the warehouse, the name of

the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or by the state warehouse superintendent or his duly authorized agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the state warehouse system for fluctuations in weight due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in § 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; 1925, c. 225; 1941, c. 337, s. 4; C. S. 4925(k).)

Editor's Note.—The 1941 act amended this section to read as set out above.

C. S. § 4918, superseded by this section, specifically stated that official receipts would carry "absolute title to the cotton." It may thus be doubted whether official receipts could be issued in the name of the owner, when the cotton was encumbered by a lien. Northcutt v. People's Bonded Warehouse Co., 206 N. C. 842, 175 S. E. 165.

The cases annotated below were decided under the law as formerly written.

Warehouseman as Insurer.—Where under a contract of bailment the bailee receives certain bales of cotton and stores them in his warehouse, under agreement to return the identical bales upon return of the warehouse receipts in the manner provided in the contract, the liability of the bailee is that of insurer, and it is liable in damages when it is prevented by theft from performing its contract, though without negligence on its part. Lacy v. Hartford Acci., etc., Co., 193 N. C. 179, 136 S. E. 359.

Same—Liabilty to State.—Under the provisions of the statute to provide improved marketing facilities for cotton, and the rules and regulations made by the State Board of Agriculture under section 106-432, and the warehouse receipts, made negotiable by this section, the warehouseman's liability to the State after it has paid the bailor for his stolen cotton, or the one entitled by the proper transfer of the certificate, is not dependent upon the exercise of due care by the warehouseman, or the absence of negligence by its employees or agents, for within the intent and meaning of the statute the liability of the warehouseman is that of insurer. Lacy v. Hartford Acci., etc., Co., 193 N. C. 179, 136 S. E. 359.

§ 106-442. Transfer of receipt; issuance and effect of receipt.—The official negotiable receipt issued under § 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, it being the duty of the local manager accepting same for storage to satisfy himself as to the title to the same by requiring the depositor of the cotton or other agricultural commodity to sign a statement appearing on the face of the official receipt to the effect that there is no lien, mortgage, or other valid claim outstanding against such cotton or other agricultural commodity, and any person falsely signing such a statement shall be punished as provided for false pretenses in § 14-100. (1921, c. 137, s. 12; 1941, c. 337, s. 5; C. S. 4925(l).)

Editor's Note.—The 1941 amendment made this section applicable to "other agricultural commodity."

§ 106-443. Issuance of false receipt a felony; punishment.—The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the state penitentiary for a period of not less than one or more than five years, or by a fine not exceeding ten times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; 1941, c. 337, s. 6; C. S. 4925(m).)

Editor's Note.—The 1941 amendment made this section applicable to "other agricultural commodity."

§ 106-444. Delivery of cotton without receipt or failure to cancel receipt.—Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or imprisonment not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; 1941, c. 337, s. 7; C. S. 4925(n).)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodity."

§ 106-445. Rules for issuance of duplicate receipts.—The state warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse are authorized to issue a duplicate receipt for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the state warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the state warehouse superintendent and the local manager from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the

board of agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; 1941, c. 337, s. 8; C. S. 4925(o).)

Editor's Note.—The 1941 amendment inserted the words "or other agricultural commodity" and made other changes.

§ 106-446. State not liable on warehouse debts; tax on cotton continued if losses sustained. — No debt or other liability shall be created against the state by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the state, except that expenses of supervision may be paid by the board of agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required of all officers and supplemental indemnifying or guarantee fund mentioned in § 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such losses shall be made good by having the State Board of Assessment repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in § 106-435, for the two years ending June thirtieth of the year one thousand nine hundred and twenty-three. (1919, c. 168, s. 16; 1921, c. 137, s. 16; 1941, c. 337, s. 9; C. S. 4925(p).)

Editor's Note.—The 1941 amendment inserted the words "or other agricultural commodities" in the first sentence of this section.

§ 106-447. Insurance of cotton; premiums; lien for insurance and storage charges.—The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on storage against loss by fire and lightning. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it, insurance policies to be in the name of the state and the premium collected from the owners of the cotton and other agricultural commodities, the state to have a lien on cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the state. (1919, c. 168, s. 17; 1921, c. 137, s. 17; 1941, c. 337, s. 10; 1943, c. 474; C. S. 4925(q).)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodities."

The 1943 amendment added at the end of the first sentence the words "against loss by fire and lightning."

§ 106-448. Superintendent to negotiate loans on receipts and sell cotton for owners.—The state warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and coöperate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance and operation of the state warehouse system: Provided however, that the state incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; 1941, c. 337, s. 11; C. S. 4925(r).)

Editor's Note.—The 1941 amendment made this section applicable to "other agricultural commodities."

§ 106-449. Construction of the 1941 amendment. —The provisions of Chapter 337 of the Public Laws of 1941, amending this article, shall not apply to the storage of tobacco in any form. (1941, c. 337, s. 11½.)

§ 106-450. Compliance with United States warehouse law. — The state warehouse superintendent may, upon approval of the board of agriculture, operate or cause to be operated, subject to the United States warehouse act, any or all of the warehouses leased by him under the provisions of this article, and he is authorized to comply with said United States warehouse act and the regulations thereunder. (1921, c. 137, s. 19; C. S. 4925(s).)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined.—Any person, firm or corporation operating any public cotton gin; that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways: (1) mark in color upon the bagging of the bale, in figures; (2) attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number; (3) impress the serial number upon one of the bands or ties around the bale. Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1923, c. 167.)

Art. 39. Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges. — The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of

one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum: Provided, that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed four per centum. (Rev., s. 3042; 1895, c. 81; 1941, c. 291; C. S. 5124.)

Editor's Note.—The 1941 amendment directed that a colon be substituted for the period at the end of the section and the above proviso added.

A warehouse system to aid in the marketing of leaf tobacco is authorized by this section et seq. Champion Shoe Machinery Co. v. Sellers, 197 N. C. 30, 32, 147 S. E. 674.

Cited in Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1265.

§ 106-453. Oath of tobacco weigher.—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ....., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated. (Rev., s. 3043; 1895, c. 81, s. 2; C. S. 5125.)

Cross Reference.—As to provisions requiring accounts of sales and reports to commissioner, see §§ 106-456 et seq.

§ 106-454. Warehouse proprietor to render bill of charges; penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by any one injured thereby. (Rev., s. 3044; 1895, c. 81, ss. 3, 4; C. S. 5126.)

§ 106-455. Tobacco purchases to be paid for by cash or check to order.—The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Editor's Note.—The 1939 amendment added the second sentence. For discussion of section prior to amendment, see 9 N. C. Law Rev. 387.

Art. 40. Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required.—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S. 4926.)

As to effective period of lien upon leaf tobacco sold in auction warehouse, see § 44-69.

§ 106-457. Monthly reports to commissioner; results classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the commissioner of agriculture at Raleigh, North Carolina. The report so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (1907, c. 97, s. 2; Ex. Sess. 1921, c. 76; C. S. 4927.)

Editor's Note.—Formerly under this section, the date set for making the required statement was "on or before the fifth day of each succeeding month," instead of the tenth as changed by Public Laws 1921, Ex. Sess., ch. 76.

§ 106-458. Commissioner to keep record and publish in bulletin.—The commissioner of agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the state, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The commissioner of agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the state, or having a large circulation therein. (1907, c. 97, s. 3; Ex. Sess. 1921, c. 76; C. S. 4928.)

Editor's Note.—Formerly, the two dates set under this section for the publication and receipt of reports were the tenth and fifth day of each month, respectively, instead of the fifteenth and tenth under the section as it now stands, the change having been effected by Public Law 1921, Ex. Sess., ch. 76.

§ 106-459. Penalty for failure to report sales.—Any warehouse failing to make the report as required by § 106-457 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the

department of agriculture for expense of advertising. (1915, c. 31, s. 1; C. S. 4929.)

§ 106-460. Commissioner to publish failure; certificate as evidence. — The commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the commissioner under seal of the department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; Ex. Sess. 1921, c. 76; C. S. 4930.)

Editor's Note.—Formerly, the date set under this section for the publication of the names of delinquent tobacco warehouses was on the 12th day of each month, instead of the 14th under the section as it now stands, the change having been effected by Public Laws 1921, Ex. Sess., ch. 76.

§ 106-461. Nested, shingled or overhung tobacco.—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

1st. Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;

2nd. Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

3rd. Overhanging tobacco: That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-462. Sale under name other than that of true owner prohibited. — It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-463. Allowance for weight of baskets and trucks.—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-464. Violation made misdemeanor. — Any person, firm or corporation violating the provisions of §§ 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited. — Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as non-stock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to-wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; A fee of one hundred dollars ($100.00) in those towns in which during said period of time more than three million and less than ten million pounds of tobacco was sold; A fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; A fee of three hundred dollars ($300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. That any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268.)

Art. 41. Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions.—Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the state of North Carolina shall first procure from the commissioner of revenue of North Carolina a license so to do, and for that purpose shall file with the said commissioner of revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situ-

ated; and shall pay to the said commissioner of revenue of North Carolina, to be placed in the general fund for the use of the state, an annual license tax of five hundred dollars ($500.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246.)

Editor's Note. — The 1939 amendment decreased the license tax from $1000 to $250. The 1941 amendment increased the tax to $500.00 and added the proviso.

The former law (P. L. 1935, c. 360) was void for uncertainty, the statute failing to stipulate the time when the license prescribed should be paid and failing to prescribe for how long a time the license should run. State v. Morrison, 210 N. C. 117, 185 S. E. 674.

The former law was not a criminal statute, and a person refusing to comply with its provisions could not be charged with crime. Id.

Validity.—This and following sections imposing a license tax on dealers in scrap tobacco, is held not vague or uncertain, and is uniform and equal in its application. Ficklen Tobacco Co. v. Maxwell, 214 N. C. 367, 199 S. E. 404, holding that the former tax of $1,000 was not excessive as a matter of law.

§ 106-467. Report to commissioner of agriculture each month.—On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in § 106-466 shall make a report to the commissioner of agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc. — (a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the commissioner of revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, solicitors, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars ($250.00), shall be obtained for such additional agents, representatives, solicitors, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law enforcement officer of North Carolina, or any person from whom such tobacco is bought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this article may employ traveling representatives, agents, peddlers, or solicitors for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the commissioner of revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars ($250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the commissioner of revenue a license to engage in such business and for that purpose shall file with the commissioner of revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its prin-

cipal office is situated, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in this state in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2.)

Editor's Note.—This section was so changed by the 1939 amendment that a comparison here is not practicable.

§ 106-469. Violation made misdemeanor. — Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 106-470. Exemptions.—Nothing in this article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year one thousand nine hundred thirty-seven, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. 4½; 1939, c. 389, s. 3.)

Editor's Note.—The 1939 amendment added the part of this section beginning with the word "or" in line four.

Art. 42. Production, Sale, Marketing and Distribution of Tobacco.

§ 106-471. Definitions.—As used in this article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

"Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of the state or federal government.

"Similar act" means an act of another state containing provisions substantially the same as this article, except that the omission of provisions requiring the establishment of acreage quotas for individual farms shall not be deemed a substantial variation from this article.

"Kind of tobacco" means one or more types of tobacco as classified in the service and regulatory announcement number one hundred and eighteen of the bureau of agricultural economics of the United States department of agriculture as listed below, according to the name or names by which known:

Types eleven, twelve, thirteen and fourteen, known as flue-cured tobacco.

Type thirty-one, known as burley tobacco.

"Crop year" means the period from May first of one year to April thirtieth of the succeeding year, both dates inclusive.

"Surplus tobacco" means the quantity of tobacco marketed from the crop produced on a farm in any crop year in excess of the marketing quota for such farm for such year.

"Buyer or handler" means any person who buys tobacco from the producer thereof, or who sells tobacco for the producer thereof, and pays the producer for such tobacco, or who redries or otherwise processes tobacco for the producer thereof of prior to the sale of such tobacco by the producer, or any producer who markets tobacco produced by him directly to the consumer.

"Dealer" means any person who buys and resells tobacco prior to the redrying, conditioning, or processing thereof.

"Producer" means any person who has the right during any year to sell, or to receive a share of the proceeds derived from the sale of, tobacco produced by him or on land owned or leased by him.

"Operator" means any person who, as owner-operator, or as cash rent, standing rent, or share rent tenant, operates a farm (i. e., a tract or tracts of land operated as a unit with the same machinery and other equipment) on which tobacco is produced, and includes a share-cropper who operates a farm if the owner-operator or tenant does not provide for the obtaining of marketing certificates with respect to the tobacco crop of the farm. (1937, c. 22, s. 1.)

Editor's Note.—This article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and consequently is of no avail until other tobacco-producing states co-operate. 15 N. C. Law Rev. 323.

§ 106-472. North Carolina tobacco commission created; members; county and district committeemen; vacancies; compensation.—There is hereby created a commission to be known as the North Carolina tobacco commission (hereinafter referred to as the "commission"). The commission shall consist of seven (7) members, and each of the four (4) tobacco belts, viz: eastern belt, middle belt, old belt and border belt, shall have one or more representatives selected as follows: When this article becomes effective, the director of the state argicultural extension service shall arrange for a meeting of tobacco producers in each county (any county in which there are less than one hundred tobacco producers shall be grouped with another adjoining county), at which three (3) tobacco producers shall be elected, by the producers attending the meeting, to serve as county committeemen for one crop year. The director of the state agricultural extension service shall divide the state into six (6) districts and arrange for a meeting of the county committeemen elected in each district, at which meeting the county committeemen in each district shall nominate from among their number three (3) producers to serve as district committeemen. From the three (3) district committeemen nominated in each district the governor shall appoint one producer to serve for a period of one crop year as a member of the commission. The director of the state agricultural extension service shall serve, or shall appoint one member of his staff to serve, as a member of the commission. Vacancies on the commission during any crop year shall be filled by the governor by the appointment of another district committeeman for the remainder of such year from the district in which the vacancy occurs: Provided, that the director of the state agricultural extension service shall fill the vacancy in the case of the member of the commission appointed by him. At the end of each crop year the tobacco commission shall be selected for the succeeding crop year in the manner provided

above. Each member of the commission not already in the employment of the state shall be paid the sum of ten dollars ($10.00) for each day actually spent in the performance of his duties, and shall be reimbursed for subsistence, not exceeding five dollars ($5.00) per day, and for necessary travel expenses. (1937, c. 22, s. 2.)

§ 106-473. Compacts with governors of other states; referendum on question of enforcement. — The governor is authorized and directed to negotiate and enter into a compact with respect to each kind of tobacco with the governor of each of the states producing such kind of tobacco: Provided, (1) that any compact shall not become effective until it has been entered into by the states of North Carolina, Virginia, South Carolina and Georgia, and any compact with respect to burley tobacco shall not become effective until it has been entered into by the states of North Carolina, Kentucky, Virginia and Tennessee; (2) that a compact with respect to any kind of tobacco shall not become effective during any crop year unless entered into prior to the first day of such crop year, and (3) that any provisions in such compact or compacts which relate to the establishment of tobacco acreage quotas as provided herein shall not become effective unless and until the consent of the congress of the United States shall be given to a compact or compacts providing for the establishment of tobacco acreage quotas. This article shall be enforced with respect to any kind of tobacco upon the establishment of a compact with respect to such kind of tobacco, and its enforcement with respect to such kind of tobacco shall be suspended upon the withdrawal from such compact by any state required as a party thereto. If an injunction issued by a court of competent jurisdiction against the enforcement of a similar act of any state is made permanent so as to stop the administration of said act in such state during any crop year, the enforcement of this article may be suspended by the commission with respect to the kind of tobacco covered by such compact until such time as the compact is again made effective or the injunction dissolved, as the case may be. Upon the filing with the commission of a petition or petitions by fifteen per cent or more of the producers of any kind of tobacco in this state requesting that the enforcement of this article be suspended with respect to such kind of tobacco, the commission shall conduct a referendum within sixty days after the receipt of such petition or petitions to determine whether the producers of such kind of tobacco in the state are in favor of the enforcement of this article, and if the commission finds that one-third or more of the producers who vote in the referendum are not in favor of the enforcement of the article, such findings of the commission shall be certified to the governor, who shall proclaim the article inoperative for the crop year next succeeding the crop year in which the referendum is conducted. (1937, c. 22, s. 3.)

§ 106-474. Cooperation with other states and secretary of agriculture in making determinations. —The commission shall meet and co-operate with the tobacco commissions of other states that are parties to a compact, and any persons designated by the secretary of agriculture of the United States to serve in an advisory capacity, for the purposes of making certain determinations enumerated in this section, and when such determinations are agreed upon by a majority of the members of the commission for this state, and a majority of the members of the commissions for other states, such determinations shall be accepted and followed in the administration of this article.

(a) Determine from statistics of the United States department of agriculture a marketing quota, which for any kind of tobacco shall be that quantity of such kind of tobacco produced in the United States which is estimated to be required for world consumption during any crop year, increased or decreased, as the case may be, by the amount by which the world stocks of such kind of tobacco at the beginning of such crop year are less than or greater than the normal world stocks of such kind of tobacco.

(b) Determine a tobacco marketing quota for each state, for each kind of tobacco, for each crop year for which this article is in effect with respect to such kind of tobacco. The marketing quota for each state for each kind of tobacco shall be that percentage of the quantity determined under sub-section (a) of this section which is equal to the percentage that the total production of such kind of tobacco in the state for the year or years set forth below is of the total production of such kind of tobacco in the United States for such year or years:

Flue-cured tobacco, one thousand nine hundred and thirty-five, and burley tobacco, one thousand nine hundred and thirty-three, one thousand nine hundred and thirty-four, and one thousand nine hundred and thirty-five.

(c) Determine a base tobacco yield for each state for each kind of tobacco. The base tobacco yield for each kind of tobacco for each state shall be the total production of such kind of tobacco in such state in the year or years named in sub-section (b) of this section, divided by the total harvested acreage of such kind of tobacco in such state in such year or years.

(d) Determine and make such adjustments from year to year in the percentage of the marketing quota to be assigned to each state, or in the base yield for each state, or both (as determined pursuant to sub-sections (b) and (c) of this section and as adjusted in any preceding year pursuant to this sub-section), not exceeding two per cent (2%) decrease or five per cent (5%) increase in any crop year of the percentage of the said marketing quota assigned to each state, or five per cent (5%) decrease or increase of the base yield for each state in any crop year, as are determined to be necessary to correct for any abnormal conditions of production during the year or years specified in subsection (b) of this section, and trends in production during or since such year or years in any state as compared with other states: Provided, that the percentages of the marketing quota for any kind of tobacco for all states producing such kind of tobacco, as adjusted pursuant to this sub-section, for any year shall equal one hundred per cent (100%).

(e) Determine and make adjustments in the marketing quota established pursuant to sub-sections (b) and (d) of this section for any kind of tobacco for any crop year, not exceeding ten per

cent (10%) of said quota, from time to time during that period from August first to December fifteenth of such year if, upon the study of supply and demand conditions for such kind of tobacco, the commission finds that such adjustments are required to effectuate the purpose of this article and of similar acts of other states: Provided, that any such adjustment shall apply uniformly to all states and only during the crop year in which such adjustment is made.

(f) Determine regulations with respect to the transfer of marketing certificates among producers of any kind of tobacco within the states which are parties to a compact with respect to such kind of tobacco, and such other regulations as may be deemed appropriate to the uniform administration and enforcement of this article and of similar acts of other states. (1937, c. 22, s. 4.)

§ 106-475. Tobacco acreage and marketing quotas for each farm.—The commission shall establish tobacco acreage and tobacco marketing quotas for each crop year for any farm on which tobacco is grown, such quotas to be determined as follows:

(a) For any farm for which a base tobacco acreage and a base tobacco production have previously been determined by the agricultural adjustment administration of the United States department of agriculture, as shown by the available records and statistics of that department, the base tobacco acreage and base tobacco production so last determined shall constitute the tobacco acreage and tobacco marketing quotas, subject to such adjustments as are recommended by the county committee of the county in which the farm is located and approved by the commission as being in conformity with the provisions of sub-sections (c) and (d) of this section.

(b) For any farm for which a base tobacco acreage and base tobacco production have not been previously determined by the agricultural adjustment administration of the United States department of agriculture, the tobacco acreage and tobacco marketing quotas shall be established in conformity with the provisions of sub-sections (c) and (d) of this section: Provided, that the total of the tobacco acreage and of the tobacco marketing quotas established for such farms in any crop year shall not exceed two per cent (2%) of the total tobacco acreage and tobacco marketing quotas, respectively, established pursuant to sub-section (a) of this section, plus the tobacco acreage and the tobacco marketing quotas established for farms in preceding years pursuant to this sub-section.

(c) The tobacco acreage and the tobacco marketing quotas established for each farm shall be fair and reasonable as compared with the tobacco acreage and the tobacco marketing quotas for other farms which are similar with respect to the following: The past production of tobacco on the farm and by the operator thereof; the percentage of total cultivated land in tobacco and in other cash crops; the land, labor, and equipment available for the production of tobacco; the crop rotation practices and the soil and other physical factors affecting the production of tobacco. The acreage quota for farms in a county shall not exceed such maximum percentage of the cultivated acreage as shall be fixed by the county committee, and the maximum so set by the county committee shall not exceed a percentage which will insure the adjustment of the inequalities existing in such county.

(d) The total of the tobacco acreage quotas for any kind of tobacco established for all farms in the state in any crop year shall not exceed a tobacco acreage quota for the state determined by dividing the marketing quota for such kind of tobacco for the state by the base tobacco yield for such kind of tobacco for the state, determined in accordance with sub-sections (c) and (d) of § 106-474.

The tobacco acreage and the tobacco marketing quotas for any kind of tobacco established for each farm in any crop year pursuant to sub-sections (a) and (b) of this section shall be adjusted so that the aggregate of the tobacco acreage quotas and the aggregate of the tobacco marketing quotas for all farms in the state does not exceed the tobacco acreage and the tobacco marketing quotas, respectively, for such kind of tobacco established for the state for such year; and the commission shall prescribe such regulations with respect to such adjustments as will tend to protect the interests of small producers.

(e) If, after marketing quotas are established for farms for any kind of tobacco in any crop year, there is an adjustment, pursuant to sub-section (e) of § 106-474, in the marketing quota for such kind of tobacco for the state for such year, the marketing quotas for all farms in the state shall be adjusted accordingly.

(f) If a base tobacco yield is not determined by the several state commissions the commission for this state shall determine a base yield for the state in accordance with the procedure specified in sub-sections (c) and (d) of § 106-474.

(g) In each county there shall either be published in one local newspaper the following information for each township of the county: (1) the name of each tobacco grower in that township; (2) the number of his tobacco tenants; (3) his total cultivated acres; (4) his total tobacco acreage and tobacco marketing quota; (5) the per cent of his cultivated land represented by his tobacco acreage quota, or else there shall be posted in at least five public places in each township a report for that township showing this information. One copy of such information shall be filed in the office of the clerk of the superior court in the county.

(h) No reduction shall be required in the flue-cured tobacco acreage quota established for any farm if such quota is three and two-tenth acres or less: Provided, that if the operator of the farm reduces the acreage of tobacco grown on the farm in any year below the acreage quota, a proportionate reduction may be required in the marketing quota for the farm.

(i) The terms of this article, relating to the fixing of acreage or marketing quotas, shall not apply to any grower of burley tobacco, with or without an established acreage base, whose acreage is two acres or less. (1937, c. 22, s. 5; c. 24, ss. 1-3.)

§ 106-476. Notification of quotas established and adjustments; marketing and resale certificates; charge for surplus tobacco; administrative committees, agents and employees; hearings and in-

vestigations; collection of information; regulations. — The commission is authorized and directed:

(a) To notify as promptly as possible the operator of each farm, for which acreage and marketing quotas are established, of the amount of such quotas for the farm and of any adjustment thereof which may be made from time to time pursuant to this article.

(b) Upon application therefor by the operator of the farm, or by the person marketing the tobacco grown thereon, to issue to the buyer or handler who purchases or handles such tobacco, marketing certificates for an amount of tobacco not in excess of the marketing quota for the farm (as adjusted pursuant to subsection (d) of § 106-475, on which such tobacco is produced, or not in excess of the quantity of tobacco harvested from the crop produced on such farm, whichever is smaller: Provided, that the commission (in accordance with regulations prescribed by the commission) may provide for the issuance and transfer of marketing certificates for an amount of tobacco equal to the amount by which the said quantity marketed falls below the said marketing quota for any farm: Provided further, that any regulations pertaining to such issuance and transfer shall be uniform as to the same kind of tobacco in all states entering into a compact with respect to such kind of tobacco.

(c) Upon application therefor by any buyer or handler to issue marketing certificates for surplus tobacco produced on the farm upon payment of a charge of twenty-five per cent (25%) of the gross value, or of one and one-half cents (1½c) per pound, whichever is larger, of the tobacco covered by such certificates. The buyer or handler, in settling with the grower, shall deduct from the proceeds of sale of such surplus tobacco or, if not sold, from any advance or loan thereon, the amount of such charge, which charge shall be deemed an assessment upon the producer for the purposes of paying the costs, charges, and expenditures provided for by this article.

(d) Upon application therefor by any tobacco dealer to issue, under such terms and conditions as the commission shall by regulations prescribe, resale certificates for such tobacco purchased by any dealer during any day as such dealer specified will be resold prior to the redrying or processing thereof, where marketing certificates or resale certificates have been issued for such tobacco pursuant to the provisions of this article.

(e) To establish or provide for the establishment of such committees of tobacco producers, and to appoint such agents and employees as the commission finds necessary for the administration of this article, and to fix the compensation of the members of the county committees referred to in § 106-472, and of such agents and employees: Provided, that the rates of compensation for such committeemen, agents and employees shall be comparable with rates of compensation to persons employed in similar capacities in connection with the administration of the agricultural conservation program, and acceptable to the federal authority.

(f) To provide for the making of such investigations and the holding of such hearings as the commission finds necessary in connection with the establishment of acreage and marketing quotas for farms and to designate persons to conduct such investigations and hold such hearings in accordance with regulations prescribed by the commission.

(g) To provide for collection of such information pertaining to the acreage of tobacco grown for harvest on each farm as the commission may consider necessary for the purpose of checking such acreage with the acreage quota for the farm and to prescribe any such regulations as may be necessary in connection therewith.

(h) To prescribe such other regulations as the commission finds necessary to the exercise of the powers and the performance of the duties vested in it by the provisions of this article. (1937, c. 22, s. 6.)

§ 106-477. Board of adjustment and review for each county. — The county committee of each county shall be and it is hereby constituted the board of adjustment and review for its county, whose duty it shall be to adjust and distribute the total base acreage and marketing quotas allocated to the several farms in the county by the commission so as to effectuate the provisions of this article.

(a) The county board of adjustment and review may designate a clerk for such board.

(b) The board of adjustment and review shall meet on the first Monday in January of each and every year, after giving ten days' notice (by publication in a newspaper published in the county) of the time, place and purpose of the meeting, and may adjourn from day to day while engaged in the adjustment and review of the acreage and marketing quotas of the county, but shall complete their duties on or before the first Monday in February of each and every year: Provided, however, that the commission shall designate the time within which the said adjustment and review shall be made for the year one thousand nine hundred and thirty-seven.

(c) The board of adjustment and review, on request, shall hear any and all producers, operators, and applicants in the county in respect to their acreage or marketing quotas, or the quotas of others; and after due notice to the person or persons affected, shall allow, increase, or reduce such acreage or marketing quotas as in their opinion will make a fair and equitable allotment within the meaning of this article; and shall cause to be done whatever else may be necessary to make the distribution of county acreage and marketing quotas comply with the provisions of this article; and after the completion of the adjustment and review, a list showing the details thereof shall be prepared, and a majority of the board shall endorse thereon and sign the statement to the effect that the same is the fixed list of quotas for the current year, and said list, or a certified copy thereof, shall be filed in the office of the clerk of the superior court within three days after the completion of the adjustment and review.

(d) Any producer, operator, or person claiming or challenging an allotment quota may except to the decision of the board of adjustment and review and appeal therefrom to the commission by filing in duplicate a written notice of such appeal with the county committee within ten days after the filing of the list of quotas in the office

of the clerk of the superior court. At the time of filing such notice of appeal the appellant shall file with the county committee a statement in duplicate of the grounds of appeal; and within three days after the filing thereof the county committee shall forward or cause to be forwarded to the commission one copy each of the notice of appeal and statement of grounds of appeal. The commission shall, on or before the first Monday in March thereafter, hear and determine such appeal, after first giving due notice of the time and place of such hearing to the appellant and to the chairman of the county committee. At the hearing the commission shall hear relevant and pertinent testimony or affidavits offered by the appellant or county committee; and thereafter, by order, shall modify or confirm the decision of the county board of adjustment and review, and shall deliver to the county committee a certified copy of such order, which shall be binding upon all parties concerned for the current year. (1937, c. 24, s. 4.)

§ 106-478. Handling of funds and receiving payments.—The commission is authorized:

(a) To accept, deposit with the state treasurer and provide for the expenditure of such funds as the congress of the United States may advance or grant to the state for the purpose of administering this article. Such expenditures shall be in accordance with the act of congress authorizing or making such advance or grant.

(b) To receive, through such agents as it may designate, all payments covering the sale of marketing certificates pursuant to sub-section (c) of § 106-476; to provide for the fixing of an adequate bond for any person responsible for receiving and disbursing any funds of or administered by the commission; and to provide for the expenditure of such funds in the manner prescribed in § 106-480. (1937, c. 22, s. 7.)

§ 106-479. "Tobacco commission account" deposited with state treasurer.—All receipts from the sale of marketing certificates pursuant to subsection (c) of § 106-476 and all funds granted or advanced to the state by the congress of the United States for the purpose of administering this article shall be deposited with the state treasurer and shall be placed by him in a special fund known as the "Tobacco Commission Account," and the entire amount of such receipts and funds hereby is appropriated out of such tobacco commission account and shall be available to the commission until expended. (1937, c. 22, s. 8.)

§ 106-480. Purposes for which funds expended; reserve necessary.—Funds of or administered by the commission shall be expended, in accordance with regulations prescribed by the commission, for the following purposes: First, to repay to the treasurer of the United States any funds advanced by the United States to the commission for the purpose of administering this article: Provided, the United States requires such repayment. Second, to pay any expenses lawfully incurred in the administration of this article, including expenses of any agency of the state incurred at the request of the commission. Third, to make payment to tobacco producers whose sales of tobacco, because of loss by fire or weather, or diseases affecting their tobacco crops adversely during any crop year, are less than the marketing quotas for their farms for such year. Such payments shall be at a rate per pound of such deficit determined by dividing the funds available for such payments by the total number of pounds by which the sales of tobacco by all producers fell below the marketing quotas for their farms: Provided, that such deficit is due to loss by fire or weather, or disease affecting their crops adversely; and Provided further, that such rate of payment shall in no event exceed five cents (5c) per pound, and that no such payments shall be made until there is established as a reserve an amount necessary to pay the expenses which the commission estimates will be incurred in the administration of this article for a period of one crop year. (1937, c. 22, s. 9.)

§ 106-481. Unlawful to sell, buy, etc., without marketing certificate; restrictions upon dealers.—Upon the establishment of marketing quotas for any kind of tobacco for individual farms for any crop year, pursuant to the provisions of this article, it shall be unlawful:

(a) For any person knowingly to sell, to buy, to redry or to condition or otherwise process any of such kind of tobacco harvested in such crop year unless the marketing certificates therefor have been issued as provided in this article.

(b) For any dealer to resell any of such kind of tobacco for which marketing certificates have not been issued as aforesaid prior to the redrying, conditioning, or processing thereof, except in his own name, or to resell any such tobacco except that purchased and owned by him and covered by a marketing certificate or resale certificate previously issued showing such dealer to be the purchaser of such tobacco, or to redry, condition, or process or to have redried, conditioned, or processed, prior to the resale thereof, any such tobacco covered by a resale certificate unless the resale certificate issued with respect thereto is surrendered to the commission. (1937, c. 22, s. 10.)

§ 106-482. Violation punishable by forfeiture of sum equal to three times value of tobacco.—Any person wilfully selling, buying, redrying, conditioning, or processing tobacco of any kind with respect to which this article is effective for which marketing certificates or resale certificates have not been issued as provided in this article, or any person wilfully participating or aiding in the selling, buying, redrying, conditioning, or processing of tobacco not covered by such marketing or resale certificates, or any person offering for sale or selling any tobacco except in the name of the owner thereof, shall forfeit to the state a sum equal to three times the current market value of such tobacco at the time of the commission of such act, which forfeiture shall be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 11.)

§ 106-483. Forfeiture for harvesting from acreage in excess of quota.—Any operator wilfully harvesting or wilfully permitting the harvesting of tobacco on a farm from an acreage in excess of the acreage quota for the farm shall forfeit to the state a sum equal to fifty dollars ($50.00) per acre of that acreage harvested in excess of the acreage quota for the farm, which forfeiture shall

be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 12.)

§ 106-484. Violation of article a misdemeanor.—Any person violating any provisions of this article, or of any regulation of the commission issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not more than fifty dollars ($50.00) for the first offense and not more than one hundred dollars ($100.00) for each subsequent offense. (1937, c. 22, s. 13.)

§ 106-485. Penalty for failure to furnish information on request of commission.—All tobacco producers, warehousemen, buyers, dealers, and other persons having information with respect to the planting, harvesting, marketing, or redrying or conditioning or processing of tobacco in this state for sale or resale to manufacturers, domestic or foreign, shall from time to time, upon the written request of the commission or its duly authorized representative, furnish such information and file such returns as the commission may find necessary or appropriate to the enforcement of this article. Any person wilfully failing or refusing to furnish such information or to file such return, or wilfully furnishing any false information or wilfully filing any false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not more than one hundred dollars ($100.00) for each such offense. (1937, c. 22, s. 14.)

§ 106-486. Courts may punish or enjoin violations.—All courts of this state of competent jurisdiction are hereby vested with jurisdiction specifically to punish violations of this article, and the superior courts of the state are vested with jurisdiction, upon application of the commission, to enjoin and restrain any person from violating the provisions of this article or of any regulations issued pursuant to this article. (1937, c. 22. s. 15.)

§ 106-487. Attorneys for state to institute proceedings, etc.; commission to report violations to solicitors, etc.—Upon the request of the commission it shall be the duty of the several attorneys for the state, in their respective jurisdictions, to institute proceedings to punish for the offenses, enforce the remedies, and to collect the forfeitures provided for in this article, and it shall be the duty of the commission to call to the attention of the prosecuting officers of the state any violation of any of the criminal provisions of this article. (1937, c. 22, s. 16.)

§ 106-488. Receipts from surplus produced in other states, paid to commission of such states; co-operation with other commissions. — In order to assure the proper co-ordination of the administration of this article with the administration of similar acts of other states, marketing certificates and resale certificates shall be issued by the commission, in accordance with regulations prescribed by the commission, with respect to tobacco marketed in this state, or redried, conditioned, or processed in this state prior to the first sale thereof, or resold, even though such tobacco was produced in another state, and the receipts from sales of marketing certificates for surplus tobacco produced in such other state shall be paid to the commission of the state in which such tobacco was produced, and the commission shall co-operate with and assist the commission of any other state in obtaining such records as may be necessary to the administration of any similar act of such state. (1937, c. 22, s. 18.)

§ 106-489. Form and provisions of compact. — The compact referred to in § 106-473 shall contain the provisions shown below, subject to such alterations or amendments as shall not be in conflict with the provisions of this article, and as shall be agreed upon from time to time by the states which enter into such compact.

COMPACT

This agreement entered into this ..... day of ..... between the State of ..... by ....., Governor; the State of ..... by ....., Governor; the State of ..... by ....., Governor, and the State of ..... by ....., Governor, Witnesseth:

Whereas, the parties hereto have each enacted a state statute providing for the regulation and control of the production and sale of tobacco in the states, and providing for the protection of the producers' tobacco crops from the adversities of unfavorable weather, crop diseases, and fire; and

Whereas, it is the desire of the parties uniformly to enforce each state statute so as to accomplish the purposes for which each act was enacted:

Now, therefore, the parties do hereby jointly and severally agree as follows:

(1) To co-operate with each other in establishing for each crop year a marketing quota for each state for each kind of tobacco referred to in the respective state statutes with respect to which such state statutes are or will be in effect for such crop year.

(2) To co-operate with each other in formulating such regulations as will assure uniform and effective administration and enforcement of each of the aforesaid state statutes.

(3) Not to depart from or fail to enforce to the best of its ability any regulation concerning the enforcement of the state statutes without the consent of a majority of the members of the tobacco commissions of each of the several parties to this compact.

In witness whereof, the parties have hereunto set their hands as of the day of the year first above written.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

(1937, c. 22, s. 19.)

Art. 43. Threshers of Wheat.

§ 106-490. Licensing of power threshers. — It shall be the duty of any person, firm or corporation who shall engage in power threshing in any county in North Carolina to first secure a license

from the county in which the operator resides: Provided, that securing of a license in one county shall be sufficient to allow the person, firm or corporation to operate in any county of the State. (1935, c. 329, s. 1.)

§ 106-491. Issuance by registers of deeds; expiration date; fee; threshers of own crops exempted. —It shall be the duty of the register of deeds of each of the several counties of the State to issue a license to engage in threshing in that county to any person, firm or corporation applying for same. Every license issued under the provisions of this article shall expire on the first day of April succeeding the date of the issue of such license. To defray the necessary expenses involved, the register of deeds may make a charge not to exceed fifty cents for each license issued: Provided, that operators who thresh their own crops only shall be exempt from any license cost. (1935, c. 329, s. 2.)

§ 106-492. Records and reports of threshers, violation made misdemeanor.—It shall be the duty of every person, firm or corporation, who shall engage in threshing for others or themselves, in any county of the State, to keep a complete and accurate record of the acreages harvested and amounts threshed for each farm, and to promptly make, upon blanks to be furnished by the register of deeds of the county, reports showing the acreages and the amounts threshed by said person, firm or corporation, in said county during the preceding season. A violation of the provisions of this section shall be deemed a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars: Provided, the register of deeds shall give thirty days' notice to the licensee before indictment is made, and if the licensee makes said report within said time no indictment shall be made. (1935, c. 329, s. 3.)

§ 106-493. Public notice of requirements; prosecution for noncompliance.—It shall be the duty of the register of deeds of each of the several counties of the State to give public notice of these requirements before the threshing seasons and to make diligent inquiry as to whether the provisions of § 106-492 have been complied with, and upon failure of any person, firm or corporation to comply with same, to swear out a warrant before some justice of the peace of the county and the procedure thereon shall be as in other criminal cases. (1935, c. 329, s. 4.)

§ 106-494. Report of register of deeds to commissioner of agriculture.—It shall be the duty of the register of deeds of each of the several counties in the State to promptly submit, upon blanks to be furnished by the commissioner of agriculture, a report to the commissioner of agriculture showing the crop acreages harvested and amounts that have been threshed in the said county in the preceding crop season. (1935, c. 329, s. 5.)

§ 106-495. Commissioner to furnish blank forms to registers of deeds; publication of reports.—It shall be the duty of the commissioner of agriculture to furnish to the registers of deeds of the several counties of the State, on or before the first day of May in each year, a sufficient number of blank forms for threshers' licenses, operators' threshing reports, and registers' of deeds summary reports. The commissioner of agriculture shall also collect and publish the county results of these reports prior to the next threshing season. (1935, c. 329, s. 6.)

Art. 44. Unfair Practices by Handlers of Farm Products.

§ 106-496. Protection of producers of farm products against unfair trade practices. — The board of agriculture is hereby authorized to make rules and regulations necessary to protect producers of farm products from loss through financial irresponsibility and unfair, harmful and unethical trade practices of persons, firms and corporations (hereinafter referred to as "handlers") and their agents, who incur financial liability for farm products. (1941, c. 359, s. 1.)

§ 106-497. Permits required of handlers of farm products not operating on cash basis. — No person shall act as a handler of farm products on any basis except a cash basis, until he obtains a permit from the commissioner of agriculture. The commissioner of agriculture may require from each applicant such verified information as he sees fit in order to determine the applicant's financial responsibility and reputation, and the board may make rules and regulations as to issuing permits. (1941, c. 359, s. 2.)

§ 106-498. Establishment of financial responsibility before permit issued; bond. — No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the commissioner of agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not to exceed ten thousand ($10,000) dollars. The commissioner of agriculture may require a new bond or additional bonds up to the ten thousand dollar ($10,000.00) limit when he finds it necessary for the protection of the producer. Such bonds shall be payable to the state in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfilment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or wilful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3.)

§ 106-499. Contracts between handlers and producers; approval of commissioner.—No handler shall enter into any written contract with a producer in North Carolina, for the production, delivery, or sale of farm products, until he files with the commissioner of agriculture a true copy of the contract and it is examined and approved by the commissioner. The commissioner may withhold his approval in his discretion if he is of

the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this article. (1941, c. 359, s. 4.)

§ 106-500. Additional powers of commissioner to enforce article.—In order to enforce this article, the commissioner of agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(a) To inspect or investigate transactions for the sale or delivery of farm products to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, farm products and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(b) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this article or of rules, regulations, and orders made by the board or the commissioner. Any party disobeying any order or subpoena of the commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the commissioner;

(c) To issue all such rules and regulations, with the approval of the board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this article. (1941, c. 359, s. 5.)

§ 106-501. Violation of article or rules made misdemeanor.—Any person who violates the provisions of this article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

Art. 45. Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart. — For the purpose of the holding annually of a State Fair and exposition which will properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart two hundred acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1.)

§ 106-503. Board of agriculture to operate fair.—The State Fair provided for in § 106-502, shall be managed, operated and conducted by the board of agriculture established in § 106-2. To that end, said board of agriculture shall, at its first meeting after the ratification of this section, take over said State Fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State Fair and shall hold and conduct said State Fair with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said Fair, and/or lease said Fair properties so as to provide a State Fair. (1931, c. 360, s. 3.)

Editor's Note.—This section repealed Public Laws 1927, c. 209, s. 2, providing for the management and operation of the fair by a board of directors.

§ 106-504. Lands dedicated by State may be repossessed at will of general assembly.—Any lands which may be dedicated and set apart under the provisions of this article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence. — Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, not exceeding ten thousand dollars in value, as may be needful to promote the objects of their association.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the general assembly. (Rev., ss. 3868, 3869; Code, s. 2220; R. C., c. 2, ss. 6, 7; 1852, c. 2. ss. 1, 2, 3; C. S. 4941.)

Cross Reference.—As to power of board of county commissioners to promote farmers coöperative demonstration work, see § 153-9, paragraph 35.

§ 106-506. Organization; officers; new members.—Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (Rev., s. 3869; Code, s. 2221; R. C., c. 2, s. 7; 1852, c. 2, s. 3; C. S. 4942.)

§ 106-507. Exhibits exempt from state and county taxes.—Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of state, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the commissioner of revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The commis-

sioner of revenue shall immediately refer said application to a committee consisting of the president of the North Carolina association of agricultural fairs, the commissioner of agriculture, and the director of the extension service of North Carolina State College for approval or rejection. If the application is approved by said committee, the commissioner of revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any state, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved: Provided, however, that the commissioner of revenue shall have the right to cancel said permit at any time upon the recommendation of said committee. Any society or association failing to so obtain a permit from the commissioner of revenue or having its permit canceled shall pay the same state, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the state shows, carnivals, or other attractions. (Rev., s. 3871; 1905, c. 513, s. 2; 1935, c. 371, s. 107; C. S. 4944.)

Editor's Note.—The 1935 amendment so changed this section that a comparison here is not practical.

§ 106-508. Funds to be used in paying premiums.—All moneys so subscribed, as well as that received from the state treasury as herein provided, shall, after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their by-laws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufactures, mechanical implements, tools and productions as are of the growth and manufacture of the county, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county wherein such societies are respectively organized. (Rev., s. 3873; Code, s. 2223; R. C., c. 2, s. 9; 1852, c. 2, s. 7; C. S. 4945.)

§ 106-509. Annual statements to state treasurer.—Each agricultural society entitled to receive money from the state treasurer shall, through its treasurer, transmit to the treasurer of the state, in the month of December or before, a statement showing the money received from the state, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (Rev., s. 3874; Code, s. 2224; R. C., c. 2, s. 10; 1852, c. 2, s. 8; C. S. 4946.)

§ 106-510. Publication of statements required.—Each agricultural society receiving money from the state under this chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the state; and evidence that the requirements of this chapter have been complied with shall be furnished to the state treasurer before he shall pay to such society the sum of fifty dollars for the benefit of such society for the next year. (Rev., s. 3875; Code, s. 2225; R. C., c. 2, s. 11; 1852, c. 2, s. 9; C. S. 4947.)

§ 106-511. Records to be kept; may be read in evidence.—The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (Rev., s. 3876; Code, s. 2226; R. C., c. 2, s. 12; 1852, c. 2, s. 5; C. S. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. Lien against licensees' property to secure charge.—All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fair grounds, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain per cent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S. 4950.)

§ 106-513. Notice of sale to owner.—Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property ten days before such sale, if he or it be a resident of the state, but if a nonresident of the state, or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S. 4951.)

§ 106-514. Unlawful entry on grounds a misdemeanor.—If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3669; Code, s. 2795; 1901, c. 291; 1870-1, c. 184, s. 3; C. S. 4952.)

§ 106-515. Assisting unlawful entry on grounds a misdemeanor.—It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days. (1915, c. 242, ss. 3, 4; C. S. 4953.)

§ 106-516. Vendors and exhibitors near fairs to pay license. — Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, ferris wheel, or any other device for public amusement, within one-fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established sixty days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S. 4954.)

§ 106-517. Application for license to county commissioners.—Every such person mentioned in § 106-516 shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date. (1915, c. 242, s. 6; C. S. 4955.)

§ 106-518. Unlicensed vending, etc., near fairs a misdemeanor.—Any person violating the provisions of §§ 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, at the discretion of the court. (1915, c. 242, s. 7; C. S. 4956.)

§ 106-519. Commissioners may refuse to license shows within five miles.—The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments sixty days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S. 4957.)

§ 106-520. Local aid to agricultural, animal, and poultry exhibits.—Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S. 4958.)

Art. 46. Erosion Equipment.

§ 106-521. Counties authorized to provide farmers with erosion equipment.—The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

§ 106-522. Application for assistance.—Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which, in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ 106-523. Investigation and extending relief.—Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon proceed to supply or have supplied such equipment as in their judgment may be necessary under the circumstances, as provided in this article. (1935, c. 172, s. 3.)

§ 106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment. — The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ 106-525. Guarantee of payment where equipment purchased by federal agencies. — Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase

price of such equipment in full or the interest upon the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ 106-526. Expense of counties extending relief made lien on premises of applicant.—In the event the county commissioners shall extend any relief under this article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ 106-527. Counties excepted.—This article shall not apply to the counties of Alleghany, Alexander, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

Editor's Note.—The 1937 amendment struck out "Union" from the list of excepted counties.

Art. 47. State Marketing Authority.

§ 106-528. State policy and purpose of article.—It is declared to be the policy of the state of North Carolina and the purpose of this article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the coöperation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labelled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ 106-529. State marketing authority created; members and officers; commodity advisers; meetings and expenses.—To secure these aims, there is hereby created an incorporated public agency of the state, to be known as the state marketing authority, hereinafter referred to as the "authority." It shall consist of the members of the state board of agriculture, and the commissioner of agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the board of agriculture. The governor shall appoint from time to time commodity advisers to plan with the authority the programs undertaken in their respective communities. The authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the authority. He shall give bond in such amount as the authority shall determine in some reliable surety company doing business in North Carolina, and the authority shall pay the premiums. The authority shall meet in regular session annually at a fixed place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ 106-530. Powers of authority.—The authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the state or of the United States, and to enter into agreements with the United States department of agriculture or any other legally constituted state or federal agency, or with any county, city or town in the furtherance of the purposes of this article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The authority may make such contracts as may be needed for these purposes. In no case shall the authority be responsible for any rent except from the income of the market in excess of other operating expenses. The authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers, distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the authority. The authority may make such regulations as will promote the policy of this article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, coöperative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or services under the supervision and regulation of the authority. The authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of

service or facility in the markets under its control, taking into consideration the cost of such facility or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the state marketing authority. Such permits shall enable the holders to solicit orders and to buy and sell produce under the rules and regulations of the authority and in conformance with §§ 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, one thousand nine hundred and thirty (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding thirty years after their date, and shall bear such interest, not exceeding five per cent per annum, payable either annually or semi-annually, as the authority shall determine. They shall be signed by the chairman of the authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other state or federal agency, or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the authority. To secure such indebtedness, the authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the authority shall be obligations of the state of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the state or any political subdivision. This does not prevent the state or any of its agencies, departments or institutions, or any private or public agency from making a contribution to the authority, in money or services or otherwise.

Bonds and notes issued under this article shall be exempt from all state, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

(a) Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;

(b) the rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;

(c) the setting aside of reserves or working funds, and the regulation and disposition thereof;

(d) limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;

(e) limitations on the issuance of additional bonds; and

(f) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.

(8) To adopt, use and alter a corporate seal.

(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the authority.

(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this article. (1941, c. 39, s. 3.)

§ 106-531. Discrimination prohibited; restriction on use of funds.—The authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.

(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this state marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ 106-532. Fiscal year; annual report to governor.—The authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The commissioner of agriculture shall file an annual report with the governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ 106-533. Application of revenues from operation of warehouses. — All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no mar-

ket shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ 106-534. Exemption from taxes and assessments. — The authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

Art. 48. Relief of Potato Farmers.

§ 106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system. —From and after March 15, 1941, every person, firm, or association or corporation engaged in the practice of supplying growers of Irish potatoes in this state with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars ($10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification.—Bladen, Durham, Greene, Lenoir, Pender, Randolph, Rockingham, Sampson and Union: 1941, c. 354, s. 5.

§ 106-536. Additional net profits due grower not affected. — The minimum amount to be paid the grower by those furnishing said supplies under the terms of this article shall in no wise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ 106-537. Minimum payments only compensation for labor and use of equipment, land, etc. — The payment of the stipulated ten dollars ($10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars ($10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ 106-538. Time of payments; article not applicable to landlord-tenant contracts.—The said sum of ten dollars ($10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than thirty (30) days after the delivery of last potatoes grown under the share planting contract existing between said grower or growers and the said person, firm, association or corporation: Provided that nothing in this article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

Chapter 107. Agricultural Development Districts.

§ 107-1. Clerk's power to establish; public use. —The clerk of the superior court (hereinafter called the "clerk" or "the court") of any county of the state of North Carolina shall have jurisdiction, power, and authority to establish agricultural development districts in his county for the purpose of clearing and putting in suitable condition for the beginning of cultivation good grades of lands, forested or cut-over, suitable for agriculture, and it is hereby declared that

the said development shall be considered a public benefit and conducive to the public welfare. (1917, c. 131, s. 1; C. S. 4959.)

§ 107-2. Landowners' petition and deposits. — Whenever a petition signed by all the landowners in a proposed agricultural development district shall be filed in the office of the clerk of the superior court of any county in which a part of said lands is located, setting forth and certifying that it is their desire and intention to form an agricultural development district (hereinafter called "the district") of an area aggregating not less than one thousand acres, and that it is their purpose, when cleared and put into condition for cultivation, to sell the said land to settlers on long time terms and at reasonable prices.

They shall deposit with the clerk—

a. A certified check for not less than one thousand dollars, plus ten cents per acre for each additional acre in the proposed district, from which funds the clerk shall from time to time meet the actual expenses of examining and verifying and other expenses incidental to forming the district.

b. A complete map of the lands to be included in the district.

c. A soil map showing the types of soils.

d. A drainage map showing the natural drainage of the lands, and any proposed system of drainage it is intended to establish.

e. Certificates of title by a reputable attorney of the county.

f. An estimate of the cost of improvements under the plan submitted.

g. A certificate that the lands when improved will have a market value of at least twice the amount of the total cost of the proposed improvement. (1917, c. 131, s. 2; C. S. 4960.)

§ 107-3. Viewers' appointment. — The clerk shall then appoint a board of viewers (hereinafter called "the viewers"), composed of three members, one a competent civil engineer and the other two practical agriculturists, to examine the lands and data submitted to the clerk by the landowners, and report as to the facts being virtually as stated, or to give their opinion as to any variations. (1917, c. 131, s. 2; C. S. 4961.)

§ 107-4. Viewers' report. — Their written report shall be filed within two weeks from the date of their appointment. The clerk shall consider this report. If the viewers report that the project is not practicable or will not be for the public welfare, and the clerk shall approve such findings, the petition shall be dismissed at the cost of the petitioners. (1917, c. 131, s. 2; C. S. 4962.)

§ 107-5. Plan submitted to department of conservation and development.—If the viewers report that the project is practicable, and that it will be for the public welfare and conducive to the general welfare of the community, and the court shall so find, then all of the data and reports of the proceedings shall be submitted to the department of conservation and development, which shall designate:

1. An engineer to survey and approve of the boundaries and drainage and road plans.

2. An attorney of reputation to examine and approve of the chains of title submitted.

3. A forester to make an estimate of the cost of clearing.

4. A soil expert to report on the availability of the land for agricultural purposes. (1917, c. 131, s. 3; C. S. 4963.)

§ 107-6. District established, if department approves.—The department of conservation and development shall consider these reports, data, and plans, and, if he approves the same, shall so certify to the clerk of the court, who shall then declare the district established. (1917, c. 131, s. 3; C. S. 4964.)

§ 107-7. Board of agricultural development commissioners appointed. — After the said district shall have been declared established as aforesaid, and the complete plans therefor approved, the clerk shall appoint two persons, one of whom shall be a landowner of the district, the other a practical agriculturist of good character, not a landowner of the district, and these two shall choose a third, who may or may not be a landowner of the district, and the three so appointed and chosen shall be designated as the Board of Agricultural Development Commissioners of ..... District. (1917, c. 131, s. 4; C. S. 4965.)

§ 107-8. Commissioners incorporated; powers; officers; superintendent's bond. — Such commissioners when so appointed and chosen shall be immediately created a body corporate under the name and style of the Board of Agricultural Development Commissioners of .... District (hereinafter called "the commissioners" or "the board of commissioners"), with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and vice-chairman. They shall also elect a secretary, within or without their body, and shall adopt by-laws for the government of their proceedings. The treasurer of the county in which the proceedings are instituted shall be ex officio treasurer of such board of commissioners. Such board of commissioners shall adopt a seal, which it may alter at pleasure. They shall have and possess such powers as are herein granted. The name of such district shall constitute a part of its corporate name. The commissioners shall appoint a competent person as superintendent of construction; such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties. Such bond shall be in favor of the board of commissioners. In the event of any vacancy in the membership of the board of commissioners the remaining members shall fill such vacancy, subject to the approval of the court. (1917, c. 131, s. 4; C. S. 4966.)

§ 107-9. Classification of lands according to benefits.—It shall be the further duty of the viewers to personally examine the lands in the district and classify them with reference to the benefits they will receive from the improvements to be made. The land benefits shall be separated into five classes. The land receiving the highest benefit shall be marked Class A; that receiving the next highest benefit, Class B; that

receiving the next highest benefit, Class C; that receiving the next highest benefit, Class D; and that receiving the smallest benefit, Class E. The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined, and the total number of acres in each class in the entire district shall be ascertained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five cents per acre is assessed against the land in Class A, four cents per acre shall be assessed against the land in Class B, and three cents per acre in Class C, and two cents per acre in Class D, and one cent per acre in Class E. This shall form the basis of assessment for benefits to the lands of the district. (1917, c. 131, s. 5; C. S. 4967.)

§ 107-10. Appeal from viewers' report. — Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the superior court in term-time. Such an appeal shall be taken and prosecuted as now provided in special proceedings. Such an appeal shall be based and heard only upon such exceptions theretofore filed by the complaining party, either as to issue of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. (1917, c. 131, s. 6; C. S. 4968.)

§ 107-11. Letting contract for construction. — The commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein said district is located, and such additional publication elsewhere as they deem expedient, of time and place of letting the work of construction, and in such notice they shall specify the approximate amount of work to be done, the time fixed for the completion thereof, and the date appointed for the letting. They, together with the superintendent of the district, shall convene and let to the lowest responsible bidder, either as a whole or in part, or in sections, as they deem most advantageous for the district, the proposed work. The landowners may bid on the work, and in the event of their securing the contract, the work shall be done at actual cost, it being distinctly understood that the landowners are to receive no profit from said contract, and any saving effected shall inure to the benefit of the district. No bids shall be entertained that exceed the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The commissioners shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by so doing. The successful bidder shall be required to enter into a contract with the board of commissioners, and to execute a bond for the faithful performance of such contract, with sufficient surety, in favor of the board of commissioners for the use and benefit of the district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract the superintendent of construction shall act only in an advisory capacity to the board of commissioners. The contract shall be based on the plans and specifications submitted by the commissioners in a report, and confirmed by the court, the original of which shall remain on file in the office of the clerk and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under authority of the commissioners, and on the date therefor appointed for the opening of bids. All bids must be accompanied by a certified check for three per centum of the amount of the bid. (1917, c. 131, s. 7; C. S. 4969.)

§ 107-12. Payment for work done. — The superintendent of construction shall make monthly estimates of the amount of work done and shall furnish one copy to the contractor and file the other with the secretary of the board of commissioners, and the commissioners shall within five days after filing of such estimate meet and direct the secretary to draw a warrant in favor of the contractor for ninety per centum of the work done according to the specifications and contract; and upon the presentation of such, properly signed by the chairman or vice-chairman and secretary, to the treasurer of the district, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the fund as before provided. In the event that the landowners receive the contract, the monthly payments shall cover only the actual cost of the work, as certified by the superintendent of construction, to whose certificates shall be attached all payrolls and vouchers. If any contractor to whom said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the commissioners against such contractor and his bond in the superior court, for damages sustained in the district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1917, c. 131, s. 8; C. S. 4970.)

§ 107-13. Record book kept by clerk.—The clerk shall provide a suitable book to be known as the Record Book of the Agricultural Development Commissioners of ..... District, in which he shall cause to be recorded every petition, motion, order, record, judgment, or finding of the board of commissioners in every transaction which may come before it, in such a way as to make a complete and continuous record of the case; copies of all the maps and plans are to be furnished by the commissioners, and marked by the clerk "Official Copy," which shall be kept on file by him in his office, and one of the copies shall be pasted or otherwise attached to his record. (1917, c. 131, s. 9; C. S. 4971.)

§ 107-14. Assessment rolls; preparation; con-

tents; execution.—After the classification of the land and ratios of assessment of the different classes to be made thereon has been confirmed by the court, the commissioners shall ascertain the total cost of improvement, including all incidental expenses, and shall certify under the hand of the chairman and secretary of the board of commissioners to the clerk the said total cost, and said certificate shall be forthwith recorded in the record book and open to the inspection of any landowner in the district. The commissioners shall immediately prepare in duplicate the assessment rolls or agricultural improvement tax lists, giving therein the names of the owners of the land in the district as ascertained from the public records, a brief description of the several tracts of land assessed, and the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together with such amounts as shall have to be paid for the collection and handling of the same. The second assessment roll shall make like provision for the fourth year, and in like manner assessment rolls shall make provision for each succeeding year during the life of the bonds. Each of the said assessment rolls shall specify the time when collectible, and shall be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of the assessment made by the viewers. These assessment rolls shall be signed by the clerk and by the secretary of the board of commissioners. (1917, c. 131, s. 10; C. S. 4972.)

§ 107-15. Filing and collection of assessment rolls; to be lien on land.—One copy of each of said assessment rolls shall be filed in the record book and one copy shall be delivered to the sheriff or other county tax collector, after the clerk has appended thereto an order directing the collection of said assessment, and the said assessment shall thereupon have the force and effect of a judgment as in the case of state and county taxes. These assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner, by the same officers, as the state and county taxes are collected. (1917, c. 131, s. 10; C. S. 4973.)

§ 107-16. When assessments due; sale of delinquent lands.—The said assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff to sell the land or lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door in the county in which the lands are located, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on the first Monday of February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the land may be readvertised and sold on the first Monday in March succeeding, during the same hours, without any order therefor. In all other respects, except as to the time of the sale of the land, the existing laws as to the collection of state and county taxes shall have application to the collection of assessments under this article. (1917, c. 131, s. 10; C. S. 4974.)

§ 107-17. Settlement by tax collector.—It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the moneys so collected by him upon said tax assessments, to the end that the said treasurer may have funds in hand to meet the payment of interest and principal due upon outstanding bonds as they mature. (1917, c. 131, s. 10; C. S. 4975.)

§ 107-18. Payment of interest and installments on bonds; county treasurer's liability.—It shall be the duty of the county treasurer, and without any previous order from the commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installments of principal due on said bonds at the time and place as evidenced by said bonds; and the said county treasurer shall be guilty of a misdemeanor and subject, on conviction, to fine and imprisonment, in the discretion of the court, if he shall neglect or fail to make prompt payment of said interest and principal of said bonds, and shall likewise be liable in a civil action for all damages which may accrue to the board of commissioners or holders of said bonds, to either or both of which a right of action is hereby given. (1917, c. 131, s. 10; C. S. 4976.)

§ 107-19. New assessment on sale of land.—When any land in the district is sold, as provided in § 107-16, the court shall assess the new owner thereof, and deduct the amount of the new assessment from the assessment of the former owner, and correct the assessment rolls accordingly. (1917, c. 131, s. 10; C. S. 4977.)

§ 107-20. Advertisement of intention to issue bonds.—The commissioners shall give notice for three weeks, by publication in some newspaper published in the county in which the district or a part of the district is situated, and shall also post a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of improvement, giving the amount of the bonds to be issued, the rate of interest they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may within fifteen days after the publication of said notice pay to the county treasurer the full amount for which his land is liable, to be assessed from the classification sheet and certificate of the board of commissioners, showing the total cost of improvements, and have his lands released from liability to be assessed for such improvements. (1917, c. 131, s. 11; C. S. 4978.)

§ 107-21. Landowner's waiver.—Each and every person owning land in the district who shall fail to pay to the county treasurer the full

amount for which his land is liable as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of the bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessment which may be levied for the payment of the bonds because of any irregularity or defect in the proceedings prior to this time, except in the case of an appeal as hereinbefore provided, which is not affected by this waiver. (1917, c. 131, s. 12; C. S. 4979.)

§ 107-22. Bond issue.—At the expiration of fifteen days after the expiration of the notice of the bond issue, the board of commissioners may issue bonds of the district for an amount equal to the total estimated cost of the improvements, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of the issue: Provided, that the total principal amount of the bonds to be issued shall not exceed fifty dollars per acre for the land to be improved.

These bonds shall bear six per cent interest per annum, payable semiannually, and shall be paid in twenty equal installments. The first installment of the principal shall mature at the expiration of three years from the date of issue, and one installment for each succeeding year for nineteen additional years. The commissioners shall sell these bonds at not less than par and apply the proceeds to the payment of interest on said bonds for the three years next following the date of issue, and the payment of other expenses of the district provided for in this chapter. The proceeds from such bonds shall be for the exclusive use of the district specified on their face. The bonds shall be numbered by the board of commissioners and recorded in the record book, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinbefore provided. If any installment of principal or interest represented by said bonds shall not be paid at the time and in the manner when the same shall be due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made shall have a right of action against said district, or the board of commissioners of said district, wherein the court may issue a writ of mandamus against said district, its officers, including the tax collector and treasurer, directing the levying of a tax or specific assessment as herein provided and the collection of the same in such sum as may be necessary to meet any unpaid installment of principal and interest and the cost of said action; and such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law; and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The official bonds of the tax collector and the county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such official bonds may be increased by the board of county commissioners. (1917, c. 131, s. 13; C. S. 4980.)

§ 107-23. Fees allowed sheriff and treasurer. — The fee allowed the sheriff or the tax collector for collecting the tax as prescribed in this chapter shall be two per centum of the amount collected, and the fee allowed the county treasurer for disbursing the revenue obtained from the sale of the bonds shall be one per centum of the amount disbursed: Provided, no fee shall be allowed to the sheriff or other tax collector, or to the county treasurer, for collecting or receiving the revenue obtained from the sale of said bonds, nor for disbursing the revenue raised for paying off said bonds: Provided further, that in those counties where the sheriff, tax collector, and treasurer are on a salary basis, no fee whatever shall be allowed for collecting or disbursing the funds of the district. (1917, c. 131, s. 13, (2d): C. S. 4981.)

§ 107-24. Fees and expenses under chapter. — Any engineer employed under the provisions of this chapter shall receive such compensation for his services as shall be fixed and determined by the commissioners. The viewers, other than the engineer, shall receive five dollars per day; the rodman, axeman, chainman, and other laborers shall receive not to exceed two dollars per day. All other fees and costs incurred under the provisions of this chapter shall be the same as are usual for like services in other cases. Said costs and expenses shall be paid, by order of the court, out of the funds provided for that purpose, and the board of commissioners shall issue warrants therefor when funds shall be in the hands of the treasurer. Any engineer, viewer, superintendent of construction, or other person appointed under this chapter may be removed by the court, upon petition, for corruption, neglect of duty, or other good and satisfactory cause shown. (1917, c. 131, s. 14; C. S. 4982.)

§ 107-25. Liberal construction; defects in proceeding.—The provisions of this chapter shall be liberally construed to promote the objects herein declared and for the general welfare of the state. The collection of assessments shall not be defeated, whether proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the commissioners; but such orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person, or modify his assessment or liability, it shall in no manner affect the rights and legality of any other person than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this chapter shall exclude all other remedies. (1917, c. 131, s. 15; C. S. 4983.)

Chapter 108. Board of Charities.

Art. 1. State Board of Charities and Public Welfare.

Sec.

Art. 2. County Boards of Charities and Public Welfare.

Art. 3. Division of Public Assistance.

Part 1. Old Age Assistance.

Part 2. Aid to Dependent Children.

General Provisions.

Art. 4. Home Boarding Fund.

Art. 5. Regulation of Organizations and Individuals Soliciting Public Alms.

Art. 1. State Board of Charities and Public Welfare.

§ 108-1. Appointment, term of office, and compensation.—There shall be appointed by the governor seven members who shall be styled "The State Board of Charities and Public Welfare," and at least one of such persons shall be a woman. The terms of office of the members of the board shall be six years. Upon the expiration of the terms of office of the present members of the board, the governor shall appoint their successors as follows: three members to be appointed on April first, one thousand nine hundred and forty-three and every six years thereafter; two members to be appointed on April first, one thousand nine hundred and forty-five and every six years thereafter; and two members to be appointed on April first, one thousand nine hundred and forty-seven and every six years thereafter. Any vacancy in the board at present or which may hereafter arise from any cause whatsoever shall be filled for the residue of the term by appointment by the governor. The governor shall designate the chairman of the board so selected, which chairmanship so designated may be changed as the governor may deem best to promote the efficiency of the service. The members of the board shall serve without pay, except that they shall receive their necessary expenses: Provided, however, that the chairman of the said board, when acting as a member of the state board of allotments and appeal shall receive a per diem to be fixed by the director of the budget, together with actual expenses incurred in attending meetings. (Rev., s. 3913; Code, s. 2331; 1868-9, c. 170, s. 1; 1909, c. 500; 1917, c. 170, s. 1; 1937, c. 319, s. 1; 1943, c. 775, s. 1; C. S. 5004.)

Editor's Note.—Prior to the 1943 amendment the members of the board were elected by the general assembly.

For act validating prior appointments of members of the state board of charities and public welfare and all prior acts of the board, see Session Laws 1943, c. 775, s. 2.

§ 108-2. Meetings of board.—The board shall hold meetings at least quarterly, and whenever called in session by the chairman, and shall make such rules and orders for the regulation of its own proceedings as it deems proper. (Rev., ss. 2807, 3914; Code, s. 2332; 1868-9, c. 170, s. 2; 1909, c. 899; 1917, c. 170, s. 1; C. S. 5005.)

§ 108-3. Powers and duties of board.—The board shall have the following powers and duties, to-wit:

1. To investigate and supervise, through and by its own members or its agents or employees, the whole system of the charitable and penal institutions of the state, and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

2. To study the subjects of nonemployment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and wife desertion, the social evil and kindred subjects and their causes, treatment, and prevention, and the prevention of any hurtful social condition.

3. To study and promote the welfare of the dependent and delinquent child and to provide, either directly or through a bureau of the board, for the placing and supervision of dependent, delinquent, and defective children.

4. To inspect and make report on private orphanages, institutions, maternity homes, and persons or organizations receiving and placing children, and to require such institutions to submit such annual reports and information as the state board may determine: Provided, that the term "maternity homes" used hereinbefore in this sub-section shall be construed to include institutions or homes maintained not only for the purpose of receiving pregnant women for care previous to, during and following delivery, but institutions or lying-in homes wherein pregnant women are received for care previous to and following delivery, the said delivery taking place in a hospital to which this statute does not apply.

5. To grant license for one year to such persons or agencies to carry on such work as it believes is needed and is for the public good, and is conducted by reputable persons or organizations, and to revoke such license when in its opinion the public welfare or the good of the children therein is not being properly subserved; Provided, subsection five shall not apply to any orphanage chartered by the laws of the State of North Carolina, owned by a religious denomination or a fraternal order, and having a plant and assets not less than sixty thousand dollars ($60,000), nor shall it apply to orphanages operated by fraternal orders, under charters of other states, which have complied with the corporation laws of North Carolina and have that amount of property.

6. To issue bulletins and have same printed and in other ways to inform the public as to social conditions and the proper treatment and remedies for social evils.

7. To issue subpœnas and compel attendance of witnesses, administer oaths, and to send for persons and papers whenever it deems it necessary in making the investigations provided for herein or in the other discharge of its duties, and to give such publicity to its investigations and findings as it may deem best for the public welfare.

8. To employ, by and with the approval of the governor, a trained investigator of social service problems who shall be known as the commissioner of public welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

9. To recommend to the legislature social legislation and the creation of necessary institutions.

10. To have the authority to establish, maintain and provide rules and regulations for the administration of a system of personnel standards on

a merit basis with a uniform schedule of compensation for all employees of the state board and of the county welfare departments: Provided, that the compensation schedule for employees of the state board shall be established in conformity with the provisions of the State Personnel Act.

11. To attend, either through its members or agents, social service conventions and similar conventions, and to assist in promoting all helpful publicity tending to improve social conditions of the state, and to pay out of the funds appropriated to the state board office expenses, salaries of employees, and all other expenses incurred in carrying out the duties and powers hereinbefore set out.

12. To receive, hold and administer for the purposes for which it is organized, any funds donated to it, either by will or deed, and to administer said funds in accordance with the instructions of the will or deed creating them.

13. To accept donations and gifts or any and all kinds of commodities, services or moneys which may be donated or given by the Federal or State government, or by any political subdivision of the State. Such donations shall be used exclusively by said board for relief purposes in this State, and said board is hereby fully authorized and empowered, under rules and regulations adopted by it, to provide for the distribution thereof.

14. To furnish to the Federal Government, or any of its agencies, such services as may be required in selecting. certifying, or referring persons who may be eligible for Civilian Conservation Corps, or persons who may be eligible for employment by the Work Projects Administration, the Resettlement Administration, the Surplus Commodities Corporation, or any other agency of the Federal Government engaged in relief or Allied activities. The State Board of Charities and Public Welfare is also authorized to certify to the Surplus Commodities Corporation the persons eligible to receive such commodities as may be distributed for relief purposes. (Rev., ss. 3914, 3915; Code, ss. 2332, 2333; 1868-9, c. 170, s. 3; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; 1937, c. 436, ss. 3, 5; 1941, c. 270, s. 1; C. S. 5006.)

Cross References.—See Const. Art. XI, § 7. For sections in other articles prescribing certain duties and powers of the board of charities and public welfare and the commissioner of public welfare, see the following: §§ 48-1 to 48-11 (duties relative to adoption of minors); § 153-9, subs. 29 (approval of establishment and maintenance of county homes for indigent and delinquent children); § 153-154 (reports required from county homes); § 153-166 (approval of facilities and equipment of district hospital homes for aged and infirm); § 35-40 (commissioner is member of board of eugenics); § 15-206 (cooperation with state probation commission); § 108-18 (duties in administering old age assistance act); § 108-57 (duties in administering aid to dependent children act); §§ 108-77 to 108-79 (administration of state boarding home fund); §§ 108-80 to 108-90 (regulation of organizations and persons soliciting alms); § 110-29 (commitment of delinquent children to board by juvenile courts); § 110-30 (approval of matron and superintendent of detention homes for children committed by juvenile courts); § 110-31 (appointment and discharge of probation officers); § 110-33 (reports required of probation officers); § 110-49 (licensing of institutions for the care of children); §§ 110-50 to 110-56 (regulation of placement of children from without state); § 106-455 (commissioner ex officio member of state commission for the blind); § 115-303 (examination of mentally incapacitated school children); § 122-20 (inspection of hospitals for the insane and reports to General Assembly); § 148-46 (commissioner is member of advisory board of paroles); § 148-9 (supervision and visitation of state prison department).

Editor's Note.—The Act of 1931 added the proviso to subsection 4 of this section. The 1937 amendment inserted the words "by and with the approval of the governor" in subsection 8. The 1941 amendment substituted subsection 10 for the former subsection 10, which directed the board to encourage employment by counties of county superintendents of public welfare.

§ 108-4. Investigate and report on mental and physical infirmities. — The board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy, and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the general assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the state. The state board shall keep and report statistics of the matters hereinbefore referred to and shall compile these reports and analyze them with a view of determining and removing the cause in order to prevent crime and distress. (Rev., s. 3916; Code, s. 2334; 1868-9, c. 170, s. 4; 1917, c. 170, s. 1; C. S. 5007.)

§ 108-5. Inspection of county prisons; reports required. — The state board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties and superintendents of public welfare and other county officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the state board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the state board. (Rev., s. 3917; Code, s. 2335; 1868-9, c. 170, s. 5; 1917, c. 170, s. 1; C. S. 5008.)

§ 108-6. Biennial reports to general assembly. —The state board shall biennially prepare and submit to the general assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the state institutions under its supervision, with such suggestions as it may deem necessary and pertinent, which shall be printed, and shall report such other matters as it may think for the benefit of the people of the state. (Rev., s. 3918; Code, s. 2338; 1868-9, c. 170, s. 8; 1870-1, c. 106; 1917, c. 170, s. 1; C. S. 5009.)

§ 108-7. Attention secured for insane and other unfortunates. — Whenever the board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of the board to cause such insane person to be conveyed to the proper state hospital for the insane, there to receive the best medical attention.

So, also, it shall be their care that all the unfortunate shall receive benefit from the charities of the state. (Rev., s. 3919; Code, s. 2336; 1868-9, c. 170, s. 6; 1917, c. 170, s. 1; C. S. 5010.)

§ 108-8. Public institutions to furnish information.—The board may require the superintendents or other officers of the several charitable and penal institutions of the state to report to them any matter relating to the inmates of such institutions, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics upon demand. (Rev., s. 3920; Code, s. 2337; 1868-9, c. 170, s. 7; 1917, c. 170, s. 1; C. S. 5011.)

§ 108-9. Relatives ineligible to appointment in state institutions.—No person shall be appointed to any place or position in any of the state institutions under the supervision of the state board who is related by blood or marriage to any member of the state board or to any of the principal officers, superintendents, or wardens of state institutions. (1917, c. 170, s. 1; C. S. 5012.)

§ 108-10. Failure of officers to furnish information. — If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the state shall fail, refuse, or neglect to furnish any information required by law to be furnished to the state board of charities and public welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the state, they shall be guilty of a misdemeanor. (Rev., s. 3566; Code, s. 2341; 1891, c. 491, s. 2; 1869-70, c. 154, s. 3; C. S. 5013.)

Art. 2. County Boards of Charities and Public Welfare.

§ 108-11. County welfare boards; appointment; duties.—Each of the several counties of the state shall have a county welfare board composed of three members who shall be appointed as follows: The board of county commissioners shall appoint one member who may be one of their own number to serve as ex officio member of the county welfare board with the same powers and duties as the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the state board of charities and public welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

The respective appointments shall be made on or before the first day of April, one thousand nine hundred and forty-one and shall be effective as of that date. In order to secure overlapping terms of office and to give continuity of policy, the first appointment of the county commissioners shall be for a term of two years; the first appointment of the state board shall be for a term of three years, and the first appointment of the third member shall be for a term of one year; but at the expiration of the terms of the three appointees their successors shall be appointed for terms of two years each. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible in the future to succeed himself after three successive terms as a member of a county welfare board: Provided, however, that no member shall serve more than six successive years.

The county welfare boards of the several counties shall have the duty of selecting the county superintendent of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including cooperation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children. The county welfare board shall meet with the superintendent of public welfare and advise with him in regard to problems pertaining to his office, and the superintendent of public welfare shall be the executive officer of the board and shall act as its secretary. (1917, c. 170, s. 1; 1919, c. 46, s. 3; 1937, c. 319, s. 3; 1941, c. 270, s. 2; C. S. 5014.)

Local Modification.—Wake: 1941, c. 270, s. 2; Wilkes: 1939, c. 106.

Editor's Note.—The 1941 amendment struck out the former section and substituted the above in lieu thereof.

§ 108-12. Meetings of the board.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the state board, and shall meet at least once a month with the superintendent of welfare and advise with him in regard to problems pertaining to his office. Members of the county board may be reimbursed for expenses incurred in the attendance at official meetings. (1917, c. 170, s. 1; 1919, c. 46, s. 4; 1937, c. 319, s. 4; 1941, c. 270, s. 3; C. S. 5015.)

Local Modification.—Mecklenburg: 1941, c. 270, s. 3.

Editor's Note.—The 1941 amendment struck out the former section and substituted the above in lieu thereof.

§ 108-13. County superintendent of welfare; appointment; salary.—On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a superintendent of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the state board of charities and public welfare. In making such appointment the county board may reappoint the superintendent of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as superintendent of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a

qualifying basis; or the county board may appoint as superintendent of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of superintendent if such person meets the minimum requirements of the position of superintendent of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as superintendent of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The superintendent so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of superintendent of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a superintendent of public welfare in accordance with the merit system rules of the state board of charities and public welfare and any superintendent so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

The county welfare board shall determine the salary to be paid the superintendent of public welfare, in accordance with the merit system compensation plan, either at the time of his appointment or at such time as they may be in regular or called session for the purpose, and the salary shall be paid by the respective counties from federal, state and county funds: Provided that in counties where financial conditions render it urgently necessary, the state board may cause to be paid out of any state or federal fund available for the purpose, such portion of the salary of the superintendent of welfare of any county as, in the discretion of the state board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county welfare superintendent is hereby authorized and directed. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; C. S. 5016.)

Local Modification.—Mecklenburg: 1941, c. 270, s. 4.

Cross Reference.—For merit system act, see §§ 126-1 et seq.

Editor's Note.—The 1941 amendment struck out the former section and substituted the above in lieu thereof.

§ 108-14. Powers and duties of county welfare superintendent. — The county superintendent of public welfare shall have the following powers and duties:

1. To act as executive officer of county welfare board and to appoint office personnel in accordance with merit system regulations of the state board of charities and public welfare, whose salaries shall be paid by the county from federal, state and county funds: Provided, that in counties where financial conditions render it urgently necessary, the state board may cause to be paid out of any state and federal funds available for the purpose such portion of the salaries as, in the discretion of the state board may be necessary.

2. To admininster old age assistance and aid to dependent children under the supervision of the state board of charities and public welfare and in accordance with the provisions of the old age assistance and aid to dependent children acts.

3. To have the care and supervision of indigent persons in the county and to administer funds provided by the county commissioners for such purposes.

4. To act as agent for the state board of charities and public welfare in relation to any work to be done by the state board in the county; and to make, under the direction of the state board, such investigations in the county in the interest of social welfare as the state board may desire or direct.

5. To issue employment certificates to children in such form and under such regulations as may be prescribed by the state department of labor.

6. To prepare and submit to the eugenics board of North Carolina petitions for sterilization of county institutional and non-institutional cases and to arrange for operations authorized by the eugenics board.

7. To serve as investigating officer and chief probation officer for all juvenile courts in the county and to have oversight of dependent and delinquent children including those on parole or probation, of such dependent children as may be placed in the county by the state board, and of those children conditionally released from state institutions for juvenile delinquents.

8. To assist and cooperate with the commissioner of paroles and the parole supervisor in the oversight and actual supervision of persons on parole in the county and to coöperate with probation commission and its representatives.

9. Under direction of the state board to look after and keep up with the condition of persons discharged from hospitals for the insane.

10. To investigate cases for adoption and supervise placements for adoption.

11. To supervise boarding homes under rules and regulations of the state board.

12. To cooperate with existing agencies in the promotion of wholesome recreation facilities in the county. (1917, c. 170, s. 1; 1919, c. 46, s. 3; 1941, c. 270, s. 5; C. S. 5017.)

Editor's Note.—The 1941 amendment struck out the former section and substituted the above in lieu thereof.

Art. 3. Division of Public Assistance.

§ 108-15. Division of public assistance created. —There is hereby created in the state board of charities and public welfare a division of public assistance, including (a) assistance to aged needy persons, and (b) aid to dependent children, as administered under authority of this article. (1937, c. 288, s. 1.)

§ 108-16. Director of public assistance.—The commissioner of welfare, with the advice and approval of the governor, shall employ a whole-time executive to be known as "director of public assistance." Such director, under the authority and supervision of the commissioner of welfare, shall have charge of the administration of the division herein created, and shall actively direct its affairs; and shall perform such other duties as may be required of him by the rules and regulations adopted by the state board. He shall see that this article is properly administered, that the requirements thereof are carried out in a timely and orderly manner, that administration of this division shall be kept at all times properly co-ordi-

nated and efficiently maintained in agreement with other agencies of the state and with the federal government; and shall perform such other duties as are customary in his position.

The director of public assistance shall receive such salary and compensation as may be fixed by the director of the budget; and his tenure of office shall be such as may be fixed by rules and regulations of the department relative thereto and approved by the governor, subject to termination when, in the opinion of the governor and the commissioner of welfare, the public interest may demand it. (1937, c. 288, s. 2.)

Part 1. Old Age Assistance.

§ 108-17. Short title.—This title may be cited as the "Old Age Assistance Act." (1937, c. 288, s. 30.)

§ 108-18. Establishment of relief. — The care and relief of aged persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a state-wide system of old age relief is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the state, and each and every county thereof, and, whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of old age assistance, as defined and provided for in this article. (1937, c. 288, s. 3.)

Editor's Note.—For article discussing social security, see 15 N. C. Law Rev. 369.

§ 108-19. Definitions.—As used in this article, "state board" shall mean the state board of charities and public welfare, established by this chapter.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

"Applicant" shall mean any person who has applied for relief under this title.

"Recipient" shall mean any person who has received assistance under the provisions of this title.

"Assistance" as used under this title means the money payments to needy aged persons.

"Deputies" and "supervisors" shall mean such persons as may be designated and appointed by the state board to exercise its power and duty of supervision under this article.

"Social security board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 4; 1939, c. 395, s. 1.)

Editor's Note.—The 1939 amendment added the definition of "social security board."

§ 108-20. Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants in aid to the state for old age assistance and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 5.)

§ 108-21. Eligibility. — Assistance shall be granted under this article to any person who:

(a) Is sixty-five years of age and over;

(b) Is a citizen of the United States or has been residing in the United States for a period of ten years and has legally declared his intention to become a citizen;

(c) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;

(d) Is not an inmate of any public institution at the time of receiving assistance. An inmate of such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.

(e) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years prior to the filing of application for assistance pursuant to the provisions of this article.

(f) Has been a resident of this state for one year immediately preceding the date of his application.

Eligibility of applicants to receive benefits under this title, and the amount of assistance given, and such other conditions of award as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the state board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding thirty dollars ($30.00) per month or three hundred sixty dollars ($360.00) during one year; and of this not more than fifteen dollars ($15.00) per month nor more than one hundred eighty dollars ($180.00) in one year shall be paid out of state and county funds. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1.)

Editor's Note.—The 1939 amendment added that part of subsection (b) beginning with the word "or" in line one. It also changed the first sentence of subsection (f).

The 1941 amendment added a proviso to the first sentence of subsection (f), which was omitted by the 1943 amendment which rewrote the first paragraph of subsection (f).

§ 108-22. State old age assistance fund. — A fund shall be created to be known as "The State

Old Age Assistance Fund." This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for old age assistance under the Federal Social Security Act. Said fund shall be used exclusively for the relief of aged persons coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for old age assistance and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided three-fourths of the benefit payments to aged persons in accordance with the provisions hereof, and the other one-fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the state as hereinafter required. (1937, c. 288, s. 7; 1943, c. 505, s. 1.)

Editor's Note.—The 1943 amendment substituted "73" for "74" in line twenty-one. It also struck out the former last sentence which read as follows: "The cost of administering the provisions of this title shall be, in part, paid from said fund in accordance with § 108-39."

§ 108-23. State appropriation.—At its present session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the aged persons coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 8.)

§ 108-24. County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the state and federal funds available for expenditure in said county for old age assistance. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 9.)

§ 108-25. Appropriations not to lapse.—No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 10.)

§ 108-26. Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the State Old Age Assistance Fund herein established, including therein such grants in aid for old age assistance as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the "State Old Age Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 11.)

§ 108-27. Department of charities and public welfare.—The powers and duties of the state board of charities and public welfare, established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of commissioner of welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12.)

§ 108-28. Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to the needy aged under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to the needy aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish reports as may be necessary;

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, non-residents or transients, and co-operate with other agencies of the state and federal governments in providing such assistance and services and in the study of the problems involved;

(h) The state board is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the state treasurer and credited to the account of the North Carolina state board of char-

ities and public welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 13; 1939, c. 395, s. 1; 1943, c. 505, s. 2.)

Editor's Note.—The 1939 amendment added subsections (g) and (h).

The 1943 amendment struck out the words "an annual report and such interim" formerly appearing after the word "Publish" in subsection (f).

§ 108-29. Certain powers and duties of local boards—county welfare boards. — The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

The county boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and report to the state board and to the county board of commissioners such investigation as may be required in order that said state board and boards of county commissioners may be fully informed as to the assistance required by aged persons coming within the eligibility provisions of this article, and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 14.)

§ 108-30. Application for assistance; determination therein.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the state board. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed thirty dollars ($30.00) per month or three hundred sixty dollars ($360.00) in one year, and there shall not be paid thereupon out of state and county funds more than fifteen dollars ($15.00) per month or more than one hundred eighty dollars ($180.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application or granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal. The state board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of old age assistance and in accordance with the rules and regulations of the state board for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving old age assistance, directly or indirectly derived from the records, papers, files, or communications of the state board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 15; 1939, c. 395, s. 1; 1941, c. 232.)

Editor's Note.—Prior to the 1939 amendment the application was required to be verified by the oath of the applicant. The 1941 amendment substituted the last two sentences above in lieu of the former last sentence of the last paragraph.

§ 108-31. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deems that any award should be in any respect changed,

an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 16.)

§ 108-32. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 17.)

§ 108-33. State board of allotments and appeal. — For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the state board of charities and public welfare and as an agency of said board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

The chairman of the state board of charities and public welfare;

The commissioner of welfare;

The director of public assistance, established by this article; all of whom shall be ex officio members of the state board of allotments and appeal. The chairman of the state board of charities and public welfare shall be the chairman of the board of allotments and appeal.

If an application is not acted upon by the county welfare board within a reasonable time, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient, the board of county commissioners and the county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare or the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners or county board of welfare, it shall be the duty of such board to forward to the board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners or county board of welfare, and such papers and documents or other matter as may be required under the rules of the state board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also, on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare, and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases, and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said board, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 18; 1939, c. 395, s. 1.)

Editor's Note.—The 1939 amendment substituted "a reasonable time" for "thirty days" formerly appearing in line twenty-two.

§ 108-34. Periodic reconsideration and changes in amount of assistance. — All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning old age assistance and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient, and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 19.)

§ 108-35. Removal to another county. — Any recipient who moves to another county in this state shall be entitled to receive assistance in the county to which he has moved, and the county welfare superintendent of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare superintendent of the county to which he has moved. The county from which the recipient

moves shall pay the assistance for a period of three months following such removal, not in excess of amount paid before removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 20; 1943, c. 505, s. 3.)

Editor's Note.—The 1943 amendment substituted the words "county welfare superintendent" for the former words referring to the board of county commissioners. It also struck out the former second paragraph.

§ 108-36. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning aged persons in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board, or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purposes of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, annually, on or before the first day of May, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board of allotments and appeal may require. (1937, c. 288, s. 21.)

§ 108-37. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for both payments of grants to recipients and for administrative purposes: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. (1937, c. 288, s. 22; 1939, c. 395, s. 1; 1943, c. 505, s. 4.)

Editor's Note.—The 1939 amendment changed the last sentence, and the 1943 amendment added the proviso thereto.

§ 108-38. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county superintendent of welfare and the state board of charities and public welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232.)

Editor's Note.—The 1939 amendment added the last para-

graph. The 1941 amendment struck out the former first paragraph of this section.

§ 108-39. Transfer of state and federal funds to the counties.—The state old age assistance fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds, for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county old age assistance fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, subject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 24.)

§ 108-40. Accounts and reports from county officers. — The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors and deputies. (1937, c. 288, s. 25.)

§ 108-41. Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 26.)

§ 108-42. Fraudulent acts made misdemeanor.—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled; and whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27.)

§ 108-43. Limitations of article. — All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 28.)

Part 2. Aid to Dependent Children.

§ 108-44. Short title.—This title may be cited as the "Aid to Dependent Children Act." (1937, c. 288, s. 60.)

§ 108-45. Establishment of relief. — The care and relief of dependent children who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a statewide system of aid to dependent children is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this

article are mandatory on the state, and each and every county thereof, and whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of aid to dependent children as defined and provided for in this article. (1937, c. 288, s. 31.)

§ 108-46. Definitions.—As used in this article, "state board" shall mean the state board of charities and public welfare, established by this chapter.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

"Applicant" shall mean any person who has applied for relief for dependent children under this title.

"Recipient" shall mean any person who has received assistance for dependent children under the provisions of this title.

"Assistance" as used under this title means the money payments for aid to dependent children.

"Social security board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 32; 1939, c. 395, s. 1.)

Editor's Note.—The 1939 amendment defined "social security board."

§ 108-47. Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants in aid to the state for aid to dependent children, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 33.)

§ 108-48. Amount of relief. — The maximum amount to be allowed per month under this article shall not exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixy-five dollars ($65.00), except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purpose above set forth. (1937, c. 288, s. 34.)

§ 108-49. Dependent children defined. — The term "dependent child" as used in this article shall mean a child under sixteen years of age, or under eighteen years of age if regularly attending school, who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home; who has resided in the state of North Carolina for one year immediately preceding the application for aid; or who was born within the state within one year immediately preceding the application if the mother has resided in the state for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support: Provided, that in all cases of desertion every effort shall be made in compliance with the provisions of §§ 14-322 to 14-335 inclusive, to apprehend the parent and charge him with the support of the said child, but this provision shall in no wise affect the eligibility of a dependent child, or children, for aid to dependent children, or the right of the county board of welfare to make awards therefor. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232.)

Editor's Note.—The 1939 amendment added the part of the proviso beginning with the word "but". The 1941 amendment made this section applicable to school children under eighteen. It also added to the list of relatives, beginning with "adoptive father."

§ 108-50. Eligibility.—To be eligible to receive aid for a dependent child or children as hereinbefore defined in § 108-49, the said father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in whose own home the said dependent child resides shall maintain a safe and proper home for himself, or themselves, and said dependent child or children. (1937, c. 288, s. 36; 1941, c. 232.)

Editor's Note.—The 1941 amendment added to the list of relatives, beginning with "adoptive father." The amendment also corrected an error of reference appearing in the original act but which had been corrected in the section as codified.

§ 108-51. State aid to dependent children fund. —A fund shall be created to be known as "The State Aid to Dependent Children Fund." This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for aid to dependent children under the Federal Social Security Act. Said fund shall be used exclusively for the relief of dependent children coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for aid to dependent children and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided three-fourths of the benefit payments to dependent children in accordance with the provisions hereof, the other one-fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the state as hereinafter required.

In the event that the Federal Social Security Act is amended by providing for a larger percent-

age of contributions to said fund, the provisions herein made shall be construed to accept such additional grants, and the amounts to be provided for aid to dependent children by state and counties shall be adjusted proportionately. (1937, c. 288, s. 37; 1941, c. 232; 1943, c. 505, s. 5.)

Editor's Note.—The 1941 amendment substituted in the fifth sentence of the first paragraph "three-fourths" for "two-thirds" and "one-fourth" for "one-third."

The 1943 amendment substituted "§ 108-73" for "§ 108-74" in the last sentence of the first paragraph. It also struck out the former last sentence of the first paragraph which read: "The cost of administering the provisions of this title shall be, in part, paid from said funds in accordance with § 108-68."

§ 108-52. State appropriation. — At its present session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the dependent children coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 38.)

§ 108-53. County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the state and federal funds available for expenditure in said county for aid to dependent children. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 39.)

§ 108-54. Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 40.)

§ 108-55. Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the state aid to dependent children fund herein established, including therein such grants in aid to dependent children as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the state aid to dependent children fund, and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 41.)

§ 108-56. General powers and duties of department of charities and public welfare.—The powers and duties of the state board of charities and public welfare established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of commissioner of welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42.)

§ 108-57. Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to dependent children under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish reports as may be necessary.

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, non-residents or transients, and co-operate with other agencies of the state and federal governments in providing such assistance and services and in the study of the problems involved.

(h) The North Carolina state board of charities and public welfare is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the state treasurer and credited to the account of the North Carolina state board of charities and public welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 43; 1939, c. 395, s. 1; 1943, c. 505, s. 6.)

Editor's Note.—The 1939 amendment added subsections (g) and (h).

The 1943 amendment struck out the words "an annual report and such interim" formerly appearing after the word "Publish" in subsection (f).

§ 108-58. Certain powers and duties of local boards—county welfare boards. — The county boards of welfare shall perform the duties herein

required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

County boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and report to the state board and to the county board of commissioners such investigation as may be required in order that the said state board and boards of county commissioners may be fully informed as to the assistance required by dependent children coming within the eligibility provisions of this article; and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 44.)

§ 108-59. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of the applications as may be necessary. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the children for whom application is made, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation, and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars ($65.00) except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purposes above set forth. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal.

The state board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of aid to dependent children and in accordance with the rules and regulations of the state board for any person or persons to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving aid to dependent children, directly or indirectly derived from the records, papers, files, or communications of the state board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 45; 1939, c. 395, s. 1; 1941, c. 232.)

Editor's Note.—Prior to the 1939 amendment the application was required to be verified by the oath of the applicant. The 1941 amendment added the paragraph at the end of this section.

§ 108-60. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deem that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 46.)

§ 108-61. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the op-

eration of any bankruptcy or insolvency law. (1937, c. 288, s. 47.)

§ 108-62. State board of allotments and appeal. —For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, the state board of allotments and appeal, created under § 108-33 shall as an agency of the state board have complete and final jurisdiction. If an application is not acted upon by the county welfare board within thirty days or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient and the board of county commissioners and county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare and the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners, it shall be the duty of such board to forward to the state board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners, and such papers and documents or other matter as may be required under the rules of the board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and the county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and the county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said boards, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 48.)

§ 108-63. Periodic reconsideration and changes in amount of assistance. — All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning aid to dependent children and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 49.)

§ 108-64. Removal to another county.—Any resident who moves to another county and continues to have such dependent children in custody in this state shall be entitled to receive assistance in the county to which he has moved, and the county welfare superintendent of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare superintendent of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 50; 1943, c. 505, s. 7.)

Editor's Note.—The 1943 amendment substituted the words "county welfare superintendent" for the former words referring to the board of county commissioners. It also struck out the former second paragraph.

§ 108-65. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning dependent children in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of

this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purpose of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of May, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board of allotments and appeal may require. (1937, c. 288, s. 51; 1943, c. 505, s. 8.)

Editor's Note.—The 1943 amendment substituted "May" for "April" in the second sentence of the second paragraph.

§ 108-66. Allocation of funds. — As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amounts to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for both payments of grants to recipients and for administrative purposes. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232.)

Editor's Note.—The 1939 amendment changed the last sentence.

The 1941 amendment substituted the words "three times" for the word "twice" formerly appearing in the last sentence of the first paragraph.

§ 108-67. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53; 1941, c. 232; 1943, c. 505, s. 9.)

Editor's Note.—The 1941 amendment struck out the former first paragraph of this section. It also substituted the words "aid to dependent children" for the words "old age assistance" as appearing in the original act. However, this correction had already been made in the section as codified.

The 1943 amendment struck out the words "in accordance with the total amount of benefit payments to be paid in each county for aid to dependent children therein," formerly appearing after the word "state" in line three of the first paragraph.

§ 108-68. Transfer of state and federal funds to the counties. — The aid to dependent children fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county aid to dependent children fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, subject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 54; 1937, c. 405; 1943, c. 505, s. 10.)

Editor's Note.—The 1943 amendment substituted "one-fourth" for "one-third" in the fifth line from the end of the first paragraph.

§ 108-69. Accounts and reports from county officers. — The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors, and deputies. (1937, c. 288, s. 55.)

§ 108-70. Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 56.)

§ 108-71. Fraudulent acts made misdemeanor. —Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain by means of wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 57.)

§ 108-72. Limitations of article. — All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 58.)

§ 108-73. Equalizing fund.—The state board of allotments and appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the state under § 108-23, relating to old age assistance, and under § 108-52, relating to aid to dependent children, such an amount of said funds appropriated by the state to the respective funds as shall be found by the state board of allotments and appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the state, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy aged persons and dependent children coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the state board of allotments and appeal, producing, as far as practicable, a just and fair distribution thereof: Provided, however, that no county shall be entitled to share in such equalizing fund unless the rate of tax necessary to be levied in such county for the purposes of this article is in excess of ten cents on the one hundred dollar valuation of taxable property therein: Provided further, the state board of allotments and appeal shall not allot to any county from such equalizing fund more than three-fourths of the cost to such county in excess of the amount produced in such county by a levy and collection of a tax rate of ten cents on the one hundred dollar valuation of taxable property therein.

After determining the amount to be allotted to any county from such equalizing fund, the state board of allotments and appeal shall determine the amount to be raised in such county by taxation to supplement the state and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62; 1943, c. 505, s. 11.)

Editor's Note.—The 1943 amendment called for a change in the number referred to in line six which had already been made upon codification.

General Provisions.

§ 108-74. Organization; appointment of agencies; employment.—The state board shall have opportunity to set up such organization as may in its judgment be deemed proper to secure the economic

and efficient administration of this article, not inconsistent with other provisions hereof. It may delegate such powers as may be lawfully delegated to such persons and agencies as will expedite the prompt execution of the duties of the board in ministerial matters; may appoint auditors, accountants, supervisors, and deputies, and other agents to aid it in its supervisory powers and to secure the proper care of the funds and administration of the law; and may employ clerical and other assistance. Except as herein otherwise provided, the salaries and compensation paid to the personnel shall be fixed by the budget commission, and the number of salaried persons and employees shall be subject to the approval of the budget commission. The organization shall likewise be such as to meet the approval of the Federal Social Security Authority in charge of the old age assistance.

The board is further authorized to pay ordinary expenses incident to administration, and to fix and pay per diem compensation to members of boards to whom new duties have been given and of whom additional service is required under this article. Such compensation shall be subject to the approval of the director of the budget. (1937, c. 288, s. 63.)

§ 108-75. County funds; how provided.—Wherever in this article provisions are made requiring the several counties to annually levy or annually levy and collect taxes to provide for such amounts as such counties are required to pay for old age assistance, or for aid to dependent children, or for the cost of administration, such provisions shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1937, c. 288, s. 63½.)

§ 108-76. Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become or be in force unless and until the governor of the state of North Carolina has issued a proclamation, duly attested by the secretary of state of the state of North Carolina, to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this article in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 288, s. 63½-A.)

Art. 4. Home Boarding Fund.

§ 108-77. State boarding home fund created.—The general assembly of North Carolina shall make appropriations to the state board of charities and public welfare for the purpose of providing aid for needy and dependent children and paying their necessary subsistence in boarding homes. The state board of charities and public welfare, from said appropriations, shall maintain a fund to be known and designated as the state boarding home fund, from which said fund there shall be paid, in accordance with the rules and regulations adopted by the state board of charities and public welfare, the amount necessary to provide homes for the needy and dependent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1.)

§ 108-78. No benefits to children otherwise provided for.—No needy or dependent child shall be eligible for the benefits provided in this article if such child is eligible for benefits provided by Part 2 of Article 3 entitled "Aid to Dependent Children." (1937, c. 135, s. 2.)

§ 108-79. Administration of fund by state board of charities and public welfare.—From the fund so provided, the state board of charities and public welfare may provide for payment of the necessary costs of keeping needy and dependent children in suitable boarding homes, including the children committed to the state board of charities and public welfare under the provisions of § 110-29, provided such children so committed to such state board of charities and public welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said fund shall be expended under the rules and regulations adopted by the state board of charities and public welfare. (1937, c. 135, s. 3.)

Art. 5. Regulation of Organizations and Individuals Soliciting Public Alms.

§ 108-80. Regulation of organizations, institutions, etc., soliciting public aid for charitable purposes.—All organizations, institutions or associations formed outside the state of North Carolina for charitable purposes, who through agents or representatives or by mail publicly solicit and receive public donations or sell memberships in this state, and all individuals, firms, or organizations selling merchandise, periodicals, books for advertising space of any kind, upon the representation or under the pretense that the whole or any part of the profit derived from the sale or barter of such merchandise, periodicals, books or advertising space, shall be used for charitable purposes, shall be required to file with the state board of charities and public welfare a statement setting forth the name and location of such organization, institution or association, the purposes for which said organization, institution or association exists, the names of its principal officers and soliciting agents, the purposes for which the money solicited is to be expended and the terms under which solicitors are employed. In the case of the selling of merchandise, periodicals, books for advertising space of any kind for charitable purposes, such statement shall set forth the full name of the individual, firm or organization conducting the same, the location at which the sale is to be conducted, the names of all organizations, institutions or associations for whose benefit the sale is conducted, the purposes for which the proceeds thereof are to be expended and the terms, including salaries and commissions, under which all employees are employed. (1939, c. 144, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 333.

§ 108-81. License required for soliciting alms,

etc.—It shall be unlawful for an individual to engage in the business of soliciting alms or begging charity for his or her own livelihood upon the streets or highways of this state or through door to door solicitation without first securing a license from the proper licensing agency hereinafter provided for. Any person desiring to engage in the business of begging or soliciting alms shall file with the proper licensing agency hereinafter provided for a written application for a license, stating in the application the name of the person desiring the license, his or her address for the past five years, the purpose for which he or she desires to solicit alms, the manner in which said funds shall be disbursed, and any other reasonable information which may be requested on the license form. The carrying of merchandise by the individual soliciting alms or begging charity shall not exempt the individual so begging from the provisions of this article. (1939, c. 144, s. 1.)

§ 108-82. Issuance of license for blind persons by state commission for blind.—If the individual soliciting alms is blind or visually handicapped, or if the organization, institution or association is soliciting public aid in behalf of the blind or visually handicapped, the application for license shall be referred to the North Carolina state commission for the blind, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the license shall be issued by the North Carolina state commission for the blind to said individual, organization, institution or association, its agents and representatives, without expense, authorizing said individual, organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city or township in the state. (1939, c. 144, s. 1.)

§ 108-83. Issuance by state department of vocational rehabilitation for crippled, etc., persons.—If the individual soliciting alms is handicapped, or if the organization, institution or association is soliciting public aid in behalf of the crippled, the application for license shall be referred to the North Carolina state department of vocational rehabilitation, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the North Carolina state department of vocational rehabilitation shall issue to said individual, organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual, organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city or township in the state. (1939, c. 144, s. 1.)

§ 108-84. License for deaf persons issued by bureau of labor for the deaf.—If the individual publicly soliciting alms has impaired hearing, or if the organization, institution or association is soliciting public aid in behalf of the deaf or hard of hearing, the application for license shall be referred to the bureau of labor for the deaf, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the bureau of labor for the deaf shall issue to said individual or to said organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual or said organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city, or township in the state. (1939, c. 144, s. 1.)

§ 108-85. Other licenses issued by state board of charities and public welfare.—All other applicants desiring to solicit alms publicly, and all other organizations, institutions or associations desiring to solicit public aid for charitable purposes shall make application to the state board of charities and public welfare, and the application for license shall be approved or disapproved, with the reasons therefor. If said application is approved, the state board of charities and public welfare shall issue to the said individual or to the said organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual or said organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations, or sell memberships in any county, city or township in the state. Such license shall be valid for one year from and after the date of its issuance, and may be renewed from time to time in the same manner as is herein provided for the original granting thereof. Any license issued to an individual or to an organization, institution or association, under the provisions of this article, may be revoked by the issuing agency for cause shown, and after reasonable notice to said individual or to said organization, institution or association and after due opportunity to be heard. Nothing in this article, however, shall be construed to prohibit any local organization, institution or association from publicly soliciting funds or donations within the county in which such organization, institution or association is located. (1939, c. 144, s. 1.)

§ 108-86. Solicitors required to have on person copy of license with photograph attached.—It shall be unlawful for any agent or representative of any organization, institution or association formed for charitable purposes, which is licensed under the provisions of this article, to publicly solicit and receive donations in this state, unless such agent or representative is provided with a copy of the license of the organization, institution or association which he represents, or by whom he is employed. Attached to such copy of said license, there shall be a photograph of the individual soliciting made within the past twelve months, which photograph must be attested and countersigned by the president, secretary or treasurer of said organization, institution or association by which such agent or representative is employed, or which he represents, certifying that such agent or representative is authorized by such organization, institution or association, to publicly solicit and receive donations for the same. (1939, c. 144, s. 2.)

§ 108-87. Exemptions.—The provisions of this article shall not apply to any appeal or solicitation made in a public religious or charitable or educational service or in a meeting of any lodge or

church or Sunday school or charitable organization, or through the public press, American Legion and other patriotic organizations. (1939, c. 144, s. 2a.)

§ 108-88. Violations made misdemeanor.—Any person who shall violate any provisions of this article or who shall solicit alms without first applying for and obtaining a license as herein provided, or who shall solicit funds under any such license and thereafter divert the same to purposes other than that for which they were contributed, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars, or imprisonment not to exceed six months. (1939, c. 144, s. 3.)

§ 108-89. Repeal of laws.—Sections 14-336, 14-337 and 14-338 are hereby repealed only in so far as they are in direct conflict with the provisions of this article. (1939, c. 144, s. 5.)

§ 108-90. Application of article.—Nothing in this article shall apply to any church, religious denomination, civic club, or lodge, which is either located in, resident in, or has communicants or members resident in this state, or their officers, employees or representatives, or to institutions or agencies fostered or promoted by the same (1939, c. 144, s. 5a.)

Chapter 109. Bonds.

Art. 1. Official Bonds.

Art. 2. Bonds in Surety Company.

Art. 3. Mortgage in Lieu of Bond.

Art. 4. Cash Deposit in Lieu of Bond.

Art. 5. Actions on Bonds.

Art. 1. Official Bonds.

§ 109-1. Irregularities not to invalidate.—When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the state for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the state for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty

and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (Rev., s. 279; Code, s. 1891; R. C., c. 78, s. 9; 1842, c. 61; 1869-70, c. 169, s. 16; C. S. 324.)

Editor's Note.—For act requiring sureties on official bonds in Currituck county to be surety, indemnity or guaranty companies, see Session Laws 1943, c. 244.

For an interesting article concerning the law of contracts, and referring generally to the instant section, see 13 N. C. Law Rev. 65, 76.

In General.—This section does not have the effect of introducing into an official bond provisions which are not, but ought to have been inserted in the conditions, so as to extend the liabilities of the obligors; but the purpose is to cure certain defects and irregularities in conferring the office and accepting the instrument, and to maintain its validity as an official undertaking, as far as it goes, notwithstanding the penalty or condition may vary from those prescribed by law. State v. Pool, 27 N. C. 105; State v. McMinn, 29 N. C. 344; State v. Jones, 29 N. C. 359; Commissioners v. Magnin, 86 N. C. 286, 289. See also, Midgett v. Nelson, 214 N. C. 396, 397, 199 S. E. 393.

The section had a retroactive operation. State v. Jones, 29 N. C. 359; State v. Pool, 27 N. C. 105.

Official bonds should be liberally construed and any variance in the condition of such an instrument from the provisions prescribed by the law will usually be treated as an irregularity, in view of this section, but this principle does not abrogate the freedom of contract. Washington v. Trust Co., 205 N. C. 382, 385, 171 S. E. 438.

Nor does this rule preclude the parties from contracting in the bond for liability for a shorter period than the official term of office of the principal. Id.

Validity as Common-Law or Voluntary Bonds.—A statutory bond, not duly executed, or not conditioned as required by statute, may be sustained as a common-law or voluntary bond. Chambers v. Witherspoon, 10 N. C. 42; Justices v. Armstrong, 14 N. C. 284; Justice v. Dozier, 14 N. C. 287; Williams v. Ehringhaus, 14 N. C. 297; Vanhook v. Barnett, 15 N. C. 268; Davis v. Somerville, 15 N. C. 382; State v. McAlpin, 26 N. C. 140; Reid v. Humphreys, 52 N. C. 258.

Name of Constable Omitted.—Where a constable's official bond was signed by the obligors but a blank was left for the name of the constable, the omission was not cured by this section. Grier v. Hill, 51 N. C. 572, distinguishing this section.

Failure to Register Constables' Bond. — An irregularity, such as want of registration, will not, under this section, invalidate a constable's bond. Warren v. Boyd, 120 N. C. 56, 26 S. E. 700.

Failure to Name Conditions in Sheriff's Bond.—Failure to name conditions required by section 162-8, relating to sheriff's bonds, will not, under this section, invalidate the bond given. Commissioners v. Sutton, 120 N. C. 298, 26 S. E. 920.

Mistake in Name of Ward in Guardian's Bond.—Where, in the order of a County Court appointing a guardian, the name Margaret is by mistake inserted as that of the ward instead of Miranda, a bond taken according to the proper requisitions, with the right name recited, will, under the operation of this section, be sustained as an official bond. Shuster v. Perkins, 46 N. C. 325.

No Penalty Named in Guardian's Bond.—Where defendants signed a bond intending to make it the guardian bond of their principal, but there was no penalty named in the bond the same being filled in subsequent to the signatures, it was held that this section does not apply, as it is confined to bonds wherein the amount of penalty varies from that fixed by law, being either more or less than the amount. Rollins v. Ebbs, 137 N. C. 355, 49 S. E. 341; Rollins v. Ebbs, 138 N. C. 140, 161, 50 S. E. 577. See dissenting opinion by Clarke, C. J., in the first report of the case.

Who May Sue.—The chairman of a board of fence commissioners, although not named in the tax collector's (sheriff's) bond, may bring suit on the same under this section, when the latter fails to pay the money collected for the erection of fences. Speight v. Staton, 104 N. C. 44, 10 S. E. 86.

Where a register of deeds issued a license for the marriage of a girl under eighteen without the consent of her father, the father is the person injured within the meaning of this section. Joyner v. Roberts, 112 N. C. 111, 114, 16 S. E. 917.

Cited in Barnes v. Lewis, 73 N. C. 138.

§ 109-2. Penalty for officer acting without bond.—Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the state for each attempt so to exercise his office. (Rev., s. 278; Code, s. 1882; R. C., c. 78, s. 8; C. S. 325.)

Stated in Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317.

§ 109-3. Condition and terms of official bonds.—Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54; C. S. 326.)

Stated in Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317.

§ 109-4. When county may pay premiums on bonds.—In all cases where the officers or any of them named in § 109-3 are required to give a bond, and the said officer or officers are paid by a set or fixed salary, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. (1937, c. 440.)

Local Modification.—Currituck: 1943, c. 269.

Editor's Note.—For act permitting board of commissioners of Guilford county to pay premiums on bonds of deputy sheriffs and constables, see Session Laws 1943, c. 65. For act requiring board of commissioners of Rockingham county to pay premiums on bonds of clerk of superior court, deputy clerks and other employees, see Session Laws 1943, c. 153.

§ 109-5. Annual examination of bonds; security strengthened. — The bonds of the officers named in § 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54; C. S. 327.)

Cross References.—As to amount of bonds of clerks of the superior courts, see § 2-3; as to amount of bond of county treasurers, see § 155-2; as to amount of bond of sheriffs, see § 162-8; as to amount of bond of coroners, see § 152-3; as to amount of bond of constables, see § 151-3; as to amount of bond of county surveyors, see § 154-2; as to amount of bond of entry-takers, see § 146-17; as to amount of bond of registers of deeds, see § 161-4.

§ 109-6. Effect of failure to renew bond.—Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested

in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (Rev., s. 309; Code, s. 1875; 1869-70, c. 169, s. 2; C. S. 328.)

§ 109-7. Justification of sureties.—Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (Rev., s. 310; Code, s. 1876; 1869-70, c. 169, s. 3; 1879, c. 207; 1889, c. 7; 1891, c. 385; 1901, c. 32; C. S. 329.)

Purpose—Contribution.—The intendment of this section was to provide a statement under oath to show the solvency of the sureties and afford information to the county commissioners under like sanction that the aggregate amount of the bond equaled the penalty required, and does not affect the doctrine of contribution as it relates to the rights of the sureties to contribution between themselves. Commissioners v. Dorsett, 151 N. C. 307, 66 S. E. 132.

Cited in State v. Patterson, 97 N. C. 360, 2 S. E. 262.

§ 109-8. Compelling justification before judge; effect of failure.—When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer, not exceeding twenty days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the twenty days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (Rev., s. 316; Code, s. 1885; 1874-5, c. 120; C. S. 330.)

Editor's Note.—In Mitchell v. Kilburn, 74 N. C. 483, Mitchell v. Hubbs, 74 N. C. 484, and Mitchell v. West, 74 N. C. 485, 486, the court refused to consider the constitutionality and construction of this section, because the appeal was improvidently awarded from a motion to dismiss.

§ 109-9. Successor bonded; official bonds considered liabilities.—The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of § 109-7. (Rev., s. 317; Code, s. 1886; 1874-5, c. 120, s. 2; C. S. 331.)

§ 109-10. Judge to file statement of proceedings with commissioners.—When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (Rev., s. 318; Code, s. 1887; 1874-5, c. 120, s. 3; C. S. 332.)

§ 109-11. Approval, acknowledgment and custody of bonds.—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safe keeping. (Rev., s. 311; Code, s. 1877; 1869-70, c. 169, s. 4; 1879, c. 207, s. 2; C. S. 333.)

§ 109-12. Clerk records vote approving bond; penalty for neglect.—It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (Rev., s. 312; Code, ss. 1878, 1881; 1869-70, c. 169, ss. 5, 8; R. C., c. 78, s. 7; 1790, c. 327; 1809, c. 777; C. S. 334.)

Editor's Note.—This section, passed in 1790, serves to show the light in which individual responsibility is regarded by the legislature. See Rawls v. Deans, 11 N. C. 299, 304.

§ 109-13. When commissioner liable as surety.—Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (Rev., s. 313; Code, s. 1879; 1869-70, c. 169, s. 6; C. S. 335.)

Construed with Section 162-12.—This section supplements and somewhat extends the provision of section 162-12, relating to the liability of sureties on a sheriff's bond. Hudson v. McArthur, 152 N. C. 445, 449, 67 S. E. 995.

Liable to All Injured Persons.—Public officials entrusted in so important a matter as this mandatory statute, are held individually liable to any one injured by their wilful failure or neglect of duty. To hold otherwise would put a premium on inefficiency and neglect. Moffitt v. Davis, 205 N. C. 565, 570, 172 S. E. 317.

Construing this section and § 153-9 together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to perform their ministerial duty of requiring bond of a clerk of the Supreme Court. Id.

Joinder of parties and causes of action, see Ellis v. Brown, 217 N. C. 787, 9 S. E. (2d) 467.

Cited in State v. Patterson, 97 N. C. 360, 2 S. E. 362, to show how stringently the obligation of seeing to the sufficiency of the bond is enforced.

§ 109-14. Record of board conclusive as to facts stated. — In all actions under § 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (Rev., s. 314; Code, s. 1881; 1869-70, c. 169, s. 8; C. S. 336.)

§ 109-15. Person required to approve bond not to be surety.—No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (Rev., s. 315; Code, s. 1887; 1874-5, c. 120, s. 3; C. S. 337.)

Art. 2. Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company. — All persons who are required to give bond to the state of North Carolina to be received by the governor or by any department of the state government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the state of North Carolina, subject to such regulations as the governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the insurance commissioner as to the condition of such company as required by law. (Rev., s. 272; 1901, c. 754; C. S. 338.)

Construed against Company.—A surety bond shall be construed most strongly against the company and most favorably to its general intent and essential purpose. Bank v. Fidelity Co., 128 N. C. 366, 38 S. E. 908. See the case as to compliance with requirement of notice of default.

§ 109-17. When surety company sufficient surety on bonds and undertakings.—A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this state to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (Rev., s. 273; 1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; C. S. 339.)

Same Liability as an Individual.—A surety corporation allowed by this section to give guardian bonds, is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to properly perform his duties causes loss to the ward's estate. Roebuck v. National Surety Co., 200 N. C. 196, 156 S. E. 531.

Cited in Pierce v. Pierce, 197 N. C. 348, 349, 148 S. E. 438.

§ 109-18. Clerk to notify county commissioners of condition of company. — Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this state, and of each surety company whose license has been revoked, in which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S. 340.)

§ 109-19. Release of company from liability.—A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings. (Rev., s. 274; 1899, c. 54, s. 48; C. S. 341.)

Getting Off Bond.—Under this section a surety company can be released from its liability on a bond only by getting off the bond. Bank v. Fidelity Co., 128 N. C. 366, 38 S. E. 908.

After Expiration.—A surety company is not liable for defalcations committed after the expiration of the term of office to which the bond refers. Blades v. Dewey, 136 N. C. 176, 48 S. E. 627.

§ 109-20. Company not to plead ultra vires.— Any company which executes any bond, obligation or undertaking under the provisions of this article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (Rev., s. 275; 1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; C. S. 342.)

§ 109-21. Failure to pay judgment is forfeiture. —If a surety company against which a judgment is recovered fails to discharge the same within sixty days from the time such final judgment is rendered, it shall forfeit its right to do business in this state, and the insurance commissioner shall cancel its license. (Rev., s. 275; 1901, c. 706, s. 1, subsec. 5; C. S. 343.)

§ 109-22. On presentation of proper bond officer to be inducted.—Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the state of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (Rev., s. 276; 1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; C. S. 344.)

Estoppel to Deny Validity of Bond.—Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offering a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. State v. Inman, 203 N. C. 542, 166 S. E. 519.

§ 109-23. Expense of fiduciary bond charged to

fund.—A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (Rev., s. 277; 1901, c. 706, s. 1, subsec. 5; 1939, c. 382; C. S. 345.)

Editor's Note.—The 1939 amendment substituted the words "to the extent of bond premiums actually paid" for the words "not exceeding one-half of one per cent."

Art. 3. Mortgage in Lieu of Bond.

§ 109-24. Mortgage in lieu of bond required to be given.— An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the state of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days. (Rev., s. 265; Code, s. 118; 1874-5, c. 103, s. 2; C. S. 346.)

Mortgage of Intestate's Property.—A mortgage by an administrator on property of his intestate to which the administrator is heir does not comply with an order to increase the bond as such a mortgage does not increase the penalty. Sellars v. Faulk, 118 N. C. 573, 24 S. E. 430.

Failure to Record.—The mortgage or deed in trust permitted by this section, to be given in lieu of an official bond, is, as to proper registration, to be regarded as a mortgage, or deed in trust, and accordingly registered as the law requires, construing the statute strictly, as required; and its entry upon the records in the clerk's office as a bond, alone, without recording it in its proper place as a mortgage is insufficient to give notice to, or priority of lien, over a deed of a subsequent purchaser of the land. Hooper v. Tallassee Power Co., 180 N. C. 651, 105 S. E. 327.

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine.—Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the state of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk or justice of the peace in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

Where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county in which the criminal proceeding is had.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar. (Rev., s. 266; Code, s. 120; 1874-5, c. 103, s. 3; 1891, c. 425, ss. 1, 2, 3; C. S. 347.)

Applicability to Justice's Court.—This section, as it read in the code of 1883, had no application in courts of justices of the peace. Comron v. Standland, 103 N. C. 207, 9 S. E. 317. Since the decision in this case, however, the section has been amended and the words "or justice of the peace" have been inserted near the end of the first paragraph. Ed. Note.

Foreclosure and Sale.—The clerk of the Superior Court may foreclose a mortgage on land given by plaintiff to secure costs of his action when the costs are awarded against him, or the clerk may report the matter to the court for a decree of sale by himself, the latter being the better practice to insure a safer title and prevent a needless sacrifice. Clark v. Fairly, 175 N. C. 342, 95 S. E. 550.

Where the Superior Court, in term, acting through the presiding judge, has duly acquired jurisdiction to decree foreclosure, it is his duty to supervise the sale and see that the land brings a fair price; and when such sale has not been made accordingly, he may set aside the sale, and permit the plaintiff to pay the costs properly chargeable against him. Clark v. Fairly, 175 N. C. 342, 95 S. E. 550.

It is proper for the court to confirm the sale, and possibly it is necessary for him to do so. Clark v. Fairly, 175 N. C. 342, 95 S. E. 550.

A decree of confirmation of the sale of lands to pay the cost of an action under a mortgage given to secure them, under this section, may be set aside by the judge during the term of the Superior Court at which it was entered. Clark v. Fairly, 175 N. C. 342, 95 S. E. 550.

Cited in State v. Jenkins, 121 N. C. 637, 28 S. E. 413.

§ 109-26. Cancellation of mortgage in such proceedings.—Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the Superior Court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of 'satisfaction' upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to the property described in such mortgage. (Rev., s. 267; 1905, c.

106; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1; C. S. 348.)

Editor's Note.— By the Public Laws of 1925 this section was amended, and the provision relating to cancellation after certain acts of the party "as administrator, executor, guardian, collector, or receiver" was added. The validating clause was omitted from this section, and will now be found as § 109-27.

§ 109-27. Validating statute.—All acts heretofore done by the several Superior Court clerks, canceling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ 109-28. Clerk of court may give surety by mortgage deposited with register.—In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the state, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (Rev., s. 268; Code, s. 122; 1874-5, c. 103, s. 6; C. S. 349.)

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case.—It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days. (Rev., s. 269; Code, s. 117; 1874-5, c. 103, s. 1; C. S. 350.)

Strictly Construed.—This section is exceptional in its provisions, and must be strictly observed. Eshon v. Commissioners, 95 N. C. 75, 77. It does not apply where the mortgage was not made to the appellee. Id. This case contains a discussion as to whether section applies in lieu of appeal bond.

Not Applicable to Justice's Court.—This section has no application in courts of justices of the peace. Comron v. Standland, 103 N. C. 207, 99 S. E. 317.

Section Does not Require Mortgage. — This section does not authorize the court to require a party to execute a mortgage of real estate in the case therein provided for. It simply allows the party of whom an undertaking may be required in such cases to give such mortgage instead of it, and the former must be for the same amount as the latter. Wilson v. Fowler, 104 N. C. 471, 472, 10 S. E. 566.

Third Person Executing Mortgage for Defendant.—Where a mortgage is given by a third person for the defendant in an action, as is permitted by this section, and the mortgagor subsequently purchases a part of the mortgaged property, it was held, upon the plaintiff's recovering from the defendant, that the mortgagor has no such interest as will allow him to interfere with the plaintiff's rights under his judgment. Ryan v. Martin, 104 N. C. 176, 10 S. E. 169.

§ 109-30. Affidavit of value of property required.—In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (Rev., s. 270; Code, s. 121; 1874-5, c. 103, s. 4; C. S. 351.)

§ 109-31. When additional security required.—If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (Rev., s. 271; Code, s. 119; 1874-5, c. 103, s. 5; C. S. 352.)

Art. 4. Cash Deposit in Lieu of Bond.

§ 109-32. Cash deposit in lieu of bond; conditions and requirements.—In lieu of any written undertaking or bond required by law in any action pending in any court of the state, the party required to make such undertaking or bond may make a cash deposit of the amount required by law in lieu of the said undertaking or bond, and such cash deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S. 352(a).)

When Applicable.—While this section by its terms applies to pending actions, as suggested in 1 N. C. L. Rev. 283, it is "probably not intended to be limited to pending actions but to apply to all cases in which such undertakings or bonds are required to be given. This extends to all cases the same requirements for making cash deposit as is now required in the plaintiff's undertaking for costs in a civil action, just as a mortgage on real or personal property may be given in lieu of bond or undertaking."

Art. 5. Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of state.—Bonds and other obligations taken in the course of any proceeding at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the state. (Rev., s. 280; Code, s. 51; R. C., c. 13, s. 11; C. S. 353.)

Quoted in Lackey v. Pearson, 101 N. C. 651, 654, 8 S. E. 121.

§ 109-34. Liability and right of action on official bonds.—Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry-taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the state, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (Rev., s. 281; Code, s. 1883; R. C., c. 78, s. 1; 1793.

c. 384, s. 1; 1833, c. 17; 1825, c. 9; 1869-70, c. 169, s. 10; C. S. 354.)

Cross Reference.—As to surety waiving his rights under this section and §§ 109-33, 109-35 by appearing and answering in a summary proceeding, see § 109-36 and the note thereto.

Leave of Court Unnecessary.—The section gives in express terms the right to bring one or more suits upon one or more of the bonds to "every injured person," not on leave from the Court, but absolutely and unconditionally so soon as the breach occurs, except that it is to be instituted in the name of the state. Boothe v. Upchurch, 110 N. C. 62, 66, 14 S. E. 642.

Constitutes Additional Remedy.—This section is not repugnant to the provisions of section 2-22, which requires that each successive clerk shall receive from his predecessor all the records, moneys, and property of his office, but only gives an additional remedy for the benefit of individuals who have cause of complaint against an unfaithful clerk of the Superior Court. Peebles v. Boone, 116 N. C. 57, 21 S. E. 187.

The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State v. Grizzard, 117 N. C. 106, 23 S. E. 93.

Person Injured.—Where H. places a note for collection in a constable's hands, and the constable sues out a warrant, obtains a judgment and receives the amount (even though there is no execution) and fails to pay the same to H., H. as the person injured is entitled to have the suit brought to his use under this section. Holcomb v. Franklin, 11 N. C. 274, 277.

The father of a girl under eighteen, to whom a marriage license has been issued without the father's consent, is the person injured within the meaning of this section. Joyner v. Roberts, 112 N. C. 111, 114, 16 S. E. 917.

Under this section, claimants of a fund arising from a partition sale are the proper parties to sue on bond of the clerk for failure of clerk to pay funds by the commissioners in partition. Smith v. Patton, 131 N. C. 396, 42 S. E. 849.

An action can be maintained by the clerk of a superior court in his own name upon the official bond of the sheriff, for the recovery of costs accrued in such court and collected by the sheriff, and due and payable to said clerk and others. Jackson v. Maultsby, 78 N. C. 174.

By Virtue or Color of Office.—The last clause of this section is very comprehensive in its terms, scope and purpose. It, on purpose, enlarges the compass of the conditions of official bonds and their purpose, and the Legislature intended by it, it seems, to prevent an evil pointed out in two or three of the cases. There were no adequate reasons why the conditions of official bonds should not extend to and embrace all the official duties of the office, and there were serious ones of justice and policy why they should. All persons interested are bound to accept the official services of such officers, as occasion may require, and they should be made secure in their rights, and have adequate remedy for wrongs done by them. Besides, such officers, indeed all public officers, should be held to a faithful discharge of their duties as such. It is singular that the clause last recited, notwithstanding a well known evil to be remedied, was not enacted until 1883. It first appears as part of The Code. So that now official bonds and the conditions of them embrace and extend to all acts done by virtue or under color of office of the officer giving the bond. Kivett v. Young, 106 N. C. 567, 569, 10 S. E. 1019; Thomas v. Connelly, 104 N. C. 342, 10 S. E. 520.

In State v. Leonard, 68 F. (2d) 228 a sheriff's bond contained a condition limiting the faithful execution of the office to specific duties such as execution of process and in view of this, and the wording of this section, the bond was held to afford no basis for a recovery by a person whom the sheriff wounded while acting in his official capacity.

This section extends the liability on the sheriff's general official bond and imposes liability for wrongful arrest and the use of excessive force in making an arrest under color of office. Price v. Honeycutt, 216 N. C. 270, 4 S. E. (2d) 611.

The surety on a bond of a delinquent tax collector is not liable for an arrest made by the collector in order to force the payment of a delinquent tax, since such act of the tax collector is not done under color of his office and does not come within the condition of the bond that he should "well and truly perform all the duties of his said office." Henry v. Wall, 217 N. C. 365, 8 S. E. (2d) 223, 127 A. L. R. 854.

Same—Acts Which Should Have Been Performed.—It is true that the clause seems in terms to provide only for acts done by the officer, and not for those which he should do but does not. But it would be putting a very narrow construction on the statute to say that he and his sureties are liable for what he did, but not for what he should have done and did not do, although the damage to the party was equally as great. State v. Grizzard, 117 N. C. 106, 108, 23 S. E. 93.

Same—Illustration of Acts.—Where a clerk appointed the commissioner to make the sale, without bond, and on approving his report received and receipted the proceeds as clerk, took out his costs and entered the amount due each heir at law on his docket, and disbursed a portion of said fund to the parties entitled, this would seem to be a receipt of the fund by the clerk "by virtue of his office." Cox v. Blair, 76 N. C. 78; McNeill v. Morrison, 63 N. C. 508; Judges v. Deans, 9 N. C. 93.

But if this were otherwise the clerk received it "as clerk," and so receipted for it. This was certainly a receipt of the money "under color of his office," and, indeed, this is admitted in the answer. The older decisions were made when these words were not in the statute. The clause embraces all cases where the officer received the money in his official capacity, but when he may not be authorized or required to receive the same. In such case the bond is responsible for the safe custody of the fund so paid in. Presson v. Boone, supra; Sharpe v. Connelly, 105 N. C. 87, 11 S. E. 177; Thomas v. Connelly, 104 N. C. 342, 10 S. E. 520; Ex parte Cassidey, 95 N. C. 225; Brown v. Coble, 76 N. C. 391; Greenlee v. Sudderth, 65 N. C. 470; Broughton v. Haywood, 61 N. C. 380; Smith v. Patton, 131 N. C. 396, 397, 42 S. E. 849.

Under this section of the Code the official bond of a constable is liable for the false imprisonment of a person by a constable, as such, without process or color thereof. Warren v. Boyd, 120 N. C. 56, 26 S. E. 700.

When the Clerk of the Superior Court is appointed receiver of a minor's estate, he takes and holds the funds by virtue of his office of Clerk, and his sureties upon his official bond as such officer are liable for any failure of duty on his part in that respect. Boothe v. Upchurch, 110 N. C. 62, 14 S. E. 642.

Bonds Cumulative.—Official bonds given by an officer during any one term of office are cumulative, and the new bond does not discharge the old one. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899; Poole v. Cox, 31 N. C. 69, 71, 49 Am. Dec. 410; Oats v. Bryan, 14 N. C. 451; Bell v. Jasper, 37 N. C. 597; Pickens v. Miller, 83 N. C. 544; Moore v. Boudinot, 64 N. C. 190.

Where the surety has renewed the bond of a clerk of the court upon his election to that office a second time, acknowledged its liability and received premiums thereon, its liability is cumulative for all defalcations thereunder, whether for the second term its principal was continuing to act de facto or de jure. Lee v. Martin, 186 N. C. 127, 118 S. E. 914.

The first bonds continue to be a security for the discharge of the duties during the whole term, and the new bonds become additional security for the discharge of such of the duties as have not been performed at the time they are given. Poole v. Cox, 31 N. C. 69, 49 Am. Dec. 410, cited in note in 23 L. R. A., N. S. 132. See also, Bell v. Jasper, 37 N. C. 597; Oats v. Bryan, 14 N. C. 451.

Action on Bond and on Case.—An action of debt on a sheriff's bond for money collected, and a nonsuit therein, is a sufficient demand to enable the plaintiff to sustain an action on the case for the same cause of action. Fagan v. Williamson, 53 N. C. 433.

Negligent Conduct of Jailer Imputed to Sheriff.—Under this section the sheriff and the surety on his official bond are liable for the wrongful death of a prisoner resulting from the negligence of the jailer in locking the prisoner, in the weakened condition, in a cell with a person whom the sheriff and the jailer knew to be violently insane, and who assaulted the prisoner during the night, inflicting the fatal injury. Dunn v. Swanson, 217 N. C. 279, 7 S. E. (2d) 563. For note on this case, see 19 N. C. Law Rev. 101.

Applied in Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506.

§ 109-35. Complaint must show party in interest; election to sue officer individually.—Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for

his injury. (Rev., s. 282; Code, s. 1884; R. C., c. 78, s. 2; 1793, c. 384, ss. 2, 3; 1869-70, c. 169, s. 11; C. S. 355.)

Cited in Western Carolina Power Co. v. Yount, 208 N. C. 182, 179 S. E. 804.

§ 109-36. Summary remedy on official bond. — When a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days notice in writing of the motion must have been previously given. (Rev., s. 283; Code, s. 1889; R. C., c. 78, s. 5; 1819, c. 1002; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; C. S. 356.)

Cumulative Remedy.—It has never been understood that this cumulative and optional remedy obstructed the bringing of a regular action on the bond, when the injured party preferred to have recourse to it. Lackey v. Pearson, 101 N. C. 651, 654, 8 S. E. 121.

There is no provision in the statute giving a preference to the party or parties who first seek such summary remedy. And, withal, before any claim, preferential or otherwise, can be established under this statute, notice must be given, the court must try the cause, and judgment must be obtained. Western Carolina Power Co. v. Yount, 208 N. C. 182, 184, 179 S. E. 804.

It was never intended that the mere lodging of a motion under this section, established a preference, or right to establish a preference, over other creditors when such other creditors had been guilty of no laches in asserting their claims. Id.

To What Officers Applicable.—In Smith v. Moore, 79 N. C. 86, it was held that the power conferred by this section as it read in the Revised Code of 1856, was confined to the officers named therein, and that there was no way to hold a commissioner appointed to make a judicial sale liable for the proceeds thereof, except by an action instituted by the parties entitled to the money. Subsequently to this decision the words "or other public officer," have been inserted in the section; but applying the ejusdem generis rule it would seem that these words would not include a master in chancery and that the Smith case declares the law as it still stands. See however Ex parte Curtis, 82 N. C. 435, where the court states that a remedy against executrix and clerk and master should have been by summary motion under this section.

Actions by Persons Entitled to Money.—This section gives a summary remedy against public officers only to those entitled to the money, so that a new clerk cannot proceed under it against a former clerk, for not paying office money over to him as his successor. O'Leary v. Harrison, 51 N. C. 338.

Proceedings May Be Consolidated with General Creditors' Suit.—Plaintiff instituted summary proceedings under this section against the clerk of the Superior Court and the surety on his bond to recover for the clerk's default in failing to return to plaintiff, as ordered by the Superior Court, moneys deposited with the clerk. Notice and complaint in the proceeding were served on defendants. Thereafter another creditor of the clerk instituted suit in her own behalf and in behalf of all persons similarly situated, and decree was entered appointing a permanent receiver for the clerk, authorizing the receiver to bring suit on the clerk's bonds, and enjoining all creditors of the clerk from instituting any other suit or action against him or on his bonds. In the summary proceeding under this section, the surety on the clerk's bond pleaded the decree affirming receiver in bar to plaintiff's right to judgment, and the trial court dismissed the summary proceeding. Held, the summary proceeding should have been consolidated with the suit in the nature of a general creditor's bill. Western Carolina Power Co. v. Yount, 205 N. C. 321, 171 S. E. 321.

Justice's Jurisdiction.—Since the repeal of sec. 13 of c. 80 of Battle's Revision it has been decided by repeated adjudication of this Court that a justice of the peace has no jurisdiction of an action on a constable's bond. Coggins v. Harrell, 86 N. C. 317, 319.

Judgment.—Under this practice, judgment was entered for the amount of the bond, the execution to be satisfied on payment of the sum collected and costs. Fell v. Porter, 69 N. C. 140, 142. From the language of the opinion in this case, it would seem that at the time of decision the operation of this section had been suspended.—Ed. Note.

Where A. obtained a judgment against B., Clerk of the Superior Court, for a sum of money in his hands by virtue of his office, and B died, and his administrator, upon demand, failed to pay the money, it was held that the court below erred in overruling a motion by the plaintiff for a judgment upon the official bond of the clerk under the provisions of this section. Cooper v. Williams, 75 N. C. 94.

Notice.—As this section read in Battle's Revision the proceedings were "without other notice than is given by the delinquency of the officer." See Prairie v. Jenkins, 75 N. C. 545, 548.

Demand Not Necessary. — In a proceeding by the state, against a clerk of the Superior Court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. State v. Gant, 201 N. C. 211, 159 S. E. 427.

Waiver by Appearance. — Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 109-33 to 109-35, to object that the plaintiffs could not maintain a summary proceeding under this section. State v. Gant, 201 N. C. 211, 159 S. E. 427.

§ 109-37. Officer unlawfully detaining money liable for damages.—When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment. (Rev., s. 284; Code, s. 1890; R. C., c. 78, s. 9; 1819, c. 1002, s. 2; 1868-9, c. 169; C. S. 357.)

This section must be considered in connection with the preceding section. Pasquotank County v. Hood, 209 N. C. 552, 554, 184 S. E. 5.

This and Preceding Section Are Not Applicable to Liquidation of Banks by Commissioner of Banks.—This and the preceding section are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. Pasquotank County v. Hood, 209 N. C. 552, 555, 184 S. E. 5.

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The punishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. Id.

Default of Officer Must Be Shown.—In an action to recover the 12 per cent allowed under this section, it is necessary that the plaintiff show some adequate default. Hannah v. Hyatt, 170 N. C. 634, 87 S. E. 517.

Liability of Surety.—While, as against the principal on the bond of a clerk of the Superior Court, interest under our statute at the rate of 12 per cent is collectible from the time of defalcation, the amount of the penalty on his bond determines the liability of the surety thereon. State v. Martin, 188 N. C. 119, 123 S. E. 631.

Effect of Waiver of Interest from Date of Defalcation.—Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the state waives the interest from the date of the actual defalcations, but does demand the 12 per cent from the date of the expiration of each term of office; a judgment awarding damages at 12 per cent, under the provisions of this section, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. State v. Gant, 201 N. C. 211, 213, 159 S. E. 427.

Applied in Windley v. Lupton, 212 N. C. 167, 193 S. E. 213.

Cited in Wood v. Citizens Bank, 199 N. C. 371, 372, 154 S. E. 623.

§ 109-38. Evidence against principal admissible against sureties.—In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (Rev., s. 285; Code, s. 1345; R. C., c. 44, s. 10; 1844, c. 38; 1881, c. 8; C. S. 358.)

Judgments as Evidence. — In an action against an officer and one of the sureties on his official bond, the record of a judgment against the officer, and others of his sureties, in a previous action against them for the same demand, and on the same bond, but in which action the surety in the present action was not a party, is competent evidence to fix the amount due by the officer. Morgan v. Smith, 95 N. C. 396.

In a learned note to the case of Charles v. Hoskins, 83 Am. Dec. 380, the annotator, Judge Freeman, says: "The question how far a judgment or decree is conclusive against a surety of a defendant, or against one who is liable over to a defendant, and who was not a party to the action, is involved in the greatest confusion. Between the intimate relations which exist between such a person and the defendant in the suit, on the one side, and the fundamental principle that no one ought to be bound by proceedings to which he was a stranger, on the other, the court has found it difficult to steer." Insurance Co. v. Bonding Co., 162 N. C. 384, 391, 78 S. E. 430.

The cases are numerous in which it has been decided that a judgment rendered against a guardian is not, unaided by the statute, admissible as evidence against the surety to his bond. McKellar v. Powell, 11 N. C. 34.

The same rulings have been made in regard to the sureties to an administration bond. Chairman v. Clark, 11 N. C. 43; Vanhook v. Barnett, 15 N. C. 268; Governor v. Carter, 25 N. C. 338; Governor v. Montford, 23 N. C. 155. So in reference to the liability of his surety to an amercement against the sheriff.

The act of 1844, (this section) however, changed the rule of law, and rendered competent against the sureties to official bonds, and those given by executors, administrators and guardians, whatever evidence would be competent against the principals, and this was declared to be conclusive, where the evidence was a judgment against him, in Brown v. Pike, 74 N. C. 531; and in Badger v. Daniel, 79 N. C. 386.

The act of 1881 amends the previous enactment by making the evidence "presumptive only" against the sureties. Moore v. Alexander, 96 N. C. 34, 36, 1 S. E. 536.

"It seems that our predecessors in office upon this Bench have intimated, and in one case held, that such judgments, unaided by the statute, are inadmissible in evidence against the surety. Moore v. Alexander, 96 N. C. 34, 36, 1 S. E. 536. But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense. Charles v. Hoskins, 83 Am. Dec. 379, and notes. In the notes to this case all the authorities are carefully reviewed." Insurance Co. v. Bonding Co., 162 N. C. 384, 392, 78 S. E. 430.

While this section fixed the rule as to actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors, or guardians, the precedents were in hopeless discord as to bonds not covered by the statute, until Associate Justice Brown laid down the rule in Dixie Fire Ins. Co. v. American Bonding Co., 162 N. C. 384, 392, 78 S. E. 430: "But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Charleston, etc., Ry. Co. v. Lassiter & Co., 208 N. C. 209, 212, 179 S. E. 789.

Debts and Assets. — In the construction of this section, it is decided that the judgment against the principal upon such official bonds as the section mentions, is not only conclusive of the debt, as it was without the aid of the enactment, but of assets also, and this effect is given to a judgment against a guardian, upon his official bond, in Badger v. Daniel, 79 N. C. 386; Morgan v. Smith, 95 N. C. 396, 399; Brown v. Pike, 74 N. C. 531.

In Armistead v. Harramond, 11 N. C. 339, Hall, J., said that a "judgment against an administrator is evidence against him of a debt due by the intestate, and is evidence also of assets in his hands to discharge it; and although, for the reason before given, it is also evidence of a debt due, as far as it relates to his sureties," etc. Morgan v. Smith, 95 N. C. 396, 399. Since the passage of the act of 1844, the judgment is also evidence of the assets against the surety. Brown v. Pike, 74 N. C. 531, and cases cited.

Admissibility of Admissions of Administrator of Principal against Surety When Their Interests at Variance.— A judgment upon the admissions in the answer of the administrator bank of a deceased county treasurer is not competent in an action by the county commissioners as evidence against the surety on the official bond of the deceased when the bank has been made a party defendant and the surety at once raises the issue as to whether a part of the defalcation was moneys defaulted from the bank when the deceased was acting as its assistant cashier, the interest of the bank and the surety being in conflict, and this section not applying in such cases. Commissioners of Chowan v. Citizens Bank, 197 N. C. 410, 149 S. E. 380.

For case recognizing the principle adopted in Commissioner of Chowan County v. Citizens' Bank, 197 N. C. 410, 149 S. E. 380, but holding the rule inapplicable under peculiar facts of case, see Charleston, etc., Ry. Co. v. Lassiter & Co., 208 N. C. 209, 179 S. E. 879.

Not Applicable to Tort Action. — The rule that the judgment against the principal in an official or fiduciary bond is presumptive evidence against the sureties under this section does not apply, as this is not an action on the bond, but in tort. Martin v. Buffaloe, 128 N. C. 305, 309, 38 S. E. 902.

Annual account of guardian competent evidence against him, and presumptive evidence against his sureties. Loftin v. Cobb, 126 N. C. 58, 35 S. E. 230.

Joinder of Administrator and Sureties. — Under this section the sureties on an administrator's bond are properly joined with the administrator, where it is shown that the administrator received a benefit from a falsified final account by reason of which the plaintiffs' judgment against the administrators remained unpaid. State v. McCanless, 193 N. C. 200, 136 S. E. 371.

Cited in Pullen v. Mining Co., 71 N. C. 563; Gurganus v. McLawhorn, 212 N. C. 397, 193 S. E. 844.

§ 109-39. Officer liable for negligence in collecting debt.—When a claim is placed in the hands of any sheriff, coroner or constable for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (Rev., s. 286; Code, s. 1888; R. C., c. 78, s. 3; 1844, c. 64; 1869-70, c. 169, s. 12; C. S. 359.)

Applicable to Claims, Not Executions. — This section applies only to claims placed in the hands of the sheriff or other officer for collection—such claims as are within the jurisdiction of a justice of the peace, and may be collected by judgment and process of execution granted by that magistrate. It does not apply to executions issuing from the Superior or other courts of record. The reason for the distinction is clearly and certainly pointed out in McLaurin v. Buchanan, 60 N. C. 91. The statute, in effect, now is just as it was when that decision was made. Brunhild v. Potter, 107 N. C. 415, 419, 12 S. E. 55.

What Constitutes Negligence. — The degree of diligence required is that which a prudent man would ordinarily exercise in the management of his own affairs. A constable is not bound to such strict accountability as when process is delivered to him as an officer. Morgan v. Horne,

44 N. C. 25; Lipscomb v. Cheek, 61 N. C. 332. Therefore, what constitutes negligence must depend upon the facts in each particular case; five months delay was held negligence in Nixon v. Bagby, 52 N. C. 4.

A constable is not bound to sue out a warrant on a claim put in his hands for collection, when the issuing of such process would be entirely fruitless. State v. Holcombe, 24 N. C. 211.

Chapter 110. Child Welfare.

Art. 1. Child Labor Regulations.

§ 110-1. Minimum age.—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law: and Provided, that boys twelve years of age and over securing a certificate from the department of labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of § 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under § 95-11. Nothing in this article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

Editor's Note.—The cases cited below were decided under the former law.

Employment before 1903 Act.—As to employment of children before the child labor act of 1903, and the liability for damages resulting therefrom, see Ward v. Allen, 126 N. C. 948, 36 S. E. 194; Fitzgerald v. Furniture Co., 131 N. C. 636,

645, 42 S. E. 946; Hendrix v. Cotton Mills, 138 N. C. 169, 170, 50 S. E. 561.

Employment Since the 1903 Act.—As to employment of children since the child labor act of 1903, see Rolin v. Tobacco Co., 141 N. C. 300, 310, 53 S. E. 891; Leathers v. Tobacco Co., 144 N. C. 330, 342, 57 S. E. 11; Starnes v. Mfg. Co., 147 N. C. 556, 61 S. E. 525.

Employment Since the 1907 Act.—As to employment of children since the child labor act of 1907, see McGowan v. Mfg. Co., 167 N. C. 192, 82 S. E. 1028; Evans v. Lumber Co., 174 N. C. 31, 93 S. E. 430.

Effect of Decisions on Acts of 1903 and 1907.

1. The statute is constitutional.
2. It applies to employment of factories and manufacturing establishments, and to no other.
3. The employment of a child under twelve years of age in a factory or manufacturing establishment is negligence per se.
4. Such negligence is proximate, if the child is injured as the result of his employment.
5. There is no assumption of risk by the child.
6. The negligence of the parent, if any, in permitting the employment, cannot be imputed to the child.
7. In addition to the usual presumption against contributory negligence, there is a presumption that the child has not the capacity to appreciate the danger of his employment.
8. This presumption may be rebutted. Pettit v. Atlantic Coast Line R. Co., 156 N. C. 119, 127, 72 S. E. 195.

Messenger or Delivery Service Included.—This section does prohibit the employment of "any one under 14 years of age" in messenger or delivery service. Pettitt v. Atlantic Coast Line R. Co., 186 N. C. 9, 16, 118 S. E. 840.

Does Not Apply to Volunteer Workman.—Where the plaintiff, a boy under fourteen, is a mere volunteer injured in the performance of a simple and ordinary task, this section has no application. Reaves v. Catawba Mfg., etc., Co., 206 N. C. 523, 174 S. E. 413.

§ 110-2. Hours of labor. — No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and Provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the state commissioner of labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2.)

Violation of Section Must Be Shown to Be Proximate Cause of Injury.—In order to make an employer liable in damages for an injury sustained by an employee between 14 and 16 years of age being required to work more than 8 hours a day in violation of this section, it must be shown that the violation of the statute was a proximate cause of injury complained of. Williamson v. Old Dominion Box Co., 205 N. C. 350, 171 S. E. 335.

§ 110-3. Lunch period.—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 110-4. Posting of hours. — Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this article and a list of the occupations prohibited to such minors, to be furnished by the state department of labor. (1937, c. 317, s. 4.)

§ 110-5. Time records.—Every employer shall keep a time-book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the state department of labor. (1937, c. 317, s. 5.)

§ 110-6. Hazardous occupations prohibited for minors under sixteen.—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, ship building, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat grinding machines, dough brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold

rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

In or About or in Connection with Quarry.—In Campbell Contracting Co. v. Maryland Casualty Co., 21 Fed. (2d) 909, 910, it is said: "We cannot agree with the contention that a boy operating a hoist, that by means of a cable pulls cars loaded with stone out of a quarry 150 to 175 feet distant, and whose duty it was upon signal to have the whistle blown, warning of a blast, and whose further duty it was to warn passersby, was not working 'in or about or in connection with a quarry.' "

§ 110-7. Hazardous occupations prohibited for minors under eighteen.—No minor under the age of eighteen years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: Provided, however, that this section shall not prohibit a minor under the age of eighteen years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages.

Nor shall any minor under eighteen years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the state department of labor and the said state department of labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. (1937, c. 317, s. 7; 1943, c. 670.)

Editor's Note.—The 1943 amendment added the proviso to the second sentence.

§ 110-8. Employment of minors in street trades; sale or distribution of newspapers, etc. — No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven p. m. or before 6 a. m., or unless he has an employment certificate issued in accordance with § 110-9. The state commissioner of labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this article or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock p. m. and before five o'clock a. m., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the department of labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than twenty-four hours per week: Provided further, that nothing in this article shall be construed to prevent boys twelve years of age and over, upon securing a proper certificate from the department of labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock p. m. and six o'clock a. m., nor for more than ten hours in any one week. (1937, c. 317, s. 8.)

§ 110-9. Employment certificate required. — Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required. (1937, c. 317, s. 9.)

Newsboy Not Employee.—A newsboy engaged in selling papers is not an employee of the newspaper within the meaning of that term as used in the workmen's compensation act, the newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of affecting sales, although some degree of supervision was exercised by the newspaper. Creswell v. Charlotte News Pub. Co., 204 N. C. 380, 168 S. E. 408.

§ 110-10. Officers authorized to issue certificates.—The employment certificate required by this article shall be issued only by county or city superintendents of public welfare in such form and under such conditions as may be prescribed by the state department of labor. (1937, c. 317, s. 10.)

§ 110-11. Refusal and revocation of employment certificate.—The person designated to issue employment certificates may refuse to grant such

certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the commissioner of labor. (1937, c. 317, s. 11.)

§ 110-12. Method of issuing employment certificates.—The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by some one duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

(a) A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

(b) A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

(c) Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

(d) In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor and that the proofs of age specified in the preceding sub-divisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the state department of labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the state department of labor.

(4) A school record signed by the principal of the school which the minor has last attended or by some one duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment. (1937, c. 317, s. 12.)

Editor's Note.—For decisions under former law, see Rolin v. Tobacco Co., 141 N. C. 300, 53 S. E. 891; Williamson v. Old Dominion Box Co., 205 N. C. 350, 171 S. E. 335.

§ 110-13. Employment certificate as evidence.—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 110-14. Regular and vacation employment certificates.—Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 110-15. Duties of employers in regard to employment certificates.—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this article. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor. (1937, c. 317, s. 15.)

§ 110-16. Certificates of age. — Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this article, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 16.)

§ 110-17. State supervision of the issuance of employment certificates.—The state department of labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the state department of labor within one week after issuance. The state department

of labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 110-18. Rules and regulations.—The commissioner of labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this article as may be deemed necessary by said commissioner. (1937, c. 317, s. 18.)

§ 110-19. Inspection and prosecutions.—It shall be the duty of the state department of labor and of the inspectors and agents of said state department of labor to enforce the provisions of this article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said state department of labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this article may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work. (1937, c. 317, s. 19.)

§ 110-20. Penalties.—Whoever employs or permits or allows any minor to be employed or to work in violation of this article, or of any order or ruling issued under the provisions of this article, or obstructs the state department of labor, its officers or agents, or any other persons authorized to inspect places of employment under this article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice from the state department of labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this article may be recovered by the state in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

Art. 2. Juvenile Courts.

§ 110-21. Exclusive original jurisdiction over children.—The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

1. Who is delinquent or who violates any municipal or state law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

2. Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or

3. Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the state, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the state. (1919, c. 97, s. 1; C. S. 5039.)

Cross References.—As to domestic relations court, see §§ 7-101 et seq. As to jurisdiction over violations of motor vehicle laws by persons over fifteen years of age, see § 20-219.1.

Editor's Note.—The Apprentice Law, Revisal, ch. 4, and the Juvenile Delinquent Law, Public Laws 1915, ch. 222, and all other laws inconsistent with this act are repealed and substituted by this article.

Constitutionality.—This section and the section following in this article are held to be a constitutional and valid enactment. State v. Burnett, 179 N. C. 735, 102 S. E. 711; In re Coston, 187 N. C. 509, 122 S. E. 183.

The statute creating juvenile courts in the several counties of this state is valid, and the statute confers jurisdiction on the courts to place children under its jurisdiction in public and private institutions in proper instances. Winner v. Brice, 212 N. C. 294, 193 S. E. 400.

Purpose. — This section does not deal with delinquent children as criminals, but as wards of the state, and undertakes to give the control and environment that may lead to their reformation and enable them to become law-abiding and useful citizens, and a support and not a hinderance to the commonwealth and the objection that the statute ignores or unlawfully withholds the right to a trial by jury can not be sustained. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Sections Interdependent.—The child's welfare act, Public Laws of 1919, ch. 97, and this and the following sections thereof, establishing the juvenile courts were enacted as a whole, and the sections are interrelated and interdependent, and the intent thereof is so to be interpreted. State v. Ferguson, 191 N. C. 668, 132 S. E. 644.

Repeal of Ch. 122, Laws of 1915.—This section and the following section of this article establishing a juvenile court, repeal ch. 122, Laws of 1915, and State v. Newell, 172 N. C. 933, 90 S. E. 594, has no application. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Capability of Committing Crimes—Duration of Jurisdiction.—Where the jurisdiction of the juvenile court has once attached it remains during the minority of the youthful offender, for the purpose of his correction and reformation. State v. Coble, 181 N. C. 554, 107 S. E. 132; In re Coston, 187 N. C. 509, 122 S. E. 183.

Exclusive Criminal Jurisdiction.—The juvenile court, as a separate part of the Superior Court, is given by this section, among other things, the sole power to investigate charges of misdemeanors, and of felonies with punishment not exceeding a ten-year imprisonment, made against children between the ages of fourteen and sixteen years at the time of the offense committed, and excludes the jurisdiction of the justice of the peace to bind them over to the

Superior Court in such instances. State v. Coble, 191 N. C. 554, 107 S. E. 132.

This section gives exclusive original jurisdiction to the Superior Court where the custody of a child less than sixteen years of age is in question and establishes the juvenile courts as separate, though not necessarily independent, part of the Superior Courts for the administration of the act, and makes the clerks of the Superior Courts judge of the juvenile courts. In re Hamilton, 182 N. C. 44, 108 S. E. 385.

Allegations Showing Jurisdiction.—Allegations of a petition, admitted by demurrer, that the children in question were each under sixteen years of age, resided in the county, and were subject to such conditions and improper guardianship and control as to endanger their morals, health, and welfare, and that petitioner was entitled to their custody as their guardian under a deed executed by their father, for the purpose of placing them in a private institution in accordance with the wishes of their father, are sufficient to show exclusive original jurisdiction of the children, for the purposes of the statute, in the juvenile court of the county. Winner v. Brice, 212 N. C. 294, 193 S. E. 400.

Same—Assault with Deadly Weapon.—The juvenile court has exclusive jurisdiction over investigation of a charge of an assault with a deadly weapon, inflicting a serious injury, made by a child within sixteen years of age, and where a justice of the peace has assumed jurisdiction and bound the defendant over to the Superior Court, the case will, on motion, be removed to the juvenile Court, to be proceeded with as the statute directs, though at the latter date the offender's age may be more than sixteen years. State v. Coble, 181 N. C. 554, 107 S. E. 132.

Resume of Result.—By this section and the following section of this article in case of children under the age of sixteen years charged with being delinquent by reason of the violation of the criminal laws of the state, it is provided and intended to be provided in effect: (a) That children under fourteen years of age are no longer indictable as criminals, but must be dealt with as wards of the state, to be cared for, controlled and disciplined with a view to their reformation. (b) That in case of children between fourteen and sixteen years of age, and as to felonies, whenever the punishment can not exceed ten years, they may if the instance requires it, be bound over to the Superior Court to be prosecuted under the criminal law appertaining to the charge. (c) That in case of children from fourteen to sixteen years of age as to felonies, whenever the punishment is ten years and over they are amenable to prosecution for crime as in case of adults. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Where the father of a minor child brings a writ of habeas corpus in the Superior Court for the custody of the child, the respondent being the maternal grandmother of the child in whose care the child was left by its mother, the Superior Court has original jurisdiction, and the respondent's motion to transfer the hearing from the Superior Court to the juvenile court is properly overruled. In re Ten Hoopen, 202 N. C. 223, 162 S. E. 619.

Not Amendment to Adoption Law.—The Juvenile Court Act was in no respect an amendment to the former Adoption Law, and did not affect the procedure therein prescribed for the adoption of minors. Ward v. Howard, 217 N. C. 201, 7 S. E. (2d) 625.

Applied in McEachern v. McEachern, 210 N. C. 98, 185 S. E. 684.

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts. — There shall be established in each county of the state a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of ..... county.

The clerk of the superior court of each county in the state shall act as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, that in counties, where the county seat is a city containing twenty-five thousand inhabitants, or more, the board of commissioners of such counties shall have the right in their discretion to coöperate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97, s. 2; Ex. Sess. 1920, c. 85; C. S. 5040.)

Local Modification.—Buncombe: 1935, c. 220; 1941, c. 208, s. 3; Forsyth: 1935, c. 385; 1941, c. 110; Mecklenburg: 1937, c. 251.

Editor's Note.—The provisional clause, in the second paragraph under this section, with regard to the election of a juvenile court judge in a city containing twenty-five thousand inhabitants, or more, is new with Public Laws, Ex. Sess. 1920, ch. 85.

§ 110-23. Definitions of terms. — The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided. The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the judge of the joint city and county juvenile court elected as provided in § 110-22. The term "child" shall mean any minor less than sixteen years of age. The term "adult" shall mean any person sixteen years of age or over. (1919, c. 97, s. 3; C. S. 5041.)

The Word "Child."—The provision of sec. 3, ch. 97, Public Laws 1919, that the meaning of the word "child" shall be one "less than eighteen years of age," and the term "adult" shall mean any person eighteen years old or over, intended, from the interpretation of the entire chapter, that to come within the provision of the act the child should be a minor under the age of sixteen years. The discrepancy is cured by the enactment of this section in its present form in the Consolidated Statutes of 1919. State v. Coble, 181 N. C. 554, 107 S. E. 132.

§ 110-24. Sessions of court; records; general provisions.—Sessions of the court shall be held at such times and in such places within the county as the judge shall from time to time determine. In the hearing of any case coming within the provisions of this article the general public may be excluded and only such persons admitted thereto as have a direct interest in the case. Sessions of the court shall not be held in conjunction with any other business of the superior court, and children's cases shall not be heard at the same time as those against adults.

The court shall maintain a full and complete record of all cases brought before it, to be known as the juvenile record. All records may be withheld from indiscriminate public inspection in the discretion of the judge of the court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication under the provisions of this article shall operate as a disqualification of any child for any public office, and no child shall be denominated a criminal by

reason of such adjudication, nor shall such adjudication be denominated a conviction.

This article shall be construed liberally and as remedial in character. The powers hereby conferred are intended to be general and for the purpose of effecting the beneficial purposes herein set forth. It is the intention of this article that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the state and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. (1919, c. 97, s. 4; C. S. 5042.)

§ 110-25. Petition to bring child before court.—Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact. (1919, c. 97, s. 5; C. S. 5043.)

§ 110-26. Issuance of summons; traveling expenses allowed.—Upon the filing of the petition or upon the taking of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed. (1919, c. 97, s. 6; 1939, c. 50; C. S. 5044.)

Editor's Note.—The 1939 amendment struck out of the last sentence the words "when approved by the judge of the superior court."

§ 110-27. Custody of child may be immediate; release; bail.—If it appears from the petition that the child is embraced within subdivision one of the first section of this article, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for. (1919, c. 97, s. 7; C. S. 5045.)

§ 110-28. Service of summons.—Service of summons shall be made personally by reading to and leaving with the persons summoned a true copy thereof: Provided, that if the court is satisfied that reasonable but unsuccessful effort has been made to serve the summons personally upon any of the parties named therein, or if it shall appear to the satisfaction of the court that it is impracticable to serve a summons personally upon any of them, the court may make an order providing for service of the summons by registered mail or by publication or otherwise in such manner as the judge shall determine. It shall be sufficient to confer jurisdiction if service is effected at any time before the time fixed in the summons for the return thereof; but the court, if requested by the child or a parent, or, in case there is no parent, by the person having the guardianship, custody or supervision of the child, shall not proceed with the hearing earlier than three days after the service. Failure to serve a summons upon any person other than said child shall not impair the jurisdiction of the court to proceed in cases arising under subdivision one of the first section of this article, provided that for good cause shown the court shall have made an order dispensing with such service.

If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as for contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued on the order of the court either against the parent or guardian or other person having custody of the child or with whom the child may be, or against the child himself.

The sheriff or other lawful officer of the county in which the action is taken shall serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose. (1919, c. 97, s. 8; C. S. 5046.)

When Summons to Parents Unnecessary.—Where the juvenile court has examined into the condition of a child and has adjudged that the child is of wandering or dissolute parents, and living with its poor and dependent grandparents, who had acquiesced in the investigation and its results, it is unnecessary to the valid adjudication fixing the child as a ward of the State and taking its custody accordingly, that the parents should have been notified to be present at the investigation, though such course is to be commended when the child is living with its parents or under their control, or they are living at the time within the jurisdiction of the court. In re Coston, 187 N. C. 509, 122 S. E. 183.

§ 110-29. Hearing; disposition of child. — Upon the return of the summons or other process or after any child has been taken into custody, at the time set for the hearing, the court shall pro-

ceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the state, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may—

1. Place the child on probation subject to the conditions provided hereinafter; or

2. Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

3. Commit the child to the custody of the state board of charities and public welfare, to be placed by such board in a suitable institution, society or association as described in subsection four of this section, or in a suitable family home and supervised therein; or

4. Commit the child to a suitable institution maintained by the state or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the state and approved by the state board of charities and public welfare authorized to care for children, or to place them in suitable family homes; or

5. Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

6. If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law. (1919, c. 97, s. 9; 1929, c. 84; C. S. 5047.)

Cross Reference.—As to authority of courts to commit offenders to reformatory, see § 134-10.

Editor's Note.—The amendment of 1929 added the words "in a suitable institution, society or association as described in subsection 4 of this section" which appears in subsection 3.

Jurisdiction in Felonies.—And, in reference to the disposition of children charged as delinquents by reason of having violated a state or municipal law, and that alone, it is provided in § 110-29 that a child of 14 years, charged with a felony in which the punishment, as now fixed by law, cannot exceed 10 years, the judge of the juvenile court may, if the case be of a nature to require it, bind such child over to the next term of the superior court, it being the clear and necessary inference that, as to children of 14 years and upward, and in case of felonies when the punishment may exceed 10 years, the juvenile department of the superior court is without jurisdiction of the offense. As to children of 14 years and over, and in case of felonies in which the punishment may be more than 10 years, they shall, in all instances, be subject to prosecution for crime as in case of adults. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Legislation Justified.—The Legislature has no unlimited and arbitrary power over minors in respect to detaining them in reformatories, and enactments relating thereto are justified only upon the idea that the child is without parental care, and that his environments are such that he may reach manhood without restraint or training under corrupting influences, unless the State, as parens patriae, performs the duty which devolves primarily upon the parent. In re Watson, 157 N. C. 340, 72 S. E. 1049.

Trial by Jury.—The constitutional right of trial by jury does not extend to an investigation into the status and needs of a child upon the question as to whether he should be sent to a reformatory for his own good as well as the good of the community in the interest of good citizenship, nor does the restraint therein put upon the child amount to a deprivation of his liberty without due process of law, nor is it a punishment for crime. In re Watson, 157 N. C. 340, 72 S. E. 1049.

Habeas Corpus.—When a child is placed and detained in a reformatory under order of court, without notice to the parent or giving him an opportunity to be heard, the parent may have the legality of the detention inquired into upon his petition for a writ of habeas corpus. In re Watson, 157 N. C. 340, 72 S. E. 1049.

Sentence—Order of Detention Only.—An act creating a reformatory is "for the training and moral development of the criminally delinquent children of the State," and in its general scheme and purposes is for the benefit of a child therein detained. Hence, the provisions in the act that the child committed thereto must be "convicted" and "sentenced" by the court, does not mean that detention therein is an imprisonment as a punishment for a crime, but that the "conviction" is merely evidence that the child needs the care and nurture of the State, and that the sentence is an order of detention. In re Watson, 157 N. C. 340, 72 S. E. 1049.

The juvenile court had no power to place a child anywhere for adoption, and when it ordered a child committed to an asylum upon its finding that the child was a neglected child, the further provision of the order that the asylum should have power to place the child in a home for adoption is void. Ward v. Howard, 217 N. C. 201, 7 S. E. (2d) 625.

Applied in Winner v. Brice, 212 N. C. 294, 193 S. E. 400.

§ 110-30. Child to be kept apart from adult criminals; detention homes. — No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the state board of charities and public welfare, appoint a matron or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The

necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein. (1919, c. 97, s. 10; C. S. 5048.)

§ 110-31. Probation officers; appointment and discharge; compensation.—The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the state board of charities and public welfare.

The county superintendent of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the state board of charities and public welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the state board of charities and public welfare.

The state board of charities and public welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the state board of charities and public welfare. (1919, c. 97, s. 11; C. S. 5049.)

§ 110-32. Probation; conditions; revocation. — When the court places any child or adult on probation as provided in this article it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation. (1919, c. 97, s. 12; C. S. 5050.)

§ 110-33. Duties and powers of probation officers.—It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and to report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed record of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his supervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the state board of charities and public welfare as it may from time to time require, and shall perform such other duties as the court under

whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving. (1919, c. 97, s. 13; C. S. 5051.)

§ 110-34. Support of child committed to custodial agency.—Whenever any child is committed by the court to the custody of an institution, association, society or person other than its parent or guardian, compensation for the care of such child, when approved by the order of the court, shall be a charge upon the county, but the court may at the issuance and service of an order to show cause on the parent or other person having the duty under the law to support such child adjudge that such parent or other person shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and wilful failure to pay such sum may be punished as a contempt of court. (1919, c. 97, s. 14; C. S. 5052.)

§ 110-35. Selection of custodial agency. — In committing any child to any institution or other custodial agency other than one supported and controlled by the state or in placing the child under any guardianship other than that of its natural guardians, the court shall as far as practicable select as the custodial agency an institution, society or association governed by persons of like religious faith as the parents of such child or an individual holding the same religious belief. (1919, c. 97, s. 15; C. S. 5053.)

§ 110-36. Modification of judgment; return of child to parents.—Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the state may be released or discharged only by the governing board or officer of such institution.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the state, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person, or that the said institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child. (1919, c. 97, s. 16; C. S. 5054.)

Cross Reference.—As to appeals, see § 110-40.

Rights of Parents.—Parents, guardian, etc., must be notified and given an opportunity to be heard in proceedings in the juvenile courts under this section, with the right to review in the Superior Court upon adverse judgment; and if the child is taken over by the state, they are allowed, on proper application at any time, to have their child brought before the court, its condition inquired into and further orders made concerning it except where committed to a state institution and then they may apply directly to the Superior Court, thus giving full consideration to the family relation and parental rights. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Same—Child in State Institution.—The exception in this section, that a case may not be investigated on the petition of the parent, etc., when the child is committed to the custody of an institution controlled by the state, applies to the action of the juvenile court, and does not limit the Superior Court in its general jurisdiction over matters of law and equity, in making upon proper application and appropriate writs, inquiry and investigation into the status and condition of children disposed of under the statute, or in rendering such orders and decrees therein as the rights and justice of the case or the welfare of the child may require. State v. Burnett, 179 N. C. 735, 102 S. E. 711.

§ 110-37. Guardian appointed if welfare of child promoted.—Whenever in the course of a proceeding instituted under this article it shall appear to the court that the welfare of any child within the jurisdiction of the court will be promoted by the appointment of an individual as general guardian of its person, when such child is not committed to an institution or to an incorporated society or association, or by the appointment of an individual or corporation as general guardian of its property, the court shall have jurisdiction to make such appointment, either upon the application of the child or of some relative or friend, or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents of such child in such manner and for such time, prior to the hearing, as the court may deem reasonable. In any case arising under this article the court may determine as between parents or others whether the father or mother or what person shall have the custody and direction of said child, subject to the provisions of the preceding section. (1919, c. 97, s. 17; C. S. 5055.)

§ 110-38. Medical examination of child; disposition if mentally defective.—The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally defective he may cause the child to be examined by two licensed physicians, and on the written statement of the two examining physi-

cians that it is their opinion that the child is mentally defective, feeble-minded, or epileptic the court may commit such child to an institution authorized by law to receive and care for mentally defective, feeble-minded or epileptic children, as the case may be. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such child shall pay a part or all of the expenses of such treatment as provided in § 110-34 of this article. (1919, c. 97, s. 18; C. S. 5056.)

§ 110-39. Neglect by parents; encouraging delinquency by others; penalty. — A parent, guardian or other person having the custody of a child who omits to exercise reasonable diligence in the care, protection or control of such child, causing it to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state as provided in this article, or who permits such child to associate with vicious, immoral or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or wilfully is responsible for, encourages, aids, causes or connives at or who knowingly or wilfully does any act to produce, promote or contribute to the condition which caused such child to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state, shall be guilty of a misdemeanor. (1919, c. 97, s. 19; C. S. 5057.)

Jurisdiction.—The juvenile courts of the State are now given by statute exclusive original jurisdiction of delinquent children under sixteen years of age, with prescribed procedure by which an adjudication may be therein determined. State v. Ferguson, 191 N. C. 668, 132 S. E. 664.

§ 110-40. Appeals.—An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in §§ 110-38 and 110-39 of this article whose case has been heard by the juvenile court. Such appeal shall be taken in the manner provided for appeals to the superior court; and written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or order of such court. (1919, c. 97, s. 20; C. S. 5058.)

Authority of Superior Court Judge.—Where the proceedings for the custody of a child under sixteen years had been transferred to the juvenile court, and comes again to the Superior Court judge on appeal, the judge of the latter court has authority to review the findings of fact and the judgment of the former court, under the supervision and control given him by the statute, this section, and his findings upon competent evidence are conclusive on appeal to the Supreme Court. In re Hamilton, 182 N. C. 44, 108 S. E. 385.

Where the Superior Court judge has referred a proceeding brought by a husband in that court for the custody of his child, less than sixteen years of age, and the matter comes on appeal to the Superior Court again, the validity of the order sending or transferring the petition to the juvenile court for original investigation does not present a controlling question, or affect the jurisdiction of the Superior Court on the appeal, for thereon the judge thereof has ample authority to hear the case, either because it was properly instituted in the first instance or by virtue of the appeal. In re Hamilton, 182 N. C. 44, 108 S. E. 385.

Application First Made to Juvenile Court.—Where the parent of a child that has been adjudicated a ward of the State under the statute relating to juvenile courts afterwards claims the possession of the child, the procedure requires that she make application to the juvenile court that had adjudicated the matter in order to avoid conflict and uncertainty as to status or condition of the child, to the end that an investigation be made of the circumstances in the course and practice of the courts. In re Coston, 187 N. C. 509, 122 S. E. 183.

Writ of Habeas Corpus.—The statutory remedy by appeal being provided from the determination of the juvenile court from its judgment that a certain child comes within the statutory provisions, and the status of the child has been ascertained by the juvenile court as being that of a ward of the State, the writ of habeas corpus is not available to the parent or other claiming the child, unless in rare and exceptional cases wherein the welfare of the child has not been properly provided for. In re Coston, 187 N. C. 509, 122 S. E. 183.

While prima facie the parent has the right to the custody of his child in preference to others, this right is not an absolute one and must yield when the best interest of the child requires it; and when the father has filed his petition in habeas corpus proceedings for the custody of his child in the possession of his deceased wife's parents, the award of the Superior Court Judge for the respondents upon findings, sustained by the evidence, that the father was an unsuitable person, and that the best interest of the child required that she should remain with her grandparents, will not be disturbed in the Supreme Court on appeal. In re Hamilton, 182 N. C. 44, 108 S. E. 385.

§ 110-41. Compensation of judge. — The judge of the juvenile court shall be paid a reasonable compensation for his services, the amount to be determined by the county commissioners, and the amount thus determined by the county commissioners shall be charged against the public funds of the county. And such compensation shall be independent of any compensation which may come to him as clerk of the superior court. (1919, c. 97, s. 21; C. S. 5059.)

Cross Reference.—As to salaries of city and joint city and county juvenile courts, see §§ 110-22 and 110-44.

§ 110-42. Public officers and institutions to aid. —It is hereby made the duty of every state, county or municipal official or department to render such assistance and coöperation within his or its jurisdiction or power as shall further the objects of this article. All institutions or other agencies to which any person coming within the provisions of this article may be sent are hereby required to give such information concerning such child to the court or to any other officer appointed by it as said court or official may require for the purposes of this article. The court is authorized to seek the coöperation of all societies, organizations or individuals to the end that the court may be assisted in every way in the discharge of its duties. (1919, c. 97, s. 22; C. S. 5060.)

§ 110-43. Rules of procedure devised by court.

—The court shall have power to devise and publish rules to regulate the procedure in cases coming within the provisions of this article and for the conduct of all probation and other officers of the court in such cases. The court shall devise and cause to be printed for public use such forms for records and for various petitions, orders, processes, and other papers in the cases coming within this article as shall meet the requirements thereof, and all expenses incurred in complying with the provisions of this article shall be a public charge. (1919, c. 97, s. 23; C. S. 5061.)

§ 110-44. City juvenile courts and probation officers.—Every city in North Carolina where the population was, by the census of one thousand nine hundred and twenty, ten thousand or more shall maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provision for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that it would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city must establish a juvenile court, as provided in this section. Provided, that in the event the governing bodies of such cities reach an agreement with the county commissioners, whereby the county juvenile court shall also transact the business of the city juvenile court, the governing bodies of such city and county, by joint resolution, may elect a judge and an assistant judge of the combined court, who may be persons other than the clerk of the superior court, and who shall hold such office for the term of one year, and until their successors shall be duly elected. Such judge and assistant judge, when so elected, shall perform all the duties and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article. The assistant judge provided for by this section shall only perform the functions of judge of the combined juvenile court when the regular judge is unavoidably absent, or sick, and no orders shall be entered by him except in such cases. The compensation of the judge and of the assistant judge provided for by this section shall be determined by the county commissioners and paid by such county. The part of said salary that shall be paid by such city shall be determined by agreement between the governing bodies of the two units, as hereinbefore provided for. The authority is also hereby given by this section for the election of an assistant judge of the juvenile court in cases where counties elect to combine with a city juvenile court and let such court transact the joint business of both county and city.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants. (1919, c. 97, s. 24; 1923, c. 193; 1943, c. 594; C. S. 5062.)

Editor's Note.—This section formerly provided for the maintenance of a juvenile court in every city, where the population was, by the census of 1910, ten thousand, instead of the present provision, estimating the population by the census of 1920, as changed by Public Laws, 1923, ch. 193.

The 1943 amendment, which added that part of the second paragraph beginning with the proviso, provided: "The provisions of this act shall be an additional procedure, and shall not affect or repeal any other amendatory acts now in effect."

Art. 3. Control over Indigent Children.

§ 110-45. Institution has authority of parent or guardian.—Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this state, which shall be an institution existing under and by virtue of the laws of this state, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S. 5063.)

§ 110-46. Regulations of institution not abrogated.—Nothing in this article shall be construed in any way to abrogate any of the rules and regulations of such institutions in so far as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S. 5064.)

§ 110-47. Enticing a child from institution. — It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority

to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S. 5065.)

§ 110-48. Violation a misdemeanor. — Any person violating any of the provisions of §§ 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S. 5066.)

§ 110-49. Permits and licenses must be had by institutions caring for children.—No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this state for the purpose of caring for and placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Charities and Public Welfare. The said board shall issue such permit recommending such business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in § 108-3, subsection 5, shall annually procure a license from the State Board of Charities and Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association, violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; 1931, c. 226, s. 6; C. S. 5067.)

Art. 4. Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Bringing child into State for adoption without consent of State Board of Charities and Public Welfare.—No person, agency, association, institution or corporation shall bring or send into the State any child for the purpose of placing him out or procuring his adoption without first obtaining the consent of the State Board of Charities and Public Welfare. Such person, agency, association or corporation shall conform to the rules of the board and shall enter into a written agreement with the board to remove such child from the State, when requested so to do by the said board; that it will place the child under written contract approved by the board; that the person with whom the child is placed shall be responsible for his proper care and training; that the board and its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed out by the board and its agents. Before the child shall be brought or sent into the State for the purpose of placing him in a home, the person, agency, association, institution or corporation so bringing or sending such child shall first notify the State board of its intention, shall certify to the State board that such child does not have a contagious or incurable disease, is not deformed, feeble-minded or of vicious character, and shall obtain from the State board a certificate stating such home is, in the opinion of the said board, a suitable home for the child. The person, agency, association, institution or corporation bringing or sending the child into the State shall report once a year or when the child is placed in another home, or at such other times as the board may direct as to the location and well-being of the child, so long as he shall remain within the State and until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 1.)

§ 110-51. Bond required. — No child shall be brought into the State under § 110-50 until a justifiable and continuous bond not to exceed one thousand dollars ($1,000) be furnished and maintained by the said person, agency, association, institution or corporation for the proper fulfillment of the requirements of § 110-50. Said bond shall be made in favor of and filed with the State Board of Charities and Public Welfare with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2.)

§ 110-52. Consent of board before sending child out of State. -- No child shall be taken or sent out of the State for the purpose of placing him in a home, otherwise than by a parent, grandparent or guardian, unless the person, agency, association, institution or corporation so taking or sending him shall give the State Board of Charities and Public Welfare notice of its intention and furnish such information as the board may require. Such person, agency, association, institution or corporation shall place the child under written contract, approved by the board, that the person with whom the child is placed shall be responsible for his proper care and training and thereafter shall report to the board once a year and at such other times as the board may direct as to the location and well-being of such child until he shall have reached the age of eighteen years, or shall have been legally adopted. (1931, c. 226, s. 3.)

§ 110-53. Consent of board where parents of child have not established legal settlement.—No person, agency, association, institution or corporation shall accept for the purpose of placing him out or procuring his adoption any child either legitimate or illegitimate born in this State of parents who have not established legal settlement in the State without first obtaining the written consent of the State Board of Charities and Public Welfare. (1931, c. 226, s. 4.)

§ 110-54: Repealed by Session Laws 1943, c. 753, s. 2.

§ 110-55. Violation of article a misdemeanor.— Every person acting for himself or for an agency who violates any of the provisions of this article or who shall intentionally make any false statements to the State Board of Charities and Public Welfare shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7.)

§ 110-56. Definitions. — The term "board" wherever used in this article shall be construed to mean the State Board of Charities and Public Welfare. The terms "he" and "his" and "him" wherever used in this article shall apply to a female as well as a male child. (1931, c. 226, s. 8.)

Chapter 111. Commission for the Blind.

Art. 1. Organization and General Duties of Commission.

Art. 2. Aid to the Needy Blind.

Art. 1. Organization and General Duties of Commission.

§ 111-1. Commission created; appointment by governor; ex-officio members.—There shall be established a state commission, to be known as the North Carolina State Commission for the Blind, consisting of three persons, to be appointed by the governor within thirty days after March 5, 1935. The superintendent of the State School for the Blind and the state supervisor of vocational rehabilitation shall be ex-officio members of this commission. (1935, c. 53, s. 1.)

§ 111-2. Term of office.—The full term of office of the members of this commission, with the exception of the superintendent of the State School for the Blind and the state supervisor of vocational rehabilitation, shall be five years. The term of office of the said ex-officio members shall be contemporaneous with their tenure of office as superintendent of the State School for the Blind and state supervisor of vocational rehabilitation, respectively. Of the first commission appointed, one member shall be appointed for a term of five years, one for a term of three years, one for a term of one year. At the expiration of the term of any member of the commission, his successor shall be appointed for a term of five years. (1935, c. 53, s. 2.)

§ 111-3. Additional members of commission for blind; meeting place.—In addition to the members of the North Carolina state commission for the blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the governor within thirty days after March 20, 1937. The secretary of the state board of health, the director of the North Carolina employment service, and the commissioner of public welfare of North Carolina shall also be ex officio members of this commission, and their term of office shall be contemporaneous with their tenure of office as secretary of the state board of health, director of the North Carolina employment service, and commissioner of public welfare. Of the three additional members, to be appointed by the governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina state commission for the blind shall be held in the city of Raleigh. (1937, c. 285.)

§ 111-4. Register of state's blind.—It shall be the duty of this commission to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the commission to be of value. (1935, c. 53, s. 3.)

§ 111-5. Information and aid bureaus. — The commission shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the commission in disposing of the products of their home industry. (1935, c. 53, s. 4.)

§ 111-6. Training schools and workshops; training outside state; sale of products; direct relief; matching of Federal funds. — The commission may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may co-operate with shops already established. The commission may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the commission such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the state, they may be arranged for, at the discretion of the board, outside of the state. The commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the North Carolina state commission for the blind under the provisions of this chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the North Carolina state commission for the blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of §§ 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the Federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16.)

Editor's Note.—The 1937 amendment changed the last sentence.

§ 111-7. Promotion visits. — The commission may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the commission may deem advisable. (1935, c. 53, s. 6.)

§ 111-8. Investigations; eye examination and treatment.—It shall be the duty of this commission to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and co-operate in any such measure for the State of North Carolina as may seem wise. The commission may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified ophthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7.)

§ 111-9. Officers and agents; annual report.—The commission may appoint such officers and agents as may be necessary to carry out the provisions of this chapter and their compensation shall be fixed within the limits of the annual appropriation by the director of personnel, but no person employed by the commission shall be a member thereof. The annual report shall present a concise review of the work of the commission for the preceding year, with such suggestions and recommendations for improving the conditions of the blind and preventing blindness as may seem expedient. (1935, c. 53, s. 8.)

§ 111-10. Compensation and expenses of commission.—The members of the commission shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, shall be audited by the state auditor and paid by the treasurer of the state, out of the moneys that may be appropriated therefor. (1935, c. 53, s. 9.)

§ 111-11. Qualifications of beneficiaries. — The beneficiaries of the commission shall be persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. No person shall benefit from the provisions of this chapter unless he has been a resident of North Carolina for at least one year next preceding the receiving of such benefit. (1935, c. 53, s. 10; 1939, c. 124.)

§ 111-12. Work of state board of health unaffected.—Nothing herein shall be construed to in any way abridge the rights and privileges of the state board of health in the treatment of the blind, or in accumulating and disseminating information in reference to the blind and in the prevention of blindness. (1935, c. 53, s. 11.)

Art. 2. Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations. —The North Carolina state commission for the blind shall be charged with the supervision of the administration of assistance to the needy blind under this article, and said commission shall establish objective standards for personnel to be qualified for employment in the administration of this article, and said commission shall make all rules and regulations as may be necessary for carrying out the provisions of this article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this article. (1937, c. 124, s. 2.)

§ 111-14. Application for benefits under article; investigation and award by county commissioners.—Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she has a legal settlement an application in writing, in duplicate, upon forms prescribed by the North Carolina state commission for the blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the

state of North Carolina and who is actively engaged in the treatment of diseases of the human eye, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the North Carolina state commission for the blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina state commission for the blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina state commission for the blind, not inconsistent with this article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124.)

Editor's Note.—For comment on the enactment of this and the following sections and their application, see 15 N. C. L. Rev. 369.

§ 111-15. Eligibility for relief.—Blind persons having the following qualifications shall be eligible for relief under the provisions of this article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this state able to provide for them who are legally responsible for their maintenance; and

(3) Who have been residents of the state of North Carolina one year immediately preceding the application; and

(4) Who are not inmates of any charitable or correctional institution of this state or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the state, and who are not, because of physical or mental condition, in need of continuing institutional care. (1937, c. 124, s. 4.)

§ 111-16. Application transmitted to commission; notice of award; review by commission. — Promptly after an application for aid is made to the board of county commissioners under this article the North Carolina state commission for the blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina state commission for the blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina state commission for the blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina state commission for the blind. Notice of such appeal must be given in writing to the board of county commissioners, and within thirty days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina state commission for the blind copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina state commission for the blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina state commission for the blind shall hear the said appeal under such rules and regulations not inconsistent with this article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive secretary of the North Carolina state commission for the blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be taken by the applicant, the North Carolina state commission for the blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina state commission for the blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within ten days from notice thereof, to have such order reviewed by the members of the North Carolina state commission for the blind. The procedure in such cases shall be as provided in this section on appeals to the commission by the applicant. (1937, c. 124, s. 5.)

§ 111-17. Amount and payment of assistance; source of funds.—When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this article,

as provided in § 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina state commission for the blind, but in no case in an amount to exceed thirty dollars per month to be paid from county, state and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina state commission for the blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this article and the total amount of such county's one-fourth part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the state. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the general assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the North Carolina state commission for the blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's one-fourth part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six per cent, and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the state shall cause to be transmitted to the state treasurer one-fourth of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The state treasurer shall deposit said funds and credit same to the account of the North Carolina state commission for the blind to be employed in carrying out the provisions of this article. (1937, c. 124, s. 6.)

§ 111-18. Payment of awards.—After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina state commission for the blind, the North Carolina state commission for the blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina state commission for the blind shall determine. Such payment shall be made by warrant of the state auditor, drawn upon such funds in the hands of the state treasurer, at the instance and request and upon a proper voucher signed by the executive secretary of the North Carolina state commission for the blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure. (1937, c. 124, s. 7.)

§ 111-19. When applications for relief made directly to state commission.—If any person, otherwise entitled to relief under this article, shall have the residence requirements in the state of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this article shall be made directly to the North Carolina state commission for the blind, in writing, in which shall be contained all the facts and information sufficient to enable the said commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina state commission for the blind. If the said commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this article, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina state commission for the blind may consider just and proper, but not in excess of the amounts specified in § 111-17. Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the state, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases. (1937, c. 124, s. 8.)

§ 111-20. Awards subject to reopening upon change in condition.—All awards to needy blind persons made under the provisions of this article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The North Carolina state commission for the blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations bi-annually, or more often, as may be found necessary. The North Carolina state commission for the blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina state commission for the blind, and shall be subject to the right of appeal and review, as provided in § 111-16. (1937, c. 124, s. 9.)

§ 111-21. Disqualifications for relief.—No aid to needy blind persons shall be given under the provisions of this article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged. (1937, c. 124, s. 10.)

§ 111-22. Beneficiaries not deemed paupers. — No blind person shall be deemed a pauper by reason of receiving relief under this article. (1937, c. 124, s. 11.)

§ 111-23. Misrepresentation or fraud in obtaining assistance.—Any person who shall obtain, or attempt to obtain, by means of a wilful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred ($500.00) dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this article. (1937, c. 124, s. 12.)

§ 111-24. Cooperation with federal social security board; grants from federal government.—The North Carolina state commission for the blind is hereby empowered and authorized and directed to co-operate with the federal social security board, created under Title X of the Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this article, including the making of such reports in such form and containing such information as the federal social security board may from time to time require, and comply with such regulations as said board may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina state commission for the blind is hereby further empowered and authorized to receive grants in aid from the United States government for assistance to the blind and grants made for payment of cost of administering the state plan for aid to the blind, and all such grants so received hereunder shall be paid into the state treasury and credited to the account of the North Carolina state commission for the blind in carrying out the provisions of the article. (1937, c. 124, s. 13.)

§ 111-25. Acceptance and use of federal aid.—The commission for the blind may expend, under the provisions of the Executive Budget Act, such grants as shall be made for paying the cost of administering this chapter by the federal government under Title X of the Social Security Act. (1937, c. 124, s. 14.)

§ 111-26. Termination of federal aid. — If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the governor of the state of North Carolina has issued a proclamation duly attested by the secretary of the state of North Carolina to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this article in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ 111-27. Commission to promote employment of needy blind persons; vending stands on public property. — For the purpose of assisting blind persons to become self-supporting, the North Carolina state commission for the blind is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said commission may cooperate with the federal government in the furtherance of the provisions of the act of congress known as the Randolph-Sheppard Bill (H. R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of congress which may be hereafter enacted.

The board of county commissioners of each county and the commissions or officials in charge of various state and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any state, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the North Carolina state commission for the blind: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123.)

§ 111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind.—The North Carolina state commission for the blind is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the state treasury and credited to the account of the North Carolina state commission for the blind, to be used in carrying out the provisions of this law.

The North Carolina state commission for the blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or state or federal agency as a condition for receiving such

federal funds, not inconsistent with the laws of this state.

Whenever the words "Social Security Board" appear in §§ 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina state commission for the blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and co-operate with other agencies of the state and federal governments in the provision of such assistance and services and in the study of the problems involved.

The North Carolina state commission for the blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the State Commission for the Blind or the board of county commissioners or the county welfare department, or acquired in the course of the performance of official duties. (1939, c. 124; 1941, c. 186.)

§ 111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports.—In addition to the powers and duties imposed upon the North Carolina state commission for the blind, the said commission shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

(1) The North Carolina state commission for the blind is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the state, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in Chapter one hundred and twenty-four of the Public Laws of one thousand nine hundred and thirty-seven. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the North Carolina state commission for the blind, producing as far as possible a just and fair distribution thereof.

(2) The North Carolina state commission for the blind is hereby authorized to make such grants to the needy blind of the state as will enable said commission to receive the maximum grants from the federal government for such purpose.

(3) The North Carolina state commission for the blind is hereby authorized to work out plans with the secretary of state for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The secretary of state is hereby authorized to lend such reports to the commission for the blind for relending to needy blind lawyers. Such reports may be recalled at any time by the secretary of state upon giving fifteen days' written notice to the commission for the blind which shall remain responsible for said reports until they are returned. The commission shall relend such reports only to blind lawyers, who, after an investigation by the commission, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600.)

Chapter 112. Confederate Homes and Pensions.

Art. 1. Confederate Woman's Home.

§ 112-1. Incorporation and powers of association.—Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives and widows of North Carolina Confederate soldiers and other worthy dependent women of the Confederacy who are bona fide residents of this state.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence for forty years. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the state, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S. 5134.)

§ 112-2. Board of directors appointed; officers and duties.—The powers conferred by this article shall be exercised by a board of directors, consisting of seven members, to be appointed by the governor of the state and who shall hold office for the term of two years, and in case of a failure to appoint, the members of such board of directors shall hold their offices until their successors are appointed. The board of directors shall elect a president and a secretary, and the treasurer of North Carolina shall be the treasurer of the Woman's Confederate Home Association. The board of directors shall appoint such other officers, agents, or employees as they shall see fit, and prescribe the duties of such officers and employees; establish rules and regulations for the maintenance and government of the home, and have entire control and management of it; prescribe the rules for the admission of the inmates and their discharge, and take whatever action may be desirable in reference to the collection and disbursement of subscriptions, either to the home or to the needy Confederate women elsewhere in the state. The accounts of the officers and employees shall be duly audited and published and report thereof made as now required by law from the other state institutions. (1913, c. 62, s. 2; C. S. 5135.)

§ 112-3. Location of home.—The board of directors shall locate the Confederate woman's home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the home. (1913, c. 62, s. 2; C. S. 5136.)

§ 112-4. Advisory board of lady managers. — Mrs. Hunter Smith, Mrs. N. B. Mann, Mrs. T. L. Costner, Mrs. R. F. Dalton, Mrs. F. A. Woodard, Mrs. W. H. Mendenhall, Mrs. E. C. Chambers, Mrs. Charles S. Wallace, Mrs. M. O. Winstead, Mrs. Marshall Williams are appointed an advisory board of lady managers for a term of two years, whose duties it shall be to assist the directors in the equipment and management of the home as they may be requested to do, shall solicit contributions for the home and generally shall use all the powers given to and perform all the duties required of them by the board of directors. The successors in office of said lady managers shall be selected one from each congressional district in the state. All vacancies in said advisory board, whether from expiration of office or otherwise, shall, subject to the limitations herein set out respecting the way of selection, be filled by the board of directors. (1913, c. 62, s. 3; C. S. 5137.)

§ 112-5. Reversion of property.—If the land on which the said home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this state, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the state; but in all cases of non-user for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the state. (1913, c. 62, s. 4; C. S. 5138.)

§ 112-6. Compensation of directors. — The directors provided for in this article shall be entitled to their actual expenses incurred in attending the meetings of the board of directors since

their appointment, and also in attending future meetings of the board, the same to be paid out of the funds of the Confederate woman's home. (1915, c. 206; C. S. 5139.)

Art. 2. Pensions.

Part 1. Pension Boards.

§ 112-7. State board; examination of applications.—The governor, attorney-general, and auditor shall be constituted a state board of pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the state board shall be paid by the treasurer, upon the warrant of the auditor. (1921, c. 189, s. 1; C. S. 5168(a).)

§ 112-8. State board to make rules. — The state board of pensions is empowered to prescribe rules and regulations for the more certainly carrying into effect this article according to its true intent and purpose. (1921, c. 189, s. 2; C. S. 5168(b).)

§ 112-9. Auditor to transmit lists to clerks of court; publication of list. — The auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post-offices, as allowed by the state board of pensions. (1921, c. 189, s. 3; 1929, c. 296, s. 1; C. S. 5168(c).)

Editor's Note.—The Act of 1929 struck out the sentence "the auditor may have printed once in each year, but not oftener, a list of the pensioners on the pension roll," formerly appearing at the end of this section.

§ 112-10. County board. — The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the state auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; 1929, c. 92, s. 1; 1933, c. 465, s. 1; C. S. 5168(d).)

Editor's Note.—The Act of 1929 added the words "or daughters" to this section.

Public Laws of 1933, c. 465, made grandsons and granddaughters of veterans eligible for the board.

§ 112-11. Compensation of members of the county board of pensions. — Each member of the county board of pensions shall be entitled to two dollars a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (Rev., s. 2783; 1903, c. 273, s. 19; C. S. 3913.)

§ 112-12. Examination and classification by county board; certificate of disability.—All persons entitled to pensions under this article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1; C. S. 5168(e).)

Editor's Note.—The 1941 amendment struck out the words "on or before the first Mondays in February and July of each year," formerly appearing after the word "pensions" in line four. The 1924 amendment changed the clause which was stricken by the 1941 amendment.

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of ten days to the pensioner who is alleged not to be rightfully on the state pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; Ex. Sess. 1924, c. 106; C. S. 5168(f).)

Editor's Note. — This section was amended in 1924 by adding the "s" to "Monday" and inserting the words "February and."

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-14. Persons disabled in militia service; their widows and orphans.—Every person who may have been disabled by wounds in the militia service of the state, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (Rev., s. 4990; Code, s. 3472; R. C., c. 84; C. S. 5147.)

§ 112-15. Blind or maimed Confederate soldiers. —All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars a year. (Rev., s. 4991; 1901, c. 332, s. 5; 1899, c. 619; 1907, c. 60; 1921, c. 189, s. 7; Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24; C. S. 5168(g).)

Editor's Note.—By the 1925 amendment the words "from the public treasury" were stricken from this section. They immediately followed the word "receive."

§ 112-16. Helpless or demented widows of Confederate soldiers.—Every widow of a Confederate soldier who married and was widowed prior to one thousand eight hundred and sixty-six and who has not remarried and who bore and raised legitimate child or children of the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution, shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S. 5168(h).)

§ 112-17. List of blind and disabled soldiers to be sent to governor. — The clerk of the Superior Court shall, under his seal of office, certify to the Governor the names and the number of soldiers examined in his county who are blind and maimed, or who have become paralyzed and are totally disabled by reason thereof; upon such certificate the Auditor, with the approval of the Governor, is authorized to issue his warrant on the Treasurer to pay the sum of four hundred and twenty dollars ($420.00) annually for each blind and maimed person, named in the certificate, and the clerk shall pay out such money monthly to the persons entitled to the same.

(1921, c. 189, s. 8; 1927, c. 96, s. 1; 1941, c. 152, s. 2; C. S. 5168(i).)

Editor's Note.—The 1941 amendment substituted "on" for "to" in line eight.

§ 112-18. Classification of pensions for soldiers and widows.—There shall be paid out of the Treasury of the State, on the warrant of the Auditor, to every person who has been for twelve months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the war between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the war between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in § 112-17, who are now disabled from any cause to perform manual labor, three hundred and sixty-five dollars ($365.00).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, two hundred dollars ($200.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, three hundred dollars ($300.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, one hundred dollars ($100.00). Provided, that the State Board of Pensions upon the recommendation of the County Pension Board, may add to Class B list of pensions such widows of Confederate Veterans who were married to the deceased Veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the said State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; C. S. 5168(j).)

Editor's Note.—The Act of 1929 added the proviso to the last paragraph of this section.

The 1935 and 1937 amendments changed the paragraph entitled "Class A" under "Widows" in this section.

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll.—All widows of Confederate soldiers who have lived with such soldiers for a period of ten years prior to the death of such soldier, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general state pension laws as modified hereby. (1937, cc. 181, 454.)

§ 112-20. Persons not entitled to pensions. — No person shall be entitled to receive the benefits of this article—

1. Who is an inmate of the soldiers' home at Raleigh;

2. Who is confined in an asylum or county home;

3. Who receives a pension from any other state or from the United States;

4. Who holds a national, state, or county office, which pays annually in salary or fees the sum of three hundred dollars ($300);

5. Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;

6. Who is receiving aid from the state under any act providing for the relief of soldiers who are blind or maimed;

7. Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars ($2,000), or who, having owned property in excess of two thousand dollars ($2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, one thousand eight hundred and eighty-five: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars ($2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S. 5168(k).)

§ 112-21. Removal from pension lists of persons eligible for old age assistance.—All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for old age assistance under the provisions of §§ 108-15 to 108-76, from and after the first day of June, one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter 112, entitled "Confederate Homes and Pensions," and any acts of the general assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this state shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners

for old age assistance under the provisions of §§ 108-15 to 108-76 without any applications being made by such persons for old age assistance as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the state board of pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the state board of pensions, and such certification from the county board of welfare to the state board of pensions shall be sufficient authority for removal of such names from the pension list by the state board of pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amounts necessary for payment of awards for old age assistance shall be paid entirely out of state and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the state board of pensions, the state board of pensions shall certify the revised list of pensioners to the state auditor and the state auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the state board of pensions. (1937, c. 227; 1939, c. 102.)

Editor's Note.—The 1939 act repealed the former section and inserted the above in lieu thereof.

Part 3. Application for Pensions.

§ 112-22. Forms provided by auditor. — The auditor of the state shall provide a form of application (according to the terms of this article), and have the same printed and sent to the clerks of the superior court of the several counties of the state for use of applicants. (1921, c. 189, s. 11; C. S. 5168(l).)

§ 112-23. Application by person, guardian or receiver.—No soldier, officer, sailor, or widow shall be entitled to the benefits of this chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S. 5168(m).)

§ 112-24. Applications by persons not on rolls. —Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the state, United States, or county from which he is receiving the sum of three hundred dollars ($300) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars ($2,000); whether he is receiving any aid from the state of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the state; and whether he is a citizen of the state of North Carolina. Such application shall be verified by the oath of the applicant made before any one empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the auditor of the state under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S. 5168(n).)

§ 112-25. Time for forwarding certificate; auditor to issue warrant.—It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the auditor of the state, immediately after the certificate required by § 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the state board of pensions being satisfied of the truth and genuineness of the application, the auditor shall

issue his warrant on the state treasurer for the same. (1921, c. 189, s. 14; C. S. 5168(o).)

§ 112-26. Subsequent certificate; suggestion of fraud.—After an application has once been passed upon and allowed by the county and state boards, it shall be necessary only for the applicant to file with the auditor of state a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the auditor's office, and that the applicant is alive, but still disabled, and a citizen of this state, and still entitled to the benefits of this article, which certificate may be passed upon by the state board, upon suggestions of fraud, before the auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ 112-27. Payment of pensions in advance; acknowledgment of receipt of warrants. — Pensions are payable monthly in advance, and the state auditor shall divide into twelve equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; 1939, c. 187, s. 1; C. S. 5168(q).)

Editor's Note.—Prior to the 1939 amendment pensions were payable twice a year.

Pension Not Assignable.—Instalments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N. C. 87, 42 S. E. 538.

§ 112-28. Warrants payable to pensioner or order; indorsement; copy of power of attorney.—The auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the treasurer without the indorsement of the payee or his duly appointed attorney in fact, specially authorized to make such indorsement; and if such indorsement is made by the attorney in fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or a justice of the peace or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; 1941, c. 152, s. 3; C. S. 5168(r).)

Editor's Note.—Prior to the 1941 amendment the indorsement of the payee was required to be officially attested.

Part 5. Funds Provided for Pensions.

§ 112-29. Limit and distribution of appropriation. — The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, further, that if any moneys herein appropriated for the purposes aforesaid, shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this chapter than is appropriated under the general appropriation maintenance act. (1921, c. 189, s. 20; 1927, c. 96, s. 4; C. S. 5168(u).)

Legislative Right.—It is the exclusive right of the Legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661.

§ 112-30. Increase by counties; special tax. —The county commissioners of each county in the state are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents on the hundred dollars valuation of property and six cents on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the state pension list for that county. (1921, c. 189, s. 21; C. S. 5168(v).)

Local Modification.—Cumberland: 1907, c. 555.

Constitutionality.—Whether this section be regarded as general or special, it meets the requirements of Article V, section 6, and its efficacy is not impaired by this section of the Constitution. It is a familiar principle that existing statutes not expressly or impliedly repealed by an amendment to the Constitution remain in full force and effect, and that a statute will not be declared void unless the breach of the Constitution is so manifest as to leave no room for reasonable doubt. Brown v. Jennings, 188 N. C. 155, 124 S. E. 150.

Part 6. Miscellaneous Provisions.

§ 112-31. Officer failing to perform duties. — Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S. 5168(w).)

§ 112-32. Speculation in pension claims a misdemeanor.—Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or

sailor or widow of a deceased soldier or sailor, allowed under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S. 5168(x).)

Pension Not Assignable.—Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N. C. 87, 42 S. E. 538.

§ 112-33. County payment of burial expenses.—Whenever in any county of this state a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars ($30), to be applied toward defraying the burial expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S. 5168(y).)

County Liable for Expenses.—This section requires the $20 (now $30) on account of the burial of a Confederate pensioner to be paid by the board of commissioners of the county of the pension roll on which his name appears, irrespective of residence. Hannah v. Board, 176 N. C. 395, 97 S. E. 160.

§ 112-34. State payment of burial expenses.—Whenever in any county of this state a Confederate pensioner on the pension roll shall die, and such fact has been determined by the state auditor, the state auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a state warrant in the amount of one hundred dollars ($100.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to Old Age Assistance under the provisions of § 112-21. (1939, c. 187, s. 2; 1941, c. 152, s. 4.)

Editor's Note.—The 1941 amendment added the proviso.

§ 112-35. Peddling without license. — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this state, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this state without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the war between the states, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars ($2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, one thousand nine hundred and two. (1921, c. 189, s. 25; C. S. 5168(z).)

Cross Reference.—As to exemption from jury duty, see § 9-19.

§ 112-36. Taking fees for acknowledgments by pensioners.—It shall be unlawful for any clerk of the Superior Court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1925, c. 68.)

§ 112-37. Officers required to check roll of pensioners with record of vital statistics. — It shall be the duty of the Register of Deeds and the Clerk of the Court of each county in the State of North Carolina to check the roll of pensioners furnished the Clerks of the Court of the various counties of the State, with the record of vital statistics in the office of the Register of Deeds, within ten days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October fifteenth and April fifteenth of each year, and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the Register of Deeds and Clerk of the Superior Court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be deceased, together with the dates of their death. (1931, c. 144.)

Chapter 113. Conservation and Development.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Art. 1. Organization and Powers.

SUBCHAPTER II. STATE FORESTS AND PARKS.

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Art. 3. Private Lands Designated as State Forests.

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SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Art. 1. Organization and Powers.

§ 113-1. Meaning of terms.—In this article, unless the context otherwise requires, the expression "department" means the Department of Conservation and Development; "board" means the Board of Conservation and Development; and "director" means the Director of Conservation and Development. (1925, c. 122, s. 3.)

§ 113-2. Department created.—There is hereby created and established a department to be

known as the "Department of Conservation and Development," with the organization, powers and duties hereafter defined in this article. (1925, c. 122, s. 2.)

§ 113-3. Duties of the department.—It shall be the duty of the department, by investigation, recommendation and publication, to aid

(a) In the promotion of the conservation and development of the natural resources of the State;

(b) In promoting a more profitable use of lands, forests and waters;

(c) In promoting the development of commerce and industry;

(d) In coördinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and

(e) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State. (1925, c. 122, s. 4.)

§ 113-4. Board of Conservation and Development.—The control and management of the department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of fifteen members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-5. Appointment and terms of office of board.—After May 1, 1941, the Governor shall appoint fifteen persons to be members of the Board of Conservation and Development. In making the appointments, the Governor shall take into consideration the functions and activities of the Board, and he shall select members who are qualified to represent the different activities and functions of the department, giving as near as possible proportional representation to each and all of the functions and activities of said department. The terms of office of the board members shall be four years, and until their successors are appointed and qualified. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-6. Meetings of the Board. — The said Board shall be required to meet at least twice per year; once in January and once in July, the exact time and place to be designated by the chairman of the Board, and the Board may hold such other meetings at different times and places as may be deemed by the Board necessary to the proper conduct of the business of the department. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-7. Compensation of Board.—The members of the Board shall receive not more than five dollars per diem and actual travel expenses while in attendance on Board meetings or while engaged in the business of the department. (1925, c. 122, s. 8; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-8. Powers and duties of the board.—The board shall have control of the work of the department, and may make such rules and regulations as it may deem advisable to govern the work of the department and the duties of its employees.

It shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in § 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water-powers, with recommendations and plans for promoting their more profitable use. and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing the laws relating to all fish.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The board may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to coöperate with other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the board to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources. (1925, c. 122, s. 9; 1927, c. 57.)

§ 113-9. Director of Conservation and Development. — The Governor shall appoint a suitable person as Director of Conservation and Development, who shall have charge of the work of the department, under the supervision of the board. The director shall serve for such time as the Governor may designate in his appointment, not to exceed, however, the term of office of the Governor making the appointment, and until his successor is appointed and qualified. (1925, c. 122, s. 12.)

§ 113-10. Duties of the director.—It shall be the duty of the director, under the supervision of the board and under such rules and regulations as the board may adopt, to make, or cause to be made, examinations and surveys of the economic and natural resources of the State and investigations of its industrial and commercial enterprises and advantages, and to perform such other duties as the board may prescribe in carrying out the objects of the department. (1925, c. 122, s. 13.)

§ 113-11. Compensation of the director.—The director shall receive an annual salary to be fixed by the Governor not to exceed the sum of six thousand dollars. (Rev., s. 2757; 1905, c. 542, ss. 2, 3; 1925, c. 122, s. 14; C. S. 6122(r).)

§ 113-12. Assistants.—The director shall appoint, subject to the approval of the board, such experts and assistants as may be found necessary to enable him to carry on successfully the work of the department, among whom he may appoint, subject to the approval of the board and as may be found necessary, a State geologist and a State forester. To the State forester and the State geologist such duties may be assigned by the said director, subject to the approval of the board, as may be desired, including those heretofore exercised by those officers so designated. (1925, c. 122, s. 15.)

§ 113-13. Power to examine witnesses. — The board, or the director, is authorized, in the performance of their duties, to administer oaths and to subpœna and examine witnesses. (1925, c. 122, s. 10.)

§ 113-14. Reports and publications.—The board shall prepare a report to be submitted by the governor to each general assembly showing the nature and progress of the work and the expenditures of the department.

The board may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such reports and information shall be published and distributed as the board may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11.)

§ 113-15. Advertising of state resources and advantages.—It is hereby declared to be the duty of the department of conservation and development to map out and to carry into effect, under the direction and with the approval of the director of the budget, a systematic plan for the nation-wide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the state of North Carolina and all of its resources. (1937, c. 160.)

§ 113-16. Cooperation with agencies of the Federal government.—The board is authorized to arrange for and accept such aid and cooperation from the several United States Government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the department.

The board is further authorized and directed to cooperate with the Federal power commission in carrying out the rules and regulations promulgated by that commission; and to act in behalf of the State in carrying out any regulations that may be passed relating to water-powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to cooperation with authorized agencies of other States. (1925, c. 122, s. 18; 1929, c. 297, s. 2.)

§ 113-17. Agreements, negotiations and conferences with Federal Government.—The Department of Conservation and Development is delegated as the state agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other States, or agencies of the Federal Government, relating to the joint administration or control over the surface or underground waters passing or flowing from one State to another: Provided, that in all matters relating to pollution of said waters the department and the State Board of Health, acting jointly, are hereby designated as the official agency under the provisions of this section. (1929, c. 297, s. 1.)

§ 113-18. Department authorized to receive funds from Federal Power Commission. — All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section seventeen and other sections of the Federal Water Power Act shall be paid to the account of the State Department of Conservation and Development as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department of Conservation and Development in prosecuting investigations for the utilization and development of the water resources of the State. (1929, c. 288.)

§ 113-19. Coöperation with other State departments.—The board is authorized to coöperate with the North Carolina Utilities Commission in investigating the water-powers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the water-power sites, developed water-powers, and such other information as may be desired in regard to water-power in the State; the board shall also coöperate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State. (1925, c. 122, s. 16; 1927, c. 57, s. 1; 1931, c. 312; 1933, c. 134, s. 8.)

§ 113-20. Coöperation with counties and municipal corporations.—The board is authorized to coöperate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such coöperation is to be conducted upon such terms as the board may direct. (1925, c. 122, s. 17.)

§ 113-21. Coöperation of counties with state in making water resource survey.—The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to coöperate with the Department of Conservation and Development or other association, organizations, or corporation in making surveys of any of the natural resources of their county, and to appropriate and pay out of the funds under their control such proportional part of the cost of such survey as they may deem proper and just. (1921, c. 208; 1925, c. 122, s. 4.)

§ 113-22. Control of State forests.—The board and director shall have charge of all State forests, and measures for forest fire prevention. (1925, c. 122, s. 22.)

§ 113-23. Control of Mount Mitchell Park and other State parks.—The board shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as State parks. (1925, c. 122, s. 23.)

Cross Reference.—For other sections relating to Mount Mitchell Park, see §§ 100-11 to 100-15.

§ 113-24. Protection of waterfowl food growing in public waters.—The director of the state department of conservation and development shall have absolute control and authority over all the aquatic plant foods or other waterfowl food growing in the public waters of North Carolina. None of same shall be sold, transported or shipped from the State except by permission in writing obtained from the director of the state department of conservation and development. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned not less than ninety (90) days nor more than six (6) months, or both such fine and imprisonment, in the discretion of the court. (1935, c. 135; 1941, c. 205.)

§ 113-25. Notice to department before beginning business of manufacturing products from mineral resources of State.—Every person, firm or corporation engaging in the manufacture or production of any product from any natural resources, classified as mineral products, shall before beginning such operation, or if already engaged in such business, within ninety days after March 9, 1927, notify the department of its intention to begin or continue such business, and also notify said department of the product or products it intends to produce.

Every person, firm or corporation now engaged or hereafter engaging in the manufacture or production of any product from any natural resources of the State classified as mineral products, shall notify the department when such person, firm or corporation shall discontinue such manufacture or production.

Any person, firm or corporation failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than twenty-five dollars and not less than five dollars, in the discretion of the court. (1927, c. 258.)

§ 113-26. Department authorized to dispose of mineral deposits belonging to state.—The State Department of Conservation and Development is fully authorized and empowered to sell, lease, or otherwise dispose of, any and all mineral deposits belonging to the State of North Carolina which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State; and the said Department of Conservation and Development is authorized and empowered to convey or lease the right to such person, or persons, as it may, in its discretion, determine to take, dig and remove from such bottoms such mineral deposits found therein belonging to the State of North Carolina as may be sold or leased, or otherwise disposed of to them by the said department. The department is authorized, in its discretion, to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the said department and to the best interest of the State of North Carolina: Provided, however, that before any such sale, lease, or contract is made the same shall be approved by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation, and subject to such other terms and conditions as may be imposed by the said department.

All of the proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the Treasury of the State, but the same shall be used exclusively by the Department of Conservation and Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including therein any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 385.)

§ 113-26.1. Bureau of mines. — The governor and the council of state are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the state justify and make reasonably necessary, to create and establish as a part of the department of conservation and development a bureau of mines, to be located in the western part of the state, with a view to rendering such aid and assistance to mining developments in this state as may be helpful in this expanding industry, and to allocate from the contingency and emergency fund such funds as may reasonably be necessary for the establishment and operation of such bureau of mines.

Upon the creation and establishment of such bureau of mines as herein authorized, the same shall be operated under such rules and regulations as may be adopted by the board of conservation and development. (1943, c. 612.)

§ 113-27. Investigation of coasts, ports and waterways of State. — The department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to coöperate with agencies of the Federal and State Government and other political sub-divisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the department to represent the State in connection with such duties. (1931, cc. 139, 266; 1937, c. 434.)

§ 113-28. Reimbursement of government for expense of emergency conservation work.—When and if, upon the sale of state land or its products, the director of conservation and develop-

ment determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March thirty-first, one thousand nine hundred and thirty-three, one-half of such profit from such sale of land, or one-half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for monies expended by it under such act, for the work so done, to the extent and at the rate of one dollar per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars per acre. The director of conservation and development shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the department of conservation and development, or paid over to it by any other authorized agency making the sale, to be so retained by such department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the department of conservation and development is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said department of conservation and development as now authorized and directed by law. This section shall not be construed to authorize the sale of state lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress. (1935, c. 115.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

Art. 2. Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by division of forestry.—The department of conservation and development through the division of forestry shall inaugurate the following policy and plan looking to the coöperation with private and public forest owners in this state in so far as funds may be available through legislative appropriation, gifts of money or land, or such coöperation with landowners and public agencies as may be available:

a. The extension of the forest fire prevention organization to all counties in the state needing such protection.

b. To coöperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

c. To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said department.

d. To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

e. To acquire small areas of suitable land in the different regions of the state on which to establish small, model forests which shall be developed and used by the said department of conservation and development as state demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1.)

§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.—The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said department of conservation and development title to such tax delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the state forester may be suitable for the purposes named in § 113-29, paragraph "e". (1939, c. 317, s. 2.)

§ 113-31. Procedure for acquisition of delinquent tax lands from counties.—In the carrying out of the provisions of § 113-30, the several boards of county commissioners shall furnish forthwith on written request of the department of conservation and development a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the state forester of the department of conservation and development shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in § 113-30, request shall be made through the director of said department to the county commissioners for the acquisition of such land by the department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the department through fee simple deed or other legal transfer, said deed to be approved by the attorney general of North Carolina, and shall then receive payment from the department as above outlined. (1939, c. 317, s. 3.)

§ 113-32. Purchase of lands for use as demonstration forests.—Where no suitable tax-delinquent lands are available and in the judgment of the department of conservation and development the establishment of a demonstration forest is advisable, the department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the attorney general, but nothing in §§ 113-29 to 113-33 shall allow the department of conservation and development to acquire land under the right of eminent domain. (1939, c. 317, s. 4.)

§ 113-33. Forest management appropriation.—Necessary funds for carrying out the provisions of §§ 113-29 to 113-33 shall be set up in the regular budget as an item entitled forest management. (1939, c. 317, s. 5.)

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States.—The governor of the state is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the state, the same to be held, protected, and administered by said board as state forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the state, suitable chiefly for the production of timber, as state forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State Park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this sentence can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the Clerk of the Superior Court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this sentence shall not be exercised. The attorney-general of the state is directed to see that all deeds to the state for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Such state forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of money in the state treasury not otherwise appropriated.

The board of conservation and development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining state-controlled forests, game refuges, public shooting grounds, state parks, state lakes, and other recreational areas or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the general assembly. The department of conservation and development is further empowered to segregate state hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, state parks, state lakes, and other recreational areas to be deposited in the state treasury to the credit of the department to be used for the administration of these areas. (1915, c. 253, s. 1; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; C. S. 6124.)

Local Modification.—Stokes: 1941, c. 118, s. 2.

Editor's Note.—The amendment of 1935 added the last paragraph of this section.

The 1941 amendment added the fourth and fifth sentences to the first paragraph, together with the proviso at the end of the fifth sentence.

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc. — Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. Said Department shall have authority to establish on these or other State lands under its charge forest nurseries for the growing of trees for planting on such State forest lands and to procure or acquire tree seeds for nursery for forest use. Such planting stock as is not required in the State forests may be sold at not less than cost to landowners within the State for planting purposes, but all such planting shall be done under plans approved by the Department. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars or by imprisonment for not exceeding thirty days. (1931, c. 111.)

§ 113-36. Application of proceeds from sale of products.—All money received from the sale of wood, timber, minerals, or other products from the state forests shall be paid into the state treasury and to the credit of the Board of Conservation and Development; and such money shall be expended in carrying out the purposes of this article and of forestry in general, under the direction of the Board of Conservation and Development. (1915, c. 253, s. 2; 1925, c. 122, s. 22; C. S. 6125.)

§ 113-37. Legislative authority necessary for payment.—Nothing in this article shall operate or be construed as authority for the payment of any money out of the state treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the general assembly. (1915, c. 253, s. 2½; C. S. 6126.)

§ 113-38. Distribution of funds from sale of forest lands.—All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (Thirty-five Stat., two hundred sixty), for the counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Jackson, Macon, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forest lands shall be located.

All funds which may hereafter come into the hands of the state treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; 1933, c. 537, s. 1; 1939, c. 152; 1943, c. 527; C. S. 6126 (a).)

Editor's Note.—The 1943 amendment made this section applicable to Craven county.

§ 113-39. License fees for hunting and fishing on government-owned property unaffected. — No wording in § 113-113, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the state of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, state or non-resident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the state of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

§ 113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition. — The department of conservation and development is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the department are desirable for state forests or state parks. (1935, c. 430, s. 1.)

§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations.—When lands are acquired or leased under § 113-40, the department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of §§ 113-40 to 113-44. (1935, c. 430, s. 2.)

§ 113-42. Disposition of revenues received from lands acquired.—All revenues derived from lands now owned or later acquired under the provisions of §§ 113-40 to 113-44 shall be set aside for the use of the department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the general assembly may prescribe, and fifty per cent shall be paid into the school fund to be used in the county or counties in which lands are located. (1935, c. 430, s. 3.)

§ 113-43. State not obligated for debts created hereunder.—Obligations for the acquisition of land incurred by the department under the authority of §§ 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (1935, c. 430, s. 4.)

§ 113-44. Disposition of lands acquired.—The department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of state forests and state parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. (1935, c. 430, s. 5.)

Art. 3. Private Lands Designated as State Forests.

§ 113-45. Governor may designate state forests. —The governor of the state, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line two thousand feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "state forest of North Carolina." (1909, c. 89, s. 1; C. S. 6127.)

§ 113-46. Publication of declaration.—The declaration of the governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a state forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a state forest of North Carolina for the term of thirty years. (1909, c. 89, s. 2; C. S. 6128.)

§ 113-47. Duty of the landowners.—The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed state forest described in the application, such manner to be in accordance with a working plan approved by the Department of Conservation and Development; and the owner or owners of such proposed state forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed state forest or a part thereof is situated one-half cent for every acre of such proposed state forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the governor establishing the said state forest shall be null and void to all intents and purposes. (1909, c. 89, s. 3; 1925, c. 122, s. 22; C. S. 6129.)

§ 113-48. State forest wardens appointed.—The governor shall appoint at his discretion, with the approval of the commissioners of the county

wherein a state forest is situated, as state forest wardens such a man or men over twenty-one years of age as may be designated for appointment by the owner or owners of such state forest. Such state forest wardens are to receive no compensation other than that which the owner or owners of the state forest may pay to them. (1909, c. 89, s. 4; C. S. 6130.)

§ 113-49. Powers of state forest wardens.—The state forest wardens may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Criminal Law for setting fire to woods, for camp-fires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the state forest. They shall safeguard against trespass, and notably against fire, in the state forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the state forest warden shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force. (1909, c. 89, s. 5; C. S. 6131.)

Editor's Note.—For an article on the law of arrest in North Carolina, see 15 N. C. Law Rev. 101.

§ 113-50. Fines imposed.—The minimum fine for any offense mentioned in the preceding section committed within any state forest shall be fifty dollars if within the jurisdiction of the superior court, and twenty-five dollars if within the jurisdiction of a justice of the peace. (1909, c. 89, s. 6; C. S. 6132.)

Art. 4. Protection against Forest Fires.

§ 113-51. Board of Conservation and Development.—The State Board of Conservation and Development may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this state, and it is hereby authorized to enter into an agreement with the secretary of agriculture of the United States for the protection of the forested watersheds of streams in this state. (1915, c. 243, s. 1; 1925, c. 122, s. 22; C. S. 6133.)

§ 113-52. State forester and forest wardens.—The forester of the Department of Conservation and Development, who shall be called state forester, and shall be ex officio state forest warden, may appoint, with the approval of the Board of Conservation and Development, one county forest warden and one or more deputy forest wardens in each county of the state in which after careful investigation the amount of forest land and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; 1925, c. 106, s. 1, c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; C. S. 6134.)

Cross Reference.—For section making game protectors, deputy game protectors, and refuge keepers ex-officio forest wardens, see § 113-93.

Editor's Note.—The amendment of 1935 inserted the words "after careful investigation" and substituted the words "warrant the establishment of a forest fire organization" for the words "make it advisable and necessary."

§ 113-53. Duties of state forester.—The state forester, as the state forest warden, shall have supervision of forest wardens, shall instruct them in their duties, issue such regulations and instructions to all forest wardens as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted. (1915, c. 243, s. 3; 1925, c. 106, s. 1; 1927, c. 150, s. 2; C. S. 6135.)

§ 113-54. Duties of forest wardens; payment of expenses by state and counties.—Forest wardens shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the state forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the state forester, and shall perform such other acts and duties as shall be considered necessary by the state forester for the protection of the forested area of the counties from fire. The warden shall keep an itemized account of all expenses thus incurred and send such accounts, verified by affidavit, to the state forester monthly, for his examination. Upon approval by the state forester such accounts shall be sent by the state forester to the board of county commissioners of the county in which such expenses have been incurred, and upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to have issued a warrant on the county treasury for the payment of one-half of such account, said payments of counties' share of such expenditures to be made within one month after receipt of such statements from the state forester, provided that the total payments by the county shall not exceed five (5) mills per acre of total woodland area in said county in any one calendar year, unless specifically authorized by the county commissioners; appropriations for meeting the counties' share of the fire control costs to be set up annually by the commissioners in the county budget. (1915, c. 243, s. 4; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; C. S. 6136.)

Local Modification.—Cumberland: 1943, c. 660.

Editor's Note.—The amendment of 1935 made many changes in this section including the provision for manning lookout towers and other points. It also added the latter part of the section relating to payment of expenses.

The 1943 amendment struck out the words "to meet an emergency" formerly appearing after the word "commissioners" in the fourth line from the end of the section.

§ 113-55. Powers of forest wardens to prevent and extinguish fires.—Forest wardens shall prevent and extinguish forest fires and enforce all statutes of this state now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest warden may arrest, without a warrant, any person or persons taken by him in the act of violating any of the laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drouth the state forester may establish a fire patrol in any district, and in case of

fire in or threatening any forest or woodland the forest warden shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest warden or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest warden or person summoned by him for crossing or working upon lands of another in connection with his duties as forest warden. (1915, c. 243, s. 6; 1925, c. 106, ss. 1, 2; 1925, c. 240; 1927, c. 150, s. 4; C. S. 6137.)

Workmen's Compensation Act Applicable to Person Appointed by Warden to Assist.—A forest warden of a county is given authority by this section to appoint persons between certain ages to assist him in fighting forest fires with pain of penalty upon refusal, and a person so appointed is entitled to receive a small hourly compensation for the services so rendered, and one so appointed is an employee of the state within the meaning of the Workmen's Compensation Act, and is entitled to compensation thereunder for an injury received in the course of and arising out of his duties imposed by such appointment. Moore v. State, 200 N. C. 300, 156 S. E. 806.

Cited in Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659.

§ 113-56. Compensation of forest wardens.—Forest wardens shall receive compensation from the Board of Conservation and Development at a reasonable rate to be fixed by said board not to exceed the sum of thirty cents per hour for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in fighting or extinguishing any fire, according to an itemized statement to be rendered the state forester every month, and approved by him. Forest wardens shall render to the state forester a statement of the services rendered by the men employed by them or their deputy wardens, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the state forester. If said bill be duly approved by the state forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; 1924, c. 60; 1925, c. 106, ss. 1, 3, c. 122, s. 22; C. S. 6138.)

§ 113-57. Woodland defined.—For the purposes of this article, woodland is taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C. S. 6139.)

§ 113-58. Misdemeanor to destroy posted forestry notice.—Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the state forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting the forests in this state from fire, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not exceeding thirty days. (1915, c. 243, s. 5; C. S. 6140.)

§ 113-59. Coöperation between counties and state in forest fire protection.—The board of county commissioners of any county are hereby authorized and empowered, in their discretion, to coöperate with the Department of Conservation and Development in the protection from fire of the forests within their respective counties, and to appropriate and pay out of the funds under their control for such protection an amount not to exceed one-half of the total expended by said department in such county during any one year for such protection: Provided, that said board of county commissioners may in addition agree with the Department of Conservation and Development to pay any part of or all the expenses incurred in extinguishing forest fires within said county after satisfying themselves that such expenses were legitimate and proper. (1921, c. 26; 1925, c. 122, s. 22; C. S. 6140(a).)

§ 113-60. Instructions on forest preservation.—It shall be the duty of all district, county, township wardens, and all deputy wardens provided for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire wardens all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such wardens by the State and Federal forestry agencies touching or dealing with forest fires and forest preservation.

It shall be the duty of the various wardens herein mentioned under the direction of the State Forester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and wardens shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3.)

Art. 5. Corporations for Protection and Development of Forests.

§ 113-61. Private limited dividend corporations may be thus formed. — Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the director of the department of conservation and development shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation

laws of state of North Carolina, except where such provisions are in conflict with this article. (1933, c. 178, s. 1.)

Cross Reference.—As to corporations generally, see §§ 55-1 et seq.

§ 113-62. Manner of organizing.—A corporation formed under this article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of state of North Carolina, except where such provisions are in conflict with this article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the director of the department of conservation and development, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the director of the department of conservation and development. (1933, c. 178, s. 2.)

§ 113-63. Directors.—There shall not be less than three directors, one of whom shall always be a person designated by the director of the department of conservation and development, which one need not be a stockholder. (1933, c. 178, s. 3.)

§ 113-64. Duties of supervision by director of department of conservation and development. — Corporations formed under this article shall be regulated by the director of the department of conservation and development in the manner provided in this article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this article pro-rata according to their respective stock capitalizations. The director of the department of conservation and development shall:

(a) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article and for the protection and development of forests subject to its jurisdiction.

(b) Order all corporations organized under this article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the director of the department of conservation and development, or to refrain from doing any acts in violation thereof.

(c) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the director of the department of conservation and development.

(d) Require every such corporation to file with the director of the department of conservation and development annual reports and, if the director of the department of conservation and development shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the director of the department of conservation and development may require. (1933, c. 178, s. 4.)

§ 113-65. Powers of director. — The director of the department of conservation and development may:

(a) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(b) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The director of the department of conservation and development shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(c) Enforce the provisions of this article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5.)

§ 113-66. Provision for appeal by corporations to governor.—If any corporation organized under this article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the director of the department of conservation and development, or any valuation or appraisal of any of its property made by the director of the department of conservation and development, or any failure of or refusal by the director of the department of conservation and development to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the governor by filing with him a claim of appeal upon which the decision of the governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the governor in a written mandate to the director of the department of conservation and development, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6.)

§ 113-67. Limitations as to dividends. — The shares of stock of corporations organized under this article shall have a par value and, except as provided in § 113-69 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum per annum on stock having a preference as to dividends, or eight per centum per annum on stock not having a preference as to dividends, except

that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ 113-68. Issuance of securities restricted.—No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the state of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the director of the department of conservation and development. (1933, c. 178, s. 8.)

§ 113-69. Limitation on bounties to stockholders.—Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in § 113-67 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9.)

§ 113-70. Earnings above dividend requirements payable to state. — Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in § 113-67 shall be paid over to the state of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the director of the department of conservation and development shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10.)

§ 113-71. Dissolution of corporation. — Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the state of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within twenty years of the date of its organization unless the same is accompanied by a certificate of the director of the department of conservation and development consenting to such dissolution. (1933, c. 178, s. 11.)

§ 113-72. Cutting and sale of timber. — Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the director of the department of conservation and development, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12.)

§ 113-73. Corporation may not sell or convey without consent of director, or pay higher interest rate than 6%.—No such corporation shall:

(a) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the director of the department of conservation and development of the terms of such sale, transfer or assignment, and unless the director of the department of conservation and development shall consent thereto, and if the director of the department of conservation and development shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the director of the department of conservation and development for such period as the latter may require;

(b) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum per annum without the consent of the director of the department of conservation and development.

(c) Mortgage any real property without first having obtained the consent of the director of the department of conservation and development. (1933, c. 178, s. 13.)

§ 113-74. Power to borrow money limited.—Any such corporation formed under this article may, subject to the approval of the director of the department of conservation and development, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the director of the department of conservation and development, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the director of the department of conservation and development for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14.)

§ 113-75. Director to approve development of forests. — No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the director of the department of conservation and development, and such approval shall not be given unless:

(1) The director of the department of conservation and development shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the director of the department of conservation and development shall require of the activities to be included in the project, such statement to set forth the proposals as to (a) fire prevention and protection, (b) protection against insects and tree diseases, (c) protection against damage by livestock and game, (d) means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and (e) planting and spacing of trees.

(2) There shall be submitted to the director of the department of conservation and development

a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the director of the department of conservation and development as to where such funds are to be secured.

(3) The director of the department of conservation and development shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except in so far as the director of the department of conservation and development shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the director of the department of conservation and development, and that it will at all times comply with such rules and regulations concerning the project as the director of the department of conservation and development shall from time to time impose. (1933, c. 178, s. 15.)

§ 113-76. Application of corporate income.—The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the director of the department of conservation and development to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus and/or to the payment of dividends not exceeding the maximum fixed by this article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16.)

§ 113-77. Reorganization of corporations.—Reorganization of corporations organized under this article shall be subject to the supervision of the director of the department of conservation and development and no such reorganization shall be had without the authorization of the director of the department of conservation and development. (1933, c. 178, s. 17.)

Art. 6. Coöperation for Development of Federal Parks, Parkways and Forests.

§ 113-78. Committee to foster program for development of federal parks, etc.—The governor of the state of North Carolina is authorized and empowered to appoint a committee of three persons from each of the counties of Surry, Alleghany, Ashe, Wilkes, Caldwell, Watauga, Burke, Avery, Yancey, Mitchell, Henderson, Buncombe, Haywood, Jackson, Swain and McDowell, and any other counties in the state of North Carolina desiring to actively participate in the program of coöperation contemplated by this act. (1941, c. 377, s. 1.)

§ 113-79. Meeting of committee; executive committee; duties of executive secretary.—The members of said committee shall meet within thirty days after their appointment and shall elect or appoint an executive committee, from their membership, of not less than three nor more than five members, and it shall be the duty of such executive committee to select and recommend to the governor for appointment a full time executive secretary as the representative of the various counties interested, to contact the different federal and state agencies and departments and assist in the formulation of a workable plan between the federal agencies, the state agencies, and the various counties of the state as set out in § 113-78, in order that the people in the counties affected, and also the people in the state as a whole, may receive the full economic and social benefits from the operation of federal parks and parkways to which they are entitled. (1941, c. 377, s. 2.)

§ 113-80. Appointment of executive secretary; additional duties; salary.—The governor of the state is authorized, upon the recommendation of the executive committee above referred to, to appoint an executive secretary, whose duties, in addition to those set out in § 113-79, shall be fixed by the executive committee, the governor and the director of the department of conservation and development. The salary of said executive secretary shall be fixed by the governor and the advisory budget commission. (1941, c. 377, s. 3.)

§ 113-81. Department of conservation and development authorized to make agreements with federal and state agencies.—The department of conservation and development of the state of North Carolina is authorized to enter into agreements with the proper agencies of the federal and state governments in order to promote said program of coöperation, but no agreement shall be entered into until same has been approved by the executive committee hereinbefore set up and by the governor of the state. (1941, c. 377, s. 4.)

SUBCHAPTER III. GAME LAWS.

Art. 7. North Carolina Game Law of 1935.

§ 113-82. Title of article.—This article shall be known by the short title of "The North Carolina Game Law." (1935, c. 486, s. 1.)

Local Modification.—Currituck: 1935, c. 160.

Historical Note.—The administration of the game laws was placed in the state game commission by Public Laws 1927, c. 51 (the 1927 game Law). Public Laws 1927, c. 250, purported to abolish the state game commission and transfer its powers and duties to the department of conservation and development. (However, see Public Laws 1927, c. 253). Under the 1935 Game Law (§§ 113-82 to 113-109), administration is placed in the board of conservation and development. See § 113-84.

Under the 1927 Game Laws, the principal administrative officer was the state game warden. The office of state game warden and the office of commissioner of inland fisheries were abolished by Public Laws 1933, c. 357; and said act authorized the board of conservation and development to appoint "a person of scientific training and experience in the propogation and preservation of fish and game" to administer the duties prescribed for the state game warden and commissioner of inland fisheries. Under the 1935 Game Law, the principal administrative officer is the commissioner of game and inland fisheries. See §§ 113-83, 113-90.

§ 113-83. Definitions.—For the purpose of this article the following shall be construed, respectively, to mean:

Board—Board of conservation and development.

Commissioner—Commissioner of game and inland fisheries.

Person—The plural or singular as the case demands, including individuals, associations, partner-

ships, and corporations, unless the context otherwise requires.

Take—Whenever it is made lawful to "take" birds or animals, or parts thereof, or birds' nests or eggs, it shall mean the pursuit, hunting, capture or killing of birds or animals, or collecting of birds' nests or eggs in the manner, at the time, and by means specifically permitted. Whenever it is made unlawful to "take" birds or animals or parts thereof, or birds' nests or eggs, the word "take" shall include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting birds or animals, collecting birds' nests or eggs, and all lesser acts, such as disturbing or annoying birds or animals, or placing or using any net or other device for the purpose of taking birds or animals, whether or not they result in the taking of such birds or animals.

Open Season—The time during which birds or animals may be lawfully taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

Closed Season—The time during which birds or animals may not be taken.

Transport — Shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, carriage, or export.

Common Carrier — Railroad companies, boat lines, express companies, bus lines, and any person transporting persons or property for hire.

Game Animals—Deer, bear, fox, squirrels and rabbits.

Fur Bearing Animals — Skunk, muskrat, raccoon, opossum, beaver, mink, otter and wildcat.

Non-Game Animals—All wild animals except game and fur bearing animals.

Upland Game Birds—Quail, commonly known as Bob White or Partridge, Wild turkey, grouse, and pheasants of all kinds.

Migratory Wild Waterfowl—Anatidaw or waterfowl, including brant, wild duck, geese and swans; migratory wild birds, gruiae or cranes, including little brown, sandhill, and whooping cranes, rallidae, or rails, including coots, gallinules, sora, and other rails; limicolae, or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, sand pipers, snipes, stilts, surf birds, turnstones, willet, woodcock, and yellow legs; columbidae or pigeons, including doves and wild pigeons.

Non-Game Birds—All wild birds except upland game birds and migratory game birds.

Game—All game animals and game birds. (1935, c. 486, s. 2.)

§ 113-84. Powers and duties of the board of conservation and development.—It shall be unlawful to take or pursue any of the wild life of the State at any time or in any manner, except at such times and in such manner as the supply of said wild life may justify, and the said board is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

1. Fix seasons and bag limits or close seasons on any species of game, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the board.

2. Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.

3. Acquire by purchase, grant, condemnation, lease, agreement, gift, or devise lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:

(a) Game farms or game refuges.

(b) Lands or waters suitable for game, bird, or fur-bearing animal restoration, propagation or protection.

(c) For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the board.

(d) To extend and consolidate by exchange lands or waters suitable for the above purposes.

(e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

4. Enter into coöperative agreements with educational institutions and state, federal, or other agencies, to promote wild life research and to train men for wild life management.

5. Enter into coöperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects. (1935, c. 486, s. 4.)

§ 113-85. Limitations on powers.—Nothing in this article, however, shall be construed to authorize the board to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law. (1935, c. 486, s. 4.)

§ 113-86. Organization of work. — The board shall establish such departmental bureaus or divisions and shall authorize the commissioner to employ such experts, clerks, or other employees as it may deem necessary for the conduct of the work of the board, and it shall fix their salaries or other compensation, which shall be paid out of the game and fish fund. The board shall authorize such scientific and other studies as may be deemed necessary to its work, and shall collect, classify and disseminate such statistics, data and information as in its discretion will tend to promote the objects of this article. (1935, c. 486, s. 4.)

§ 113-87. Permits to kill game injurious to agriculture.—The board shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for re-stocking, or may be disposed of in such other manner as it may determine: Provided, that birds and animals committing depredations may be taken at any time

without a permit while committing, or about to commit, such depredations. Any permit issued pursuant to this section shall expire within four (4) months after the date of issuance. (1935, c. 486, s. 4.)

§ 113-88. Publication of rules and regulations of board.—Rules, regulations and orders of the board shall be published in the following manner: Those having general application throughout the State shall be published at least once in some newspaper published in and having general circulation throughout the State and at each county court house door; those of special character having local application only shall be published at least once in some newspaper published in and having general circulation in the locality wherein such rules, regulations and orders are applicable and at the county court house door; but, if no such newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable and at the county court house door. Such rules, regulations and orders may also be given such other publicity as the board may deem desirable. (1935, c. 486, s. 5.)

§ 113-89. County game commissions. — This article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this article and the direction of the policies and administration of this article and other laws which may exist for the same purpose as this shall be vested in and abide with the board and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the board and the exercise of any powers by them shall require the approval of the board of conservation and development. (1935, c. 486, s. 6.)

Editor's Note.—The case of State v. Sizemore, 199 N. C. 687, 155 S. E. 724, decided under the provisions of C. S. §§ 2079 to 2086, held that the effect of the North Carolina Game Law is to make county game commissions subordinate to the state commission, the powers of the former being merely advisory or recommendatory until approved by the state commission.

§ 113-90. Appointment of commissioner; salary; expenses; bond; office. — The director with the approval of the board shall appoint a commissioner, who shall receive a salary fixed by the board, not exceeding five thousand dollars per annum, payable monthly upon his own requisition. The commissioner shall be reimbursed for his actual and necessary traveling expenses, not to exceed one thousand five hundred dollars per annum, incurred in the discharge of his official business when he is away from the place where his office is located, to be paid by proper voucher. The commissioner shall give bond in the sum of ten thousand dollars, to be approved by the state treasurer, conditioned upon his faithful performance of the duties imposed upon him by the provisions of this article. The bond shall be filed with the state treasurer and the premiums paid from the state game fund. The commissioner shall have his office in the offices of the board at the capital. (1935, c. 486, s. 7.)

§ 113-91. Powers of commissioner.—In accordance with, and subject to, such rules and regulations as may from time to time be adopted by the board relating thereto, the commissioner shall have the following powers:

(a) To Issue Permits. The commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars ($2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a state game department or commission to re-stock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens of any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transporta-

tion of birds and animals raised in domestication pursuant to the provisions of this article.

(b) To Employ Deputies. The commissioner may employ such game protectors, deputy game protectors, refuge keepers, employees, and agents as shall be necessary for the proper carrying out of the provisions of this article, and with the approval of the board shall arrange the compensation for such protectors, deputy protectors, refuge keepers, employees and agents. Qualifications for the office of game protector shall be considered in the appointment of all game and fish protectors who shall be required to pass an examination showing their knowledge of provisions of the game and fish laws, the purposes of the protection of wild life, and essential matters of administration of these statutes. Said examination shall be prepared under the supervision of the commissioner and given in the county or district in which the said protector will serve and shall be conducted under the direction of the commissioner or some suitable person designated by him. The commissioner shall have general supervision and control over all such protectors, deputy protectors, refuge keepers, and employees, and shall enforce all the provisions of this article and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto. It shall be the duty of the protectors, deputy protectors, refuge keepers, and employees to obey and carry out the instructions and directions of the commissioner for the enforcement of this article.

(c) To Prepare Form of License. It shall be the duty of the commissioner to prepare forms of licenses and other forms necessary for use in the administration of the provisions of this article and to properly distribute them to the officers and persons required to issue licenses or use such forms. Each license shall be issued in the name of the commissioner and countersigned by the officer or person issuing it. Each licensee shall sign his name in ink on the license issued him. The commissioner shall cause the license accounts of officers and persons issuing licenses to be examined and audited at least once during each year, and shall require such officers and persons promptly to pay him, in accordance with the provisions of this article, all monies received by them from the sales of licenses.

(d) To Execute Warrants. The commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to seize and confiscate all instruments or devices illegally used in taking wild birds or animals, and to hold the same to be disposed of as provided in this article; to arrest without warrant any persons committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(e) To Dispose of Seized Game and Devices. All game birds and the edible portions of game animals seized under the provisions of this article shall be disposed of by the commissioner, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Non-game birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the commissioner by gift to scientific educational institutions within the State, or may be retained by him for use of the board, or in his discretion they may be destroyed. The commissioner shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provisions of this article, if the person from whom the same were seized, is convicted of violating any of the provisions of this article, or if the owner thereof is unknown, may be sold for cash by the commissioner, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the commissioner or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the commissioner immediately. The commissioner or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the State, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this article, the article so seized, unless it be an instrument or device, the use of which is prohibited by this article, or money derived from the sale thereof if it was perishable property, shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the commissioner of all property by him confiscated because of a violation of the game laws of this State, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The commissioner shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this article. (1935, c. 486, s. 8.)

Editor's Note.—It was held in Birchfield v. Department of Conservation, etc., 204 N. C. 217, 167 S. E. 855, decided under a prior law (1927, c. 51), that, although a man may have been appointed deputy game warden, he is not an employee of the state before he has received word of his appointment and accepted it.

§ 113-92. Officers constituted deputy game protectors. — All sheriffs, deputy sheriffs, police

officers, forest wardens, park patrolmen, refuge keepers, constables and all other peace officers are hereby made deputy game protectors, and it shall be made their duty to aid in the enforcement of this law. The arrest fee taxed in bills of cost in criminal actions growing out of the violation of this article or violation of laws regulating fishing, except commercial fishing, when the arrest is made by a game protector or a deputy game protector, shall be paid by the Justice of the Peace or other Criminal Court taxing same into the general school fund of the county where the violation took place. No fee shall be taxed in bills of cost for the use and benefit of a game protector or deputy game protector, who appears as a witness at the trial of such case. Any game protector or deputy game protector, who takes arrest fees or witness fees in violation of this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned or both in the discretion of the court, and in addition thereto, upon conviction, he shall forfeit his office. This article shall not apply to sheriffs or deputy sheriffs, who are on fee basis and who make arrests and appear as witnesses in such cases. In no event shall the cost of an action involving the violation of the game and fish laws be taxed against the county or state. (1935, c. 486, s. 9; 1939, c. 119.)

Editor's Note.—The 1939 amendment so changed this section that a comparison is not practicable.

§ 113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens. —The commissioner, protectors, deputy protectors and refuge keepers are hereby made ex-officio special forest wardens and charged with the duty of reporting to the forest wardens all infractions of the forest fire law and to assist forest wardens in extinguishing forest fires and generally enforcing the laws and regulations for the preservation of the forests. (1935, c. 486, s. 10.)

Cross Reference.—As to state forester and forest wardens, duties, etc., see §§ 113-52 et seq.

§ 113-94. Payment to state treasurer of license fees. — The commissioner shall promptly pay to the state treasurer all monies received by him from the sale of hunting licenses or from any other source arising through the administration of this article, and the state treasurer shall deposit all such money in a special fund, to be known as the state game fund, and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the board in the enforcement of this article and for the purposes of this article. (1935, c. 486, s. 11.)

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the commissioner, game protectors and such other persons as the commissioner may authorize in writing:

License Fees

Non-resident hunting license	$15.25
State resident hunting license	2.10
Combination hunting and fishing license	3.10
County hunting license	1.10

Said applicant, if a resident of this State, shall pay to the officer or person issuing the license the sum of one ($1.00) dollar as a license fee, and the sum of ten (10c) cents as a fee to the officer or person, other than the commissioner, for issuing the same, and shall obtain a county resident hunting license, which shall entitle him to take game birds and animals in the county of his residence, or shall pay to the officer or person issuing the license the sum of two dollars ($2.00) as a license fee and the sum of ten (10c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a resident state hunting license, which shall entitle him to take game birds and animals in any county of the State at large, as authorized by this article. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a non-resident of this State, or a resident for less than six months, or an alien, shall pay to the officer or person issuing the license fifteen ($15.00) dollars as a license fee and the sum of twenty-five (25c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a non-resident hunting license, which shall entitle him to take game birds and game animals as authorized by this article. The commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a state resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of three ($3.00) dollars as a license fee and ten (10c) cents as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, it shall be lawful for any person or persons, whether a resident or non-resident of the state of North Carolina, to hunt foxes with dogs in Northampton county without procuring a hunting license.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars ($10.00), the board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a non-resident license to any game agent of the United States or of a state of the United States

without payment of any fees, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a non-resident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five ($5.00) dollars plus twenty-five (25c) cents for the issuing officer. Such non-resident must make a sworn application to the commissioner, on forms provided by said commissioner, setting forth the location of such lands, the non-resident's title thereto, and such other information as may be required by the commissioner, and if such non-resident be a corporation, then only the non-resident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a non-resident landowner's hunting license, as herein provided.

Any non-resident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1.)

§ 113-96. Trappers' Licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of two dollars ($2.00) as a license fee, and the sum of twenty-five cents ($.25) as a fee to the officer or person other than the commissioner of game and inland fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of three dollars ($3.00) as a license fee and the sum of twenty-five cents ($.25) as a fee to the officer or person other than the commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars ($25.00) as a license fee, and the sum of twenty-five cents ($.25) as a fee to the officer or person, other than the commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the commissioner, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3.)

§ 113-97. Term and use of license.—Each license shall be void after the first day of August next succeeding the date of its issuance. Each licensee shall have his license on his person at all times when he is taking game animals or game birds, and shall exhibit the same for inspection to any game protector or other officer requesting to see it. No person shall alter or loan, change, or transfer any license issued pursuant to the provisions of this article, nor shall any person other than the person to whom it is issued use the same. (1935, c. 486, s. 13.)

§ 113-98. Exemption.—Any person who is a resident of this State, and any dependent member of his family under twenty-one years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this article, on lands owned by such resident without a license; and a minor member of a family resident of this State, under sixteen years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a non-resident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such non-resident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14.)

§ 113-99. Disposition of license fees. — The license fees provided to be paid in this article shall be remitted by the officers or persons issuing the license on the first and fifteenth of each month to the commissioner with a schedule setting forth the name and address of each licensee, the serial number and classification of the license, and the amount paid for each license issued, except that the officer or person issuing licenses shall, before making such remittance, deduct and retain as his fee the amount of fees provided to be paid to him by the provisions of this article for issuing license. On or before the first day of April of each year, each officer or person authorized to issue license shall forward to the commissioner the stubs of licenses issued by him and all unused licenses, together with a report covering the number of licenses issued and the amount of license money received by him; the commissioner shall tabulate the total number of licenses of all kinds issued in the State and the fees received therefor, and he shall include such data in his biennial report. (1935, c. 486, s. 15.)

§ 113-100. Open season.—The open seasons for taking game animals and game birds, subject to changes by the board of conservation and development from time to time as the supply of wild life shall justify, are as follows:

Bear .....October 1 to January 1
Deer (male) .....October 1 to January 1
Mink, Muskrat, Otter .....November 1 to February 15
Opossum, Raccoon (with gun or dogs) .....October 1 to February 1
Opossum, Raccoon (trapping) .....November 1 to February 15
Quail .....Thanksgiving Day of each year to February 15
Rabbit .....Thanksgiving Day of each year to February 15
Squirrel .....September 15 to January 15

Turkey .....Thanksgiving Day of each year to February 1
Woodcock .....December 1 to December 31
Ruffed Grouse ....November 20 to December 15
Wildcat, Weasel, Skunk .....No closed season
Beaver, Buffalo, Elk.
Doe Deer and Pheasants .....No open season
Dove, Ducks, Geese, Brant
and other migratory waterfowl ....Federal regulations
Snipe, Sora, Marsh Hens,
Rails, Gallinules .....Federal regulations
Fox .....County regulations

The open and closed season on all migratory wild fowl shall conform with the United States biological survey legislation, irrespective of seasons as set forth by the North Carolina Game Law. (1935, c. 486, s. 16.)

§ 113-101. Bag Limits.—It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Board of Conservation and Development may alter these bag limits as changes in the supply of wild life may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, Muskrat, Otter	No limit	No limit
Opossum, Raccoons	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed Grouse	2	10

Woodcock—Federal regulations.
Dove, Ducks, Geese, Brant and other migratory waterfowl—Federal regulations.
Snipe, Sora, Marsh Hens, Rails, Gallinules—Federal regulations.
Wildcat, Weasel and Skunk—No limit.
Fox—County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first ten (10) days next succeeding the close of such open season, but a person may not have in possession at any one time more than two (2) deer, two (2) wild turkeys and two days' bag limit of other game animals or game birds.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game law. (1935, c. 486, s. 17.)

§ 113-102. Protected and unprotected game.—Birds and animals for which no open season is provided shall be classed as protected and it shall be unlawful to take or possess them at any time. Unprotected birds and animals may be taken, possessed, bought, sold and transported at any time in any manner.

1. Unprotected Birds: English Sparrows, Great Horned Owls, Cooper's Hawks, Sharp-Shinned Hawks, Crows, Jays, Blackbirds, Starlings and Buzzards and their nests and eggs.

2. Unprotected Animals: Wildcats, Weasels and Skunks: Provided, that unprotected birds and animals may not be killed by the use of poison or dynamite except under permit issued by the commissioner.

3. No person shall take squirrels at any time in any public park. Rabbits and squirrels lawfully taken may be bought and sold during the open season and may be possessed for the first five days next succeeding the close of such season except that the board shall have the power to prohibit the sale of rabbits and squirrels at such times as conditions require. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. (1935, c. 486, s. 18.)

§ 113-103. Unlawful possession. — The possession, transportation, purchase or sale of any dead game animals, dead game birds, or parts thereof during the closed season in North Carolina, though said animals, birds, or any parts thereof were taken or killed without the State in the open season in such State, shall be unlawful; and the possession of same shall be prima facie evidence of the violation thereof: Provided, said animals or birds or parts thereof belong to any one of the family or classes protected by the North Carolina Game Law as amended to date.

The commissioner, all game protectors, deputy game protectors and refuge keepers shall have the power to enter and search any refrigeration plant, refrigerators and ice boxes of all public refrigerating storage plants, meat shops, hotels, restaurants, or other public eating places, in which such officer, making such search, has reasonable grounds to believe that game taken, killed or stored in violation of the North Carolina Game Law has been concealed or stored, and which will furnish evidence of a violation of such laws; and such search may be made without warrant, except that no dwelling may be searched without a warrant. (1935, c. 486, s. 19.)

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the board, in any hotel, restaurant, café, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and

sunset with a shot gun not larger than number ten (10) gauge, or a rifle, unless otherwise specifically permitted by this article. No person shall take any game animals or game birds or migratory game birds from any automobile, or by aid of or with the use of any jack-light, or other artificial light, net, trap, snare, fire, salt-lick or poison; nor shall any such jack-light, net, trap, snare, fire, salt-lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken from an airplane, power boat, sail boat, or any boat under sail, or any floating device towed by a power boat or sail boat; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shot gun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground. (1935, c. 486, s. 20; 1939, c. 235, s. 1; C. S. 2124.)

Editor's Note.—The 1939 amendment added the last paragraph.

§ 113-105. License to engage in business of game propagation; sale and transportation regulated.—Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section, may make application in writing to the commissioner for a license to do so. The commissioner, when it shall appear that such application is made in good faith, shall upon the payment of a fee of two dollars ($2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except quail and wild turkey in any manner and at any time and sell the carcasses for food as hereinafter prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the board; and, provided further, that propagated migratory game birds may be killed by shooting only during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the commissioner shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the commissioner at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird before attaining the age of four weeks, shall have had removed from the web of one foot a portion thereof in the form of a "V" large enough to make a well defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the board.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such propogated game birds are to be transported and number of each kind contained therein. The board shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents. The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boarding house, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or café, boarding house or club, desiring to serve game to his patrons, may make application to the department of conservation and development for a license to do so. The department, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars ($10.00) issue to each such applicant a license permitting the holder thereof to buy and possess

game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the department at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the department not later than January fifteenth. The department shall furnish the forms on which these records are to be kept. The board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this article. (1935, c. 486, s. 29.)

§ 113-106. Unlawful transportation.—No common carrier or employee of such carrier shall, while engaged in such business, transport for the owner any wild animals or birds or any part thereof, or nest or eggs of any bird, nor shall any such carrier or employee knowingly receive or possess the same for shipment for another, unless the person offering the same for shipment is in possession of valid hunting license or collecting permit. A person who is a resident of this State may transport within the State during the open season therefor, game birds and game animals lawfully taken. A person who is a nonresident of the State and a holder of a valid nonresident hunting license, may, under a permit issued by the commissioner, transport within this State, or from a point within to a point without, during the open season therefor, game birds and game animals or parts thereof lawfully taken by him, but he shall not transport out of the State during any one open season more than two male deer and two wild turkeys, or during one calendar week more than two days' bag limit of other game animals and game birds. A person may transport, buy, or sell at any time or in any manner, non-game animals and the fur of fur-bearing animals lawfully taken and tagged. A person may transport, and possess at any time and in any manner the head, antlers, hides, feet or skin of game animals or game birds lawfully taken. A person may buy and sell at any time the mounted specimens of heads, antlers, hides and feet of game animals, and the skins of game birds lawfully taken and possessed: Provided, the person selling such specimens has a written permit issued by the commissioner, authorizing him to do so. (1935, c. 486, s. 22; 1941, c. 231, s. 1.)

Editor's Note.—Prior to the 1941 amendment the second, third and fifth sentences relating to permissible transportation excepted transportation by parcel post.

§ 113-107. Marking packages in which game transported. — Any package in which any wild animal or bird or parts thereof or egg or nest of any wild bird is transported shall have clearly and conspicuously marked on the outside thereof, the names and addresses of the consignor and consignee, together with an accurate statement of the number and kinds of animals or birds or parts thereof, or eggs or nests, contained therein. (1935, c. 486, s. 23.)

§ 113-108. Privately owned public hunting grounds.—In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the State of North Carolina, through the department of conservation and development, is authorized to recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina Game Law, subject to the following conditions, stipulations, and such rules as the conservation board may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this article is one thousand (1,000) acres;

(2) Owners of land included in a hunting ground formed under this article must organize, adopt rules and regulations for the operation of said hunting grounds, and be recognized by the department of conservation and development before such hunting grounds are put into operation under this article;

(3) The department of conservation and development will list and assist in advertising such public hunting grounds as are formed under this article, subject to such rules and regulations as may be adopted by the board from time to time, and in accordance with the North Carolina Game Law and this article. The department of conservation and development will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such posters to state that the lands are posted under this section of the North Carolina Game Law and in case of withdrawal of recognition by the department such posters shall be removed from the land affected within ten days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina Game Law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the department of conservation and development, said rates not to exceed four dollars ($4.00). In addition to charges for privileges of shooting game, landowners may charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground, organized under this article, decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of

North Carolina, the owner shall be permitted to charge hunters such fees and rates as are approved by the board of conservation and development;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this article, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina Game Law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner, or after securing, on the day of the hunt, or day preceding the hunt, written permission to hunt under the authority of this article, said written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars ($25.00) for each and every offense;

(10) When hunting grounds or any part thereof, organized and operated under this article are used for purposes not consistent with the federal, state and local laws, the department of conservation and development shall withdraw recognition from the area of such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1935, c. 486, s. 24.)

§ 113-109. Punishment for violation of article.—Any person who takes, possesses, transports, buys, sells, offers for sale or has in possession for sale or transportation any wild bird, animal, or part thereof, or nest or egg of any bird, in violation of any of the provisions of this article, or who violates any other provisions of this article, or fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation promulgated by the board, shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not more than fifty dollars ($50.00) or imprisoned for not more than thirty days, and upon the second offense and conviction thereof shall be fined not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars, or by imprisonment for not more than six months, or both, in the discretion of the court. And in all cases of conviction under this section, the court in which such conviction is had shall require the surrender of any hunting license then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction to the board. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury. Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall upon conviction be fined not less than one hundred dollars ($100.00) or imprisoned for not less than sixty (60) days or both fined and imprisoned in the discretion of the court: Provided further, that any person taking or having in possession doe (female) deer in violation of this article shall be fined not less than fifty dollars ($50.00) or imprisoned not less than thirty (30) days or both fined and imprisoned in the discretion of the court. Any person, firm or corporation who buys or sells, or offers to buy or sell, quail, grouse and wild turkeys in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. (1935, c. 486, s. 25; 1939, c. 235, s. 2, c. 269; 1941, c. 231, s. 2; 1941, c. 288.)

Local Modification.—Beaufort, Gaston, Granville, Lincoln, Mecklenburg: 1937, c. 352; Buncombe: 1937, c. 352, 1941, 156; Pitt: 1941, c. 285.

Editor's Note.—The first 1939 amendment changed the provision as to revocation of license. The second 1939 amendment added the last sentence.

The 1941 amendments added the words "grouse and wild turkeys" after the word "quail" in the last sentence, and added the fifth and sixth sentences to the section.

Art. 8. Fox Hunting Regulations.

§ 113-110. Closed season.—The closed season of each year during which foxes shall not be hunted with gun, chased with dogs, killed, trapped or destroyed, shall, as to the several counties or parts of counties specified, be as follows:

Alamance ..... Feb. 1 to Oct. 1
(P. L. 1911, c. 654.)
Alleghany ..... Mar. 1 to Oct. 1
(P. L. 1915, c. 274.)
Buncombe ..... Mar. 1 to Sept. 1
(P. L. 1917, c. 658.)
Burke ..... Mar. 1 to Dec. 1
South of Catawba river
(1907, c. 388.)
Chatham ..... Feb. 1 to Sept. 1
(1909, c. 174; P. L. 1911, c. 135.)
Clay ..... Mar. 1 to Nov. 15
(P. L. 1919, c. 260.)
Cleveland ..... Mar. 1 to Dec. 1
(1907, c. 388.)
Duplin ..... Feb. 15 to Sept. 15
(P. L. 1911, c. 407.)
Franklin ..... Mar. 1 to Oct. 15
(P. L., Ex. Sess. 1913, c. 169.)
Granville ..... Mar. 1 to Sept. 1
(P. L. 1919, c. 282.)
Halifax ..... Mar. 1 to Sept. 15
(P. L. 1913, c. 591.)
Harnett ..... April 1 to Sept. 1
(1909, c. 667.)
Hoke ..... Mar. 2 to Sept. 15
(P. L. 1915, c. 459.)
Lee ..... Apr. 1 to Aug. 15
(P. L., Ex. Sess. 1913, c. 111.)
Lincoln ..... Feb. 1 to Nov. 15
(P. L. 1913, c. 659.)
Montgomery ..... Jan. 15 to Oct. 15
(P. L. 1911, c. 400.)
Moore ..... Mar. 1 to Oct. 1
(P. L. 1911, c. 291.)
New Hanover ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)

Onslow ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Pender ..... Feb. 15 to Sept. 15
(P. L. 1911, c. 407.)
Randolph ..... Jan. 15 to Nov. 1
(P. L. 1919, c. 76.)
Richmond ..... Mar. 15 to Sept. 1
(P. L. 1911, c. 382.)
Robeson ..... Mar. 1 to Oct. 1
(P. L. Ex. Sess. 1924, c. 92.)
Sampson ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Scotland ..... Mar. 2 to Aug. 15
(P. L. 1917, c. 57.)
Surry ..... Jan. 1 to Nov. 1
(P. L. 1919, c. 168.)
Wayne ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Wilkes ..... Feb. 15 to Oct. 1
(P. L. 1913, c. 77; C. S. 2110.)

Editor's Note.—In applying this section, the following matters should be noted:

(1) The Uniform Game Law (1935, c. 486) repealed all "acts, whether general, local, special, or private, or parts of such acts" in conflict therewith, but left to "county regulations" the seasons during which foxes could be hunted.

(2) The above section appeared in the Consolidated Statutes of 1919, and was a collection of various public-local laws. Since 1919, a great number of public-local laws have been enacted relating to the hunting of foxes, which do not specifically amend or modify the section by its Consolidated Statutes number (Sec. 2110). This section has been brought forward from the Consolidated Statutes, but should be considered in connection with the various local laws relating to the same subject matter.

§ 113-111. No closed season in certain counties.—It shall be lawful to hunt, take or kill foxes at any time in Ashe, Avery, Iredell, Lenoir, Henderson, Pitt, Haywood, Harnett and Watauga counties. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615.)

Editor's Note.—Public Laws 1933, c. 428, added Henderson to the list of the counties.

The 1939 amendment added Pitt and Haywood to the list.

The 1943 amendment made this section applicable to Harnett county.

§ 113-112. Police power of protectors in enforcing county laws relative to foxes.—All game protectors duly appointed by the Department of Conservation and Development and all ex officio game protectors named in the North Carolina Game Law shall be authorized and empowered as fully as is the sheriff and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5.)

Art. 9. Federal Regulations on Federal Lands.

§ 113-113. Legislative consent; violation made a misdemeanor.—The consent of the general assembly of North Carolina in hereby given to the making by the congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U. S. Stat. at Large, p. 961), and acts of congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-game birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States Government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any Act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States Government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; 1939, c. 79, ss. 1, 2; C. S. 2099.)

Editor's Note.—The 1939 amendment added the second and third paragraphs to this section.

For comment on the 1939 amendatory act, see 17 N. C. Law Rev. 364.

Acceptance May Be Presumed.—Acceptance of such a grant as is made by this section may be presumed. Chalk v. United States, 114 F. (2d) 207, 209.

Acceptance of Jurisdiction over Pisgah National Forest and Pisgah National Game Preserve.—Federal statute authorizing the president of the United States to designate areas set aside for protection of game and fish on lands purchased by the United States, and punishing the unlawful taking of game or fish, constituted an acceptance by the United States of the cession to it of jurisdiction over the Pisgah National Forest and the Pisgah National Game Preserve by a prior act of the legislature of North Carolina. Chalk v. United States, 114 F. (2d) 207.

Limitation of Number of Deer Therein.—Where the United States acquired land by grant from North Carolina for the Pisgah National Forest and the Pisgah National Game Preserve, and legislature of North Carolina enacted an act consenting that congress should make rules and regulations with respect to animals, birds, and fish, and it was established that deer herd on the preserve was so large as to damage the preserve, the United States could, without regard to state laws, limit the number of deer thereon. Chalk v. United States, 114 F. (2d) 207.

Art. 10. Regulation of Fur Dealers; Licenses.

§ 113-114. Fur dealer's license; fees. — Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Department of Conservation and Development. The fees for such licenses shall be as follows:

1. For a resident state-wide license, the sum of twenty-five dollars.

This license will entitle the holder to buy and sell furs in any or all of the counties in North Carolina.

2. For a resident county license, the sum of ten dollars. This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars.

3. For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of five dollars.

4. For a nonresident of the state, the sum of one hundred dollars for a state-wide license.

These licenses shall be issued through the game protectors or agents of the Department of Conservation and Development as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the state treasurer to the credit of the Department of Conservation and Development and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1.)

Editor's Note.—Prior to Public Laws 1933, c. 337, the state-wide license for a resident was $75, instead of $25. The license for a non-resident was $400, instead of $100, and counties were permitted to collect an additional $50 from such nonresident. The section formerly provided for an annual local license of $1, instead of $5, with the limitation that the buying should not exceed $500 worth of furs per annum.

§ 113-115. Annual report of furs bought.—Every person, firm or corporation who takes out a fur dealer's license shall report to the Department of Conservation and Development on April first of each year and every year the total amount of furs bought by such dealer, including the species of fur bearing animals and the number of each, and such other information as required by the Department of Conservation and Development. (1929, c. 333, s. 3.)

§ 113-116. What counties may levy tax.—No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

Editor's Note.—Ten dollars, instead of five dollars, was the amount permitted to be collected prior to Public Laws 1933, c. 337.

§ 113-117. Permits may be issued to nonresident dealers.—It shall be lawful for the department of conservation and development to issue permits to nonresident dealers for the purchase of raw furs from only statewide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1.)

Editor's Note.—Prior to Public Laws 1933, c. 337, this section contained the proviso limiting permits to the purchase of furs from dealers who had taken out the $75 license.

The amendment of 1935 inserted the word "statewide" preceding the word "licensed," near the end of this section.

§ 113-118. Licenses for each employee of dealer; fees; residence requirement.—All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars each. Provided that the employees of a resident firm or corporation operating under a county resident fur dealer's license shall be required to pay only the sum of ten dollars ($10.00). Applicants for resident fur dealers license must have actually resided in the state for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4; 1935, c. 471, s. 3.)

Editor's Note.—In the first sentence of this section, Public Laws of 1933, c. 337, struck out the word "duplicate" before the word "license." It also increased the sum from $10 to $25.

The amendment of 1935 added the proviso.

§ 113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer.—Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in § 113-117, shall be subject to and shall procure from the department of conservation and development a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2.)

§ 113-120. Violation a misdemeanor.—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned not more than sixty days for the first offense, and on conviction of second violation of this article such person, firm or corporation shall pay not less than two hundred dollars or be imprisoned not more than six months or both in the discretion of the court. (1929, c. 333, s. 8.)

Art. 11. Miscellaneous Provisions.

§ 113-121. Possession of firearm silencer, while hunting game, made unlawful.—It shall be unlawful for any person while hunting game in this state to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm.

If any person shall be convicted of a violation of this section he shall be fined not less than one hundred ($100.00) dollars or imprisoned not less than sixty days, or both, in the discretion of the court. (1937, c. 152.)

§ 113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor.—Part of Grandfather Mountain situate in the counties of Avery, Caldwell and above the Yonahlossee Road on one side, and above the elevation of four thousand feet on the other side, is established as a sanctuary for the preservation and protection of deer, squirrels and other wild animals (except wildcats), and wild turkey, pheasants, eagles, hawks, ravens and all other bird life.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by the preceding paragraph, any deer, squirrels, or other wild animals (except wild-cats), any wild turkeys, pheasants, eagles, hawks, ravens, or any kind of bird life. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 191; 1925, c. 212; C. S. 2105(a), 2105(b).)

§ 113-123. Assent of State to Act of Congress

providing for aid in wild life restoration projects.—The State of North Carolina hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in wild life restoration projects, and for other purposes," approved September second, one thousand nine hundred thirty-seven (Public, number four hundred fifteen, seventy-fifth Congress), and the North Carolina Department of Conservation and Development is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wild life restoration projects, as defined in said Act of Congress, in compliance with said Act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wild life in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Division of Game and Inland Fisheries under the direction of the North Carolina Department of Conservation and Development. (1939, c. 271.)

§ 113-124. Birds kept as pets or for breeding.—It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating. (Rev., s. 1876; 1903 (Pr.), c. 337, ss. 6, 7; C. S. 2103.)

§ 113-125. Local by counties: Bird dogs running at large.—It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April the first to September first of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not longer than thirty days.

This section shall apply only to the counties of Davidson, Durham, Greene, Guilford, Forsyth, Iredell, Johnston, Moore, Transylvania and Yancey. (1909, c. 775; C. S. 2132.)

§ 113-126. Deer; fire-hunting; compelling testimony.—When more persons than one are engaged in committing the offense of fire-hunting, anyone may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. (Rev., s. 3462; Code, ss. 1058, 1059; R. C., c. 34, ss. 95, 96; 1774, c. 103; 1784, c. 212, ss. 1, 3; 1801, c. 595; 1856-7, c. 24; 1879, c. 92; 1905, c. 388; 1925, c. 194; C. S. 2125.)

Local Modification.—Currituck: C. S. 2125.

SUBCHAPTER IV. FISH AND FISHERIES.

Art. 12. General Provisions for Administration.

§ 113-127. Definitions.—When used in this subchapter,

(1) "Fish" or "fishes" includes porpoises and other marine mammals, fishes, mallusca, and crustaceans, and "fishing" or "fisheries" includes all operations involved in using, setting or operating apparatus employed in killing or taking such animals or in transporting and preparing them for market.

(2) "Board" means the Board of Conservation and Development. (1915, c. 84, s. 24; C. S. 1865.)

§ 113-128. Administrative machinery for enforcing laws relating to fish.—The state of North Carolina shall have exclusive jurisdiction and control over all the fisheries of the state, wherever located. The laws relating to fish shall be enforced by the Board of Conservation and Development through the Commissioner of Game and Inland Fisheries, appointed pursuant to § 113-90, and through the Commissioner of Commercial Fisheries appointed pursuant to § 113-129. (1915, c. 84, ss. 1, 18; 1917, c. 290, ss. 1, 9; Ex. Sess. 1921, c. 42, s. 1; 1923, c. 168, s. 1; C. S. 1867, 1869.)

§ 113-129. Commissioner of commercial fisheries.—The Board of Conservation and Development shall appoint a commercial fisheries commissioner, who shall be responsible to the Board and shall make semiannual reports to them at such time as they may require. His term of office shall be four years or until his successor is appointed and qualified, and in case of a vacancy in the office the appointment shall be to fill the vacancy. By and with the consent of the Board, the commissioner may appoint assistants or may remove them and appoint their successors. Their duties shall be prescribed by the commissioner. The salary of the commissioner and his assistants shall be fixed by the Board with the approval of the Budget Bureau, and if the commissioner is absent or unable to act, the Board shall appoint one of the assistant commissioners to have and to exercise all his powers. The commissioner and his assistants shall each execute and file with the secretary of state a bond, payable to the state of North Carolina, in the sum of five thousand dollars for the commissioner and twenty-five hundred dollars for each assistant, with sureties to be approved by the secretary of state, the condition being that they will faithfully perform their duties and will account for and pay over, pursuant to law, all moneys received by them in their office. (1915, c. 84, s. 1; 1917, c. 290, s. 1; 1925, c. 310; C. S. 1870.)

Editor's Note.—By the amendment of 1925 three assistants were allowed the commissioner, where prior to this he was allowed only two.

An indemnity contract or bond, which was neither in the amount nor "conditioned" as required by this section, did not cover a claim of damages for false imprisonment committed by an assistant fisheries commissioner under color of his office, and the surety is not liable thereunder to plaintiff. Midgett v. Nelson, 214 N. C. 396, 199 S. E. 393.

§ 113-130. Fish inspectors. — The commercial fisheries commissioner may appoint, with the approval of the board, inspectors in each county having fisheries under his jurisdiction. These inspectors shall serve under the direction of the commissioner and assist him at such times as he may require. (1915, c. 84, s. 2; C. S. 1871.)

§ 113-131. Commissioner of commercial fisheries and assistants not to be financially interested in fisheries.—The Commercial fisheries commis-

sioner, assistant fisheries commissioners and inspectors shall not be financially interested in any fishing industry in North Carolina. (1915, c. 84, s. 8; 1921, c. 194, s. 1; C. S. 1872.)

Editor's Note.—By the amendment of 1921 the provision that "The members of the fisheries commission board" shall not be interested was omitted.

§ 113-132. Clerical force and office for commercial fisheries commissioner.—The commissioner of commercial fisheries shall rent and equip an office, which will be adequate for his business, in some town conveniently located to the maritime fisheries, and he is authorized with the consent of the board to employ such clerks and other employees as may be necessary for the proper carrying on of the work of his office. (1915, c. 84, s. 3; C. S. 1873.)

§ 113-133. Boats and equipment for commercial fisheries commissioner.—The commercial fisheries commissioner is authorized, with the consent of the board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this chapter. (1915, c. 84, s. 4; C. S. 1874.)

§ 113-134. "Commercial fisheries fund" derived from imposts.—All license fees, taxes, rentals, of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall, except as otherwise provided in this chapter, be deposited with the state treasurer to the credit of the commercial fisheries fund, to be drawn upon as directed by the board. (1915, c. 84, s. 9; C. S. 1875.)

Art. 13. Powers and Duties of Board and Commissioners.

§ 113-135. Duties of the Board.—It is the duty of the board of conservation and development, through its agents, the commissioner of game and inland fishing and the commissioner of commercial fishing and their assistants:

To enforce all acts relating to the fish and fisheries of North Carolina.

To make regulations that will keep open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary.

To make such rules and regulations as they think proper to procure statistics as to the annual products of the fisheries of the state.

To collect and compile statistics showing the annual product of the fisheries of the state, the capital invested, and the apparatus employed, and any fisherman refusing to give these statistics shall be refused a license for the next year. Provided, however, the board may extend the time of his operations if any fisherman fail or refuse to give statistics as required in this section.

To prepare and have on file maps based on the charts of the United States coast and geodetic survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season.

To have surveyed and marked in a prominent manner those areas of waters of the state in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the state in which oyster tonging or dredging is prohibited by law.

To prosecute all violations of the fish laws, and whenever necessary, to employ counsel for this purpose.

To remove pending trial nets or other appliances found being fished or used in violation of the fisheries laws of the state.

To carry on investigations relating to the migrations and habits of the fish in the waters of the state, also investigations relating to the cultivation of the oyster, clam, and other mollusca, and of the terrapin and crab, and for this purpose to employ scientific assistance.

To collect all license fees, rentals, or other imposts, and to pay them into the state treasury to the credit of the proper fisheries fund. On or before the twenty-fifth day of each month there shall be mailed to the treasurer of the state a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected.

To administer oaths and to send for and examine persons and papers; the commissioners also shall have this power. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S. 1883.)

§ 113-136. Regulations as to fish, fishing, and fisheries made by board.—The Board of Conservation and Development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, escallops, and other water products as it may deem necessary; and all regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (1915, c. 84, s. 21; 1917, c. 290, s. 7; 1925, c. 168, s. 2; 1935, c. 35; C. S. 1878.)

Local Modification.—Beaufort, Buncombe, Gaston, Granville, Lincoln, Mecklenburg: 1937, c. 352.

Editor's Note.—The provision for regulation and transportation of fish, etc., is new with Public Laws of 1925.

Jurisdiction.—The jurisdiction of the board extends to all the public waters of the State or over which it has control. "The several waters of the State" is the precise language of the section referred to, and the numerous portions of the law in which places are expressly mentioned are not in restriction of the general words of the principal section, but these places are only mentioned because special provision is made as being desirable or necessary for those places. State v. Dudley, 182 N. C. 822, 825, 109 S. E. 63.

The Taking of Escallops.—Under the powers so conferred and in promotion of the general purposes of the statute, the Fisheries Commission Board [now the Board of Conservation and Development] may establish a formal rule or regulation, which prohibited the taking of escallops with drags or scrapes in certain waters, and a violation of this rule will warrant conviction. State v. Dudley, 182 N. C. 822, 824, 109 S. E. 63.

§ 113-137. Regulations affecting existing interests not effective for two years.—In making regulations the board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and no changes in the existing laws which, if they should go into effect immediately, would tend to cause fishermen to lose their property shall go into effect until two years from the date that the change has been made by the board. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S. 1879.)

§ 113-138. Hearing before changes as to certain regulations.—If, however, a petition signed by five or more voters of the district or community which will be affected by the proposed changes is filed with the board through the commissioners, their assistants or deputies, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net, or time of fishing shall go into effect, petitioning that they be heard regarding such change, the board shall in that event designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, once a week for two consecutive weeks, a place at which said board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S. 1880.)

§ 113-139. Reports of board to legislature; publication.—The board shall cause to be prepared and submitted to each legislature a report showing the operations, collections and expenditures of the board; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the board, all such reports, illustrations, and maps to be printed and distributed at the expense of the state, as are other public documents, as the board may direct. (1915, c. 84, s. 15; C. S. 1882.)

§ 113-140. Violations investigated; nets seized and sold; bond of commissioner liable.—It is the duty of the commissioner of game and inland fisheries and the commissioner of commercial fisheries, or any of their assistants or deputies, upon a complaint made either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go to such place and investigate same. They shall seize and remove all nets or other appliances set or being used or that have been used in violation of the fisheries laws of the state, sell them at public auction after advertisement for twenty days at the courthouse and three other public places in the county in which the seizure was made, and apply the proceeds of sale to the payment of costs and expenses of such removal, and pay any balance to the school fund of the county nearest to where the offense is committed. The failure of the commissioners or their deputies to perform the above prescribed duty shall render their bonds liable to a penalty of five hundred dollars, one half to go to the informant and the other one half to be paid to the school fund of the county in which the action is brought. (1911, c. 18; 1941, c. 113; C. S. 1884.)

Editor's Note.—The 1941 amendment inserted after the word "used" in the second sentence the words "or that have been used."

In General.—In Lawton v. Steele, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385, the court holding that the authority to summarily destroy nets used in violation of the law for the protection of fish, "is a lawful exercise of the police power of the State and does not deprive the citizen of his property without due process of law." Daniels v. Homer, 139 N. C. 219, 224, 51 S. E. 992.

§ 113-141. Arrests without warrant; investigation of unlawful transportation of seafood.—The commissioner of game and inland fisheries and the commissioner of commercial fisheries, their assistants and deputies, shall have power, without warrant, to arrest any person or persons violating any of the fishery laws in their presence, who shall be carried before a magistrate for trial as is required by law in case of persons arrested without warrant. Authority also expressly is vested in the commissioners, their assistants and deputies, when they or either of them has reason to believe that any seafood products are unlawfully possessed, or are being transported unlawfully, or are about to be transported unlawfully, without the license tax therefor and thereon having been paid, to stop, or cause to be stopped, any vehicle or conveyance of transportation, of whatsoever kind, for the purpose of investigation and examination; and if upon such investigation and examination it appears that any seafood products are unlawfully possessed, or that the license tax therefor and thereon has not been paid, the said commissioners, their assistants or deputies, making such investigation and examination shall have the power and authority, without first having applied for and obtained warrant so to do, to arrest the person or persons owning and/or having in his or their possession for transportation and actually engaged in the transportation of the said seafood products on which said license taxes have not been paid, and take him, or them, for trial before some magistrate in the county where such arrest is made; and it shall not be obligatory upon the said commissioners, their assistants or deputies, first to apply for and obtain warrant before making such investigation and inspection. (1915, c. 84, s. 6; 1917, c. 290, s. 2; 1935, c. 118; C. S. 1885.)

Editor's Note.—The last sentence of this section relating to the authority to investigate unlawful transportation of seafood was added by the amendment of 1935.

§ 113-142. Taking fish for scientific purposes.—The board and the United States Fish and Wild Life Service may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this state the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p. m. (1915, c. 84, s. 7; C. S. 1886.)

Art. 14. Licenses for Fishing in Inland Waters.

§ 113-143. Fishing licenses for persons above

16 years of age.—In order to raise revenue with which to maintain and operate the state fish hatcheries, provide additional nurseries and administer the inland fishing laws, a license is hereby required of all persons above the age of sixteen (16) years to fish by any and all methods of hook and line or rod and reel fishing in the waters of North Carolina, other than in waters of the county in which such person permanently resides or in waters abutting thereon, as hereinafter provided. (1929, c. 335, s. 1.)

§ 113-144. Resident state license. — Any person, upon application to the director of the department of conservation and development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the State of North Carolina, shall, upon the payment of a license fee of two ($2.00) dollars for the use of the department and a fee of ten ($.10) cents for the use of the official authorized to issue licenses, be entitled to a "resident state license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under the preceding section. (1929, c. 335, s. 2.)

§ 113-145. Non-resident state license. — Any person, without regard to age or sex, upon application to the director of the department of conservation and development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a non-resident of the state, shall, upon the payment of five ($5.00) dollars for the use of the department and ten ($.10) cents for the use of the official authorized in writing to issue licenses, be entitled to a "non-resident state fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided that any non-resident of the state desiring to fish for one day or more in the waters of the state of North Carolina may do so upon payment to the clerk of the court or game warden of the county in which the non-resident desires to fish the sum of one dollar and ten cents ($1.10) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of one dollar and ten cents ($1.10) the clerk of the court or game warden shall issue a permit allowing said non-resident to fish: Provided further, that any resident of the state desiring to fish for one day or more in the waters of any county in the state of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of sixty cents (60c) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60c), the clerk of the court or game warden shall issue a permit allowing said non-resident to fish. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478.)

Editor's Note.—The Act of 1931 substituted five for three dollars formerly appearing in this section.

Public Laws of 1933, c. 236, added the proviso relating to short time licenses for nonresidents.

The amendment of 1935 increased the license fees for non-residents for one day from sixty cents to one dollar and ten cents. It also added the proviso, at the end of the section, relating to short time licenses for residents.

§ 113-146. County licenses and daily permits. —The board of county commissioners in any of the counties of the state of North Carolina may, by resolution entered upon its minutes, require a resident county license or daily fishing permit. If any of said boards shall adopt this resolution, then the resident county license shall be one dollar and ten cents ($1.10) for each year, or fifty ($.50) cents for a daily fishing permit. Whenever any such resolution is adopted the board of county commissioners shall at once notify the department of conservation and development enclosing therein a copy of said resolution, and the said county license and daily fishing permit shall be issued in the same manner and by the same agent, and the proceeds thereof shall be remitted to the department in the same manner as herein provided for State resident licenses and for non-resident fishing licenses. (1929, c. 335, s. 4.)

Local Modification.—Catawba: 1939, c. 181.

§ 113-147. Clerk of superior courts may sell licenses and account for same to department.— In addition to the wardens and agents of the department of conservation and development authorized to sell fishing licenses as hereinbefore provided, upon written application, any clerk of superior court of North Carolina shall also be authorized and empowered to sell fishing licenses and shall account therefor to the department in the same manner as wardens, and the handling of said licenses shall then become an official duty of such clerk of superior court. (1929, c. 335, s. 5.)

§ 113-148. Department to furnish forms; what licenses must show; signature of licensee; licenses to become void on December 31 of year issued; license button to be worn in plain view.—All licenses shall be issued on forms prepared and supplied by the department of conservation and development, the cost of which shall be paid from any funds that may come into its hands from the sale of fishing licenses. The license shall show the name, age, occupation and residence of the licensee and the date of its issuance. It shall also contain the signature of the licensee and shall authorize the person named therein, in all cases where a resident county license is bought, to fish in any of the waters within the county in which the applicant permanently resides, under the restrictions and requirements of existing laws and the rules and regulations of the department during the year, the date of which is inscribed thereon. In all cases where either resident or non-resident State fishing licenses are bought, they shall also contain the signature of the licensee and shall authorize the person named therein to fish in any of the waters of the state of North Carolina under the restrictions and requirements of existing laws and regulations of the department during the year, the date of which is inscribed thereon. All licenses issued under and by virtue of this article shall become void on the thirty-first day of December next following the date of issuance. The licenses may contain such other information as the department may require. There shall also be issued with each license a license button bearing the serial number of the license which must be worn in plain view at all times by licensee when fishing. Such buttons to be furnished by the department and paid for out of funds coming into

its hands from the sale of fishing licenses as required under this article. (1929, c. 335, s. 6.)

§ 113-149. Record of all licenses issued to be kept.—All clerks of superior court in various counties of the State who make application as hereinbefore provided, also assistants, wardens or agents who are authorized to issue fishing licenses shall keep such record of licenses issued by them as the department of conservation and development may require and same shall be open at all times for inspection by any official charged with the enforcement of the fishing laws. (1929, c. 335, s. 7.)

§ 113-150. Reports.—Every clerk of superior court who issues fishing licenses under and by virtue of this article shall, on the first of each month forward to the department of conservation and development a report covering the sale of licenses issued by them, on forms furnished by the department and shall attach thereto check for amount due said department. All assistants, wardens or agents authorized by the department to issue fishing licenses shall make full and complete report of their sales as required by the department. The full amount collected by each issuing officer, less the ten-cent fee on each license issued, must accompany each report. (1929, c. 335, s. 8.)

§ 113-151. Deposit of proceeds of licenses with state treasurer; use of, by department. — All moneys collected and received under and by virtue of this article, except the issuing fees, shall be deposited in the name of the state treasurer as provided by §§ 147-77 to 147-84, and shall be used by the department of conservation and development in the work of propagating and protecting game fish in North Carolina and in the administration of the inland fishing laws and for no other purpose. (1929, c. 335, s. 9.)

§ 113-152. Licenses to be kept about person of licensees; license button to be worn on outside. —No person shall fish as provided herein in any of the waters of North Carolina unless the license hereinbefore provided for be kept about the person of the licensee or exhibited upon the request of any official charged with the duty and responsibility of issuing licenses and enforcing the fishing law. No person shall fish, as provided in this article, in any of the waters of North Carolina unless license button provided for herein be at such time continually displayed on the outer garment in such manner that the license figures are plainly visible. (1929, c. 335, s. 10.)

§ 113-153. Transfer of licenses forbidden.—No person shall alter, loan or transfer any license authorized by this article, or give false or misleading information to any official authorized to issue licenses, in the application therefor. (1929, c. 335, s. 11.)

§ 113-154. Licenses not additional to propagation license; to what waters applicable. — No person required by law to procure a license to propagate fish for sale, shall be required in addition to secure a license provided by this article in order to enable such person to exercise the rights conferred by the license. The provisions of this article shall not apply to the Atlantic Ocean, the sounds or other large bodies of water near the sea coast which do not, in the judgment of the department of conservation and development, need to be stocked or protected; nor shall they prevent the owner of any land or members of his family under twenty-one years of age from fishing thereon without a license. (1929, c. 335, s. 13.)

§ 113-155. Fishing without landowner's permission.—If any person shall, without having first obtained permission of the owner, fish or attempt to catch fish from the land of another after being forbidden, either personally or by notices written or printed, posted at the courthouse door and at three places on said land, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3480; Code, s. 2831; 1895, c. 147; 1915, c. 271, s. 1; C. S. 2127.)

§ 113-156. Persons having resided in state for six months presumed to be residents.—All persons who have lived in this state for at least six months immediately preceding the date of making application for a license, shall be deemed resident citizens for the purpose of this article. (1929, c. 335, s. 14.)

§ 113-157. Violation made misdemeanor; punishment.—Any person violating the provisions of this article shall be guilty of a misdemeanor and on conviction shall be fined not exceeding fifty ($50.00) dollars or imprisoned not exceeding thirty days in the discretion of the court. (1929, c. 335, s. 15.)

Art. 15. Commercial Licenses and Regulations.

§ 113-158. Licenses to fish; issuance, terms, and enforcement.—Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the state, shall file with an inspector of the county in which he desires to fish, or with the commissioner of commercial fisheries or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the commissioner shall issue or cause to be issued to the said party or parties a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the State of North Carolina, or for tonging or dredging for oysters, as the case may be. The commissioner shall keep in a book especially prepared for the purposes an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef points, in black letters not less than twenty inches long, the initial letter of the county granting the license and the num-

ber of said license, the number to be painted on canvas and furnished by the commissioner, for which he shall receive the sum of fifty cents. Any boat or vessel used in catching oysters without having complied with the provisions of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense. (1915, c. 84, s. 10; 1917, c. 290, s. 9; C. S. 1887.)

In General.—Fishing in waters when prohibited by law is a public nuisance, and the general assembly has the power to authorize a prompt abatement of the nuisance by seizure and sale of the nets subject to the right of their owner to contest the fact of his violation of the law by a proceeding of claim and delivery, or by injunction to prevent sale, or by action to recover the proceeds of sale and damages. Daniels v. Homer, 139 N. C. 219, 51 S. E. 992.

§ 113-159. Resident may catch shellfish for own use.—No tax shall be levied or collected from bona fide residents or citizens of this state who take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days. (1917, c. 290, s. 6; C. S. 1888.)

§ 113-160. Licenses for oyster boats; schedule.—The commissioner of commercial fisheries, assistant commissioners, or inspectors, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom-house tonnage, using scrapes or dredges, measuring over all twenty-five feet and under thirty, a tax of two dollars and fifty cents; fifteen feet and under twenty-five feet, a tax of one dollar and fifty cents; on any boat or vessel with cabin or deck and under custom-house tonnage, using scrapes or dredges, measuring over all thirty feet or under, a tax of four dollars; over thirty feet, a tax of five dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of seventy-five cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this state, shall receive license or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this state. (1915, c. 84, s. 11; 1933, c. 106; C. S. 1889.)

Editor's Note.—Prior to Public Laws of 1933, c. 106, the fees required by this section were: $3, $2, $5, $6, and $1.50.

§ 113-161. Boats using purse seines or shirred nets; tax. — (a) All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of one dollar and twenty-five cents ($1.25) per ton on gross tonnage, customhouse measurement, which shall be independent of and separate from the seine or net tax on the seines or nets used on said boats or vessels. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year.

(b) Any boat or vessel operating purse seines or shirred nets without first having complied with the provisions of this section shall be seized, forfeited, and advertised for twenty days at the courthouse door and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds of such sale, less the cost of the proceedings, shall be paid into the school fund of the county where seized. Any person, firm, or corporation operating such boat or vessel in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) Every operator of all boats or vessels of any kind used in operating purse seines or shirred nets on the public waters of this State shall, in addition to the fee prescribed in subsection (a) of this section, pay a license fee for each nonresident person or persons employed by him on such boat or vessel in the amount of five dollars ($5.00) for each such person. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(d) All operators of boats or vessels of any kind used in operating purse seines or shirred nets shall apply for and obtain a license for each such purse seine or shirred net, and shall pay for such license a tax in the amount of five dollars ($5.00): Provided, that the tax herein levied on purse seines or shirred nets shall be in lieu of all other taxes levied by law against such seines or nets.

(e) Nothing in this section shall apply to boats fishing for edible fish. (1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3; 1933, c. 106, s. 2; 1939, c. 191; C. S. 1890.)

Editor's Note.—The 1933 amendment changed the amount of the fee required. The 1939 amendment made changes in subsection (a) and added subsections (b)-(e).

For comment on the 1939 amendment, see 17 N. C. L. Rev. 379.

§ 113-162. Licenses for various appliances and their users; schedule.—The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, fifty cents for each hundred yards or fraction thereof.

Stake gill nets, twenty-five cents for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, twenty-five cents for each hundred yards or fraction thereof.

Pound nets, one dollar and fifty cents on each pound; the pound is construed to apply to that part of net which holds and from which the fish are taken.

Submarine pounds, or submerged trap nets, one dollar and fifty cents for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, fifty cents each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, fifty cents per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, seventy-five cents per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

For each trot line used in taking hard crabs, one dollar and fifty cents.

Resident motor boats used in taking shrimp, three dollars ($3.00) for each boat.

Motor boats used in hauling nets, two dollars and fifty cents ($2.50) for each boat.

Motor boats used in dredging crabs or escallops, three dollars ($3.00) for each boat.

For each trawl used in taking fish or shrimp, one dollar ($1.00).

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

In addition to the officers now empowered by law, the clerks of the superior courts in the state are authorized to issue nonresident angler's license under this chapter in accordance with rules and regulations to be prescribed by the board. (1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3; 1925, c. 168, s. 1; 1927, c. 59, ss. 5, 7; 1931, c. 117; 1933, c. 106, s. 3; 1933, c. 433; C. S. 1891.)

Editor's Note.—The Act of 1931 repealed paragraphs taxing non-resident motor boats chartered by residents, used in taking shrimp and nonresidents taking shrimp.

Public Laws of 1933, cc. 106 and 443, made substantial changes in the fees required by this section.

§ 113-163. License tax on dealers and packers.—An annual license tax, for the year beginning January 1st in each year, to be collected by the commissioner of commercial fisheries, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On—

oysters, two dollars and fifty cents;

escallops, two dollars and fifty cents;

clams, two dollars and fifty cents;

crabs, for shipment out of the state, two dollars and fifty cents;

fish, two dollars and fifty cents;

shrimp, two dollars and fifty cents: Provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets. (1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2; 1933, c. 106, s. 4; C. S. 1892.)

Editor's Note.—Public Laws of 1933, c. 106, reduced the fees on oysters, scallops and clams, from $5 to $2.50. The amendment also omitted the former provision requiring a license of fifty cents a year for shucking or selling oysters and clams on local market by retail.

§ 113-164. Purchase tax on dealers; schedule; collection.—All dealers in and all persons who purchase, catch, or take for canning, packing, shucking, or shipping the sea products enumerated below shall be liable to a tax to be collected by the commissioner of commercial fisheries as follows: On—

Oysters, two cents a bushel, except coon oysters, one cent a bushel; escallops, five cents a gallon; clams, four cents a bushel; soft crafts, one and one-quarter cents a dozen; hard crabs, five cents a barrel; shrimp, cooked or green, fifteen cents per one hundred pounds: Provided, however, no license tax shall be imposed or required for trot lines used for taking hard crabs from public grounds: Provided, further, that no license tax shall be imposed or required for power boats used for dredging escallops or crabs: Provided, further, that no license shall be required of any person who takes oysters for shucking and sells such oysters at retail on local markets.

But none of these products shall be twice taxed, and no tax shall be imposed on oysters, escallops, or clams taken from private beds or gardens. Upon failure to pay said tax, the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the state of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the commercial fisheries fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor. (1915, c. 84, s. 13; 1917, c. 290, s. 4; 1919, c. 333, s. 1; 1921, c. 194, s. 2; Ex. Sess. 1921, c. 42, ss. 2-4; 1923, c. 170; 1925, c. 168, s. 3; 1927, c. 59, ss. 1, 2; 1929, c. 113; 1933, c. 106, s. 5; 1935, c. 151; 1939, c. 304; C. S. 1893.)

Editor's Note.—The Act of 1929 struck out the line of this section relating to the tax on crab meat, it being the intention of the act to repeal all laws providing for a tax on crab meat.

Public Laws 1933, c. 106, changed the fees and added the three provisos appearing at the end of the first paragraph.

A tax of four cents a bushel on hard crabs was added by the amendment of 1935. This was changed to five cents per barrel by the 1939 amendment.

§ 113-165. License tax on trawl boats.—There shall be levied annually upon each trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of twenty-five cents per gross ton, and on each trawl boat, or boat used for trawling purposes, not documented in the customs house a license tax of two dollars, and a tax of one dollar for each net. (1933, c. 106, s. 6.)

§ 113-166. Printed regulations furnished dealers.—It is the duty of the commissioner of commercial fisheries, upon issuing any license under the provisions of this subchapter to furnish with said license the printed regulations controlling the waters in which such fisherman applying therefor proposes to fish. (1917, c. 290, s. 12; C. S. 1894.)

§ 113-167. Dealers to keep and furnish statistics.—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, escallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the state, or the natural waters or streams of the state, shall keep a permanent record of all such

products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased, a statement of all these facts shall be made whenever required by the commissioner, but shall be at least at the end of each month. All such records shall be open at all times to the commissioner, assistant commissioner, or any one under the direction of the commissioner. (1917, c. 290, s. 11; C. S. 1895.)

Cross Reference.—As to provision that oyster dealers keep records, see § 113-193.

§ 113-168. Disturbing marks or property of commission prohibited.—Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the board in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or shall injure or destroy any boat or other property of any kind used by the board or any officer or employee thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court; and any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days in jail, at the discretion of the court. (1915, c. 84, s. 22; 1917, c. 290, s. 8; C. S. 1896.)

§ 113-169. Edible fish used only as food.—Any person, firm or corporation who catches or causes to be caught any edible fish in the waters of the state of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days. (1915, c. 84, s. 23; C. S. 1868.)

§ 113-170. Explosives, drugs, and poisons prohibited.—It shall be unlawful to place in any of the waters of this state any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. And any one violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days. (1915, c. 84, s. 19; C. S. 1897.)

§ 113-171. Possession of fish killed by explosives as evidence.—The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish by the person in possession thereof. (Rev., s. 2466; Code, s. 3405; 1889, c. 312; 1911, c. 170; C. S. 1898.)

§ 113-172. Discharge of deleterious matter into waters prohibited.—It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the state any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said water; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by general law or special act before the 4th day of March, 1915. (1915, c. 84, s. 20; C. S. 1899.)

§ 113-173. Operation of boats in violation of rules and laws forfeits boats and apparatus.—If any person, firm, or corporation shall use or operate any boat or vessel of any kind, in violation of any rule of the board, or any of the fish laws, it shall be the duty of the board to revoke any license issued and seize such boat or vessel and any apparatus or appliance so used or operated; but the board shall have authority to compromise by agreement with the owner of such boat or appliance for any such violation, and may return such boat or appliance so seized to the owner and reinstate license. (1919, c. 333, s. 5; C. S. 1900.)

Cross Reference.—See also, §§ 113-158 and 113-140.

§ 113-174. Violations of fisheries law misdemeanor; licenses forfeited.—Upon failure of any person, firm or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the board, and upon satisfactory settlement may be reinstated, with the consent of the board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor. (1917, c. 290, s. 11; 1919, c. 333, s. 4; C. S. 1901.)

Art. 16. Shellfish; General Laws.

§ 113-175. Oyster bed defined.—A natural oyster or clam bed, as distinguished from an artificial oyster or clam bed, shall be one not planted by man, and is any shoal, reef or bottom where oysters are to be found growing in sufficient quantities to be valuable to the public. (Rev., s. 2371; 1893, c. 287, s. 1; C. S. 1902.)

§ 113-176. Board to lease.—The board shall have power to lease to any duly qualified person, firm or corporation, for purposes of oyster or clam culture, any bottom of the waters of the state not a natural oyster bed, as defined in this article, nor a clam reservation, as defined in this article, in accordance with the provisions of this article. (1909, c. 871, ss. 1, 9; 1919, c. 333, s. 6; C. S. 1903.)

§ 113-177. Lessee to be citizen.—Any citizen of North Carolina, or firm or corporation organized under the laws of the state and doing business within its limits, shall be granted the privilege of taking up bottoms for purposes of oyster or clam culture, under the provisions of this article. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; C. S. 1904.)

§ 113-178. Areas leased in different waters.—The area which may be taken up for purposes of oyster or clam culture shall be not less than one acre nor more than fifty acres, with the exception of the open waters of Pamlico sound (and for the purposes of this article open waters of Pamlico sound shall mean the waters that are outside of two miles of the shore line), in which the minimum limit shall be five acres and the maximum shall be two hundred acres: Provided that the limit of entry in Core sound, North river, Newport river, Bogue sound, and all bays and creeks bordering on these waters, and in Jones bay, Rose bay, Abels bay, Swan Quarter bay, Middle bay, Bay river, Deep bay, Juniper bay, West and

East Bluff bays, Wysocking bay, Fire creek, Stumpy Point bay, Mouse Harbor bay, Maw bay and Broad creek, tributaries of Pamlico sound, shall be one acre as a minimum and ten acres as a maximum: Provided further, however, that after March 9, 1910, the minimum area in Core sound, North river, Newport river, Bogue sound, and all bays and creeks bordering on these waters, and in Jones bay, Rose bay, Abels bay, Swan Quarter bay, Middle bay, Bay river, Deep bay, Juniper bay, West and East Bluff bays, Wysocking bay, Fire creek, Stumpy Point bay, Mouse Harbor bay, Maw bay and Broad creek, tributaries of Pamlico sound, shall be one acre and the maximum fifty acres; but no person, firm, corporation or association shall severally or collectively hold any interest in any lease or leases aggregating an area of greater than fifty acres, except in the open waters of Pamlico sound, where the aggregate area shall be two hundred acres. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; Ex. Sess. 1921, c. 46, s. 1; C. S. 1905.)

Local Modification.—Brunswick, New Hanover, Pender: C. S. 1905.

§ 113-179. Prerequisites for lease; application; deposit; survey; location.—Such persons, firms or corporations desiring to avail themselves of the privileges of this article shall make written application, on a form to be prepared by the board, setting forth the name and address of the applicant, describing as definitely as may be the location and extent of the bottom for which application is made, and requesting the survey and leasing to the applicant of said bottom. As soon as possible after the application is received, the commissioner of commercial fisheries shall cause to be made a survey and map of said bottom at the expense of the applicant. The commissioner shall also thoroughly examine said bottoms by sounding and by dragging thereover a chain to detect the presence of natural oysters. Should any natural oysters be found, the commissioner shall cause examination to be made to ascertain the area and density of oysters on said bottom or bed, to determine whether the same is a natural bed, under the definition contained in this article. He shall be assisted in this examination on tonging ground by an expert tonger, to be appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert tonger may be able to take in a specified time; and on dredging ground the commissioner shall be assisted by an expert dredger, appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert dredger may be able to take in a specified time. The commissioner shall require the bodies of bottoms applied for to be as compact as possible, taking into consideration the shape of the body of water and the consistency of the bottom. No application shall be entertained nor lease granted for a piece of bottom within two hundred yards of a known natural bottom, bed or reef. A deposit of ten dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for. (1909, c. 871, ss. 3, 9; 1919, c. 333, s. 6; C. S. 1906.)

§ 113-180. Execution of lease; notice and filing; marking and planting.—Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map, the commissioner of commercial fisheries shall execute to the applicant, upon a form approved by the attorney-general of the state, a lease for the bottoms applied for. A copy of the lease, map of the survey and a description of the bottom, defining its position, shall be filed in the office of the commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the commissioner, and failure to do so within a period of thirty days of an order so to do issued by the commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located. (1909, c. 871, ss. 4, 9; 1919, c. 333, s. 6; C. S. 1907.)

§ 113-181. Term and rental.—All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre per year for the first ten years and one dollar per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years, of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be imposed by the state, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; 1933, c. 346; C. S. 1908.)

Editor's Note.—The rental fees were reduced, by Public

Laws 1933, c. 346, from $1 and $2, to $.50 and $1, respectively.

§ 113-182. Nature of lessee's rights; assignment and inheritance.—The said lease shall be heritable and transferable, in whole or in part, provided the qualifications of the heirs and transferees are such as are described by this article. Nonresidents, acquiring by inheritance or process sale, or persons already holding the maximum area permitted by this article, shall within a period of twelve months from the time of acquisition dispose of said prohibited or excess of holding to some qualified person, firm or corporation, under penalty of forfeiture. The lease shall be subject to mortgage, pledge, seizure for debt and the same other transactions as are other property rights in North Carolina. No transfer shall be of effect unless of court record, until entered on the books of the commissioner of commercial fisheries. (1909, c. 871, ss. 6, 9; 1919, c. 333, s. 6; C. S. 1909.)

§ 113-183. Renewal of lease.—The term of each lease granted under the provisions of this article shall be for a period of twenty years from the first day of April preceding the date of granting of said lease. At the expiration of the first lease, the lessee, upon making written application on the prescribed form, shall be entitled to successive leases on the same terms as applied to the last ten years of the first lease, for a period not exceeding ten years each. (1909, c. 871, ss. 7, 9; 1919, c. 333, s. 6; C. S. 1910.)

§ 113-184. Forfeiture of lease for nonpayment.—The failure to pay the rental of bottoms leased for each year in advance on or before the first day of April, or within thirty days thereafter, shall ipso facto cancel said lease and shall forfeit to the state the said leased bottoms and all oysters thereon, and upon said forfeiture the commissioner of commercial fisheries is hereby authorized to lease the said bottoms to any qualified applicant therefor: Provided, that no forfeiture shall be valid, however, under the provisions of this section, unless there shall have been mailed by the commissioner to the last address of the lessee upon the books of the commissioner a thirty days' notice of the maturity of said rental. (1909, c. 871, ss. 8, 9; 1919, c. 333, s. 6; C. S. 1911.)

§ 113-185. Contest over grant of lease; time for contest; decision; appeal.—If any person, within four months of the publication of the notice of granting of any lease, make claim that a natural oyster bottom, bed or reef exists within the boundaries of said lease, he shall, under oath, state his claim, and request the commissioner of commercial fisheries to cancel the said lease: Provided, however, that each such claim and petition shall be accompanied by a deposit of twenty-five dollars. No petition unaccompanied by said deposit shall be considered by the commissioner. The commissioner shall, in person, examine into said claim, and, if the decision should be against the claimant, the deposit of twenty-five dollars shall be forfeited to the state and deposited to the credit of the commercial fisheries fund. Should, however, the claim be sustained and a natural bed be found within the boundary of the lease, the said natural bed shall be surveyed and marked with stakes or buoys, at the expense of the lessee, and the said natural bed be thrown open to the public fishery. If no such claim be presented within a period of four months, or if when so presented it fail of substantiation, as provided, the lessee shall thereafter be secure from attack on such account, and his lease shall be incontestable so long as he complies with the other provisions of this article. In each and every such case the decision of the commissioner shall be subject to review and appeal before a judge of the superior court, who shall render a decision without the aid of a jury, and his decision shall be final. (1909, c. 871, s. 9; 1919, c. 333, s. 6.)

§ 113-186. License to catch oysters; oath of applicant. — Any person desiring to catch oysters from the public grounds and natural oyster beds shall make and subscribe to the following oath, before some officer qualified to administer oaths:

I, ... (state if owner, lessee, master, captain, mate, foreman, or agent of any boat used, or that may be used, in dredging oysters from the public grounds of the state), being an applicant for oyster license, do solemnly swear that I am a citizen of North Carolina, and have been a resident of the state for the two years next preceding this day; that my place of residence is now in .... County; that I will not, if granted license, employ any nonresident or unlicensed person as an assistant or serve as an assistant to any nonresident who is owner, lessee, master, captain, mate or foreman, or who has any interest in, or in the profits derived from, any boat that is used or that may be used in dredging oysters from the public grounds of the state, or unlicensed person, nor will I transfer, assign, or otherwise dispose of my license to any person, firm or corporation: that I will not knowingly or willfully violate or evade any of the laws or regulations of the state relating to oyster industry: so help me, God.

He shall then present to and file said oath with the commissioner, assistant commissioner or inspector, who, if satisfied with the truth of the statement made in the oath of application, shall issue to him an oysterman's license in the following form:

State of North Carolina, ... County.

....., a resident of ..... County, having this day made application to me for an oysterman's license, and having filed with me the oath prescribed by law, I do hereby grant to him license to catch oysters from the public grounds of this state from the fifteenth day of October, ..., until the first day of next April.

Witness my hand and official seal, this the .... day of ....., 19.... .....,

Commissioner of Commercial Fisheries,
Assistant Commissioner, or Inspector
(as the case may be).

(Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6; C. S. 1913.)

§ 113-187. Filing oath; recording license; fees.—The oath and a record of the license shall be kept by the commissioner, assistant commissioner or inspector, and for issuing and recording the same he shall receive from the applicant a fee of twenty-five cents, which, together with all other license fees collected under this chapter, shall be paid over to the state treasurer and constitute part of the commercial fisheries fund. No fee shall

be charged by the clerk for administering the oath. (Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6; C. S. 1914.)

§ 113-188. Nonresidents not to be licensed or hired as oystermen.—No person shall be licensed to catch oysters from the public grounds of the state who is owner, lessee, master, captain, mate or foreman, or who owns an interest in or who is an agent for any boat that is used or that may be used in dredging oysters from the public grounds of the state, who is not a bona fide resident of this state and who has not continuously resided therein for two years next preceding the date of his application for license, and no nonresident shall be employed as a laborer on any boat licensed to dredge oysters under this subchapter who has an interest in or who receives any profit from the oysters caught by any boat permitted to dredge oysters on the public grounds of the state. Any person, firm or corporation employing any nonresident laborer forbidden by this section, upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars. (Rev., s. 2408; 1903, c. 516, s. 6; 1905, c. 525, s. 3; C. S. 1915.)

§ 113-189. Tax on oysters exported from state.—All oysters going out of the state in any boat or vessel shall be taxed at the rate of two cents per tub. (1907, c. 969, s. 11; Ex. Sess. 1913, c. 42, s. 3; C. S. 1916.)

Constitutionality.—An act levying a tax upon all clams and oysters shipped out of a county is constitutional. Brooks v. Tripp, 135 N. C. 159, 47 S. E. 401.

In General.—It is fully established that fish, including oysters and other shellfish, as well as game, being a valued source of food supply, come well within the police power of the State and are subject to rules and regulations reasonably designed to protect them and promote their increase and growth, and that such rules and regulations may not be set aside or ignored because they indirectly affect or trench upon some private rights that are, or would be, ordinarily recognized. Daniels v. Homer, 139 N. C. 219, 51 S. E. 992; Rea v. Hampton, 101 N. C. 51, 7 S. E. 649; Patsone v. Commonwealth, 232 U. S. 138, 34 S. Ct. 281, 58 L. Ed. 539; New York v. Hesterberg, 211 U. S. 31, 29 S. Ct. 10, 53 L. Ed. 75; Lawton v. Steele, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385; State v. Sermons, 169 N. C. 285, 84 S. E. 337.

§ 113-190. Monthly report of licenses to be filed.—The commissioner of commercial fisheries, assistant commissioner or inspector who are authorized to issue license or to collect a license tax shall, on or before the fifteenth day of each month, mail to the board a statement, showing all licenses issued during the preceding month, to whom issued and for what purpose, and the amount of tax collected by them from all sources under the oyster laws, and shall at the same time remit said amount direct to the state treasurer. They shall at the same time mail to each inspector asking for the same a list of all persons to whom license has been issued and of all boats or vessels licensed, and for what purpose. (Rev., s. 2412; 1903, c. 516, s. 4; 1905, c. 525, s. 6; C. S. 1918.)

§ 113-191. Certain shellfish beds real property for taxation, etc.—All grounds taken up or held under authority of chapter 119 of the Public Laws of 1887 or previous acts for the purpose of cultivating shellfish shall be subject to taxation as real estate, and shall be so considered in the settlement of the estates of deceased or insolvent persons. (Rev., s. 2380; 1887, c. 119, s. 9; C. S. 1919.)

§ 113-192. Close season for oysters; exceptions.—If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this state between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this state, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: Provided further, that oysters may be taken with hand-tongs only for home consumption. (Rev., s. 2383; 1907, c. 969, ss. 4, 13; 1913, c. 85; 1915, c. 120; C. S. 1920.)

Local Modification.—Carteret, New Hanover, Onslow, Pender: C. S. 1920.

In General.—This section and section 113-205 cannot be construed together with the effect that the license is not required when oysters are shown to have been procured from private owners, there being no necessary or essential connection between the two, the first applying to all citizens of the State, and forbidding them to buy or sell oysters taken from public grounds or natural beds during a closed season, etc., and the other being a law referring only to regular dealers, requiring that they shall be licensed, and designed to render more effective the legislation in protection of the fish and oyster industries of the State. State v. Sermons, 169 N. C. 285, 84 S. E. 337.

§ 113-193. Oyster dealers to keep records.—All persons engaged in buying, packing, canning, shucking or shipping oysters shall keep a permanent record of all oysters either bought or caught by them, or by persons for them, when and from whom bought, the number of bushels and the price paid therefor. All these records shall at all times be open to the examination and inspection of the commissioner of commercial fisheries, assistant commissioner and inspector, and upon request shall be verified by the parties making them. If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the state shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., ss. 2396, 2418; 1903, c. 516, s. 5; 1915, c. 136, s. 2; C. S. 1921.)

Cross Reference.—As to provision that dealers in oysters, clams, crabs, fish, etc., keep and furnish statistics, see § 113-167.

§ 113-194. Oyster measure.—All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to in-

side chimb to the bottom and twenty-one inches diagonal from inside chimb to top. All measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by the commissioner of commercial fisheries, assistant commissioner or inspector. (Rev., s. 2417; 1903, c. 510, s. 12; 1907, c. 969, s. 10; Ex. Sess. 1913, c. 42, s. 2; C. S. 1922.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1923.

§ 113-195. Illegal measures prohibited.—If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2399; 1903, c. 516, s. 12; C. S. 1924.)

§ 113-196. Dredging regulated as to territory and season.—Any bona fide resident of the state duly licensed according to law and using a licensed boat or vessel may use scoops, scrapes or dredges in catching or taking oysters from the fifteenth day of November in each year to the first day in April following, from the public grounds and natural oyster beds in the broad open waters of Pamlico sound, Pamlico river, Neuse river and Shoal river, except in those portions of said sound and rivers in which the use of such instruments and implements is prohibited as herein provided. No person shall use any implement or instrument except hand-tongs in catching oysters in any bay, river, creek, strait, or any tributary of such, which borders upon or empties into Pamlico sound, Pamlico river, or Long Shoal river, except as hereinafter provided; and any point inside of a line drawn from the farthest or extreme outward point of land or marsh on the one side to the farthest or extreme outward point of land or marsh on the opposite side of any creek, strait or bay shall be construed to be within the said creek, strait or bay for the purpose of this section. Nor shall any person use any implement or instrument except hand-tongs in the waters of Pamlico sound from what is known as the reef or reefs in the eastern portion of said sound to the line of banks bordering its eastern shores; nor along the shores of Pamlico county inside of a line beginning at Maw point and running to the west end of Brant island, thence to Pamlico point; nor in the waters of Pamlico sound north of a line running from Long Shoal light to Gull Shoal life-saving station, from the first day of February of each year to the fifteenth day of November, nor in any of the waters of Carteret county. And for the purpose of this section, the northern boundary of said county shall be a line extending from Swan point to Harbor island light, thence a line to Southwest Straddle light, thence a line to Northwest point light, thence a line to the middle of Ocracoke inlet; nor in the waters of Neuse river above a line in said river running from Carbacon buoy to the western point of land at Pierce's creek. (Rev., 2413; 1903, c. 516, ss. 13, 14, 15; 1905, c. 507, s. 2; C. S. 1925.)

§ 113-197. Illegal dredging prohibited; evidence.—If any person shall use any scoops, scrapes or dredges for catching oysters except at the times and in the places in this chapter expressly authorized, or shall between the fifth day of April and the fifteenth day of November of any year carry on any boat or vessel any scoops, scrapes, dredges or winders, such as are usually or can be used for taking oysters, he shall be guilty of a misdemeanor.

If any boat or vessel shall be seen sailing on any of the waters of this state during the season when the dredging of oysters is prohibited by law in the same manner in which they sail to take or catch oysters with scoops, scrapes or dredges, the said boat or vessel shall be pursued by any officer authorized to make arrests, and if said boat or vessel apprehended by said officer shall be found to have on board any wet oysters or the scoops, scrapes, dredges or lines, or deck wet, indicating the taking or catching of oysters at said time, and properly equipped for catching or taking oysters with scoops, scrapes or dredges, such facts shall be prima facie evidence that said boat or vessel has been used in violation of the provisions of the law prohibiting the taking or catching of oysters with scoops, scrapes or dredges in prohibited territory or at a season when the taking or catching of oysters with scoops, scrapes or dredges is prohibited by law, as the case may be. (Rev., ss. 2385, 2397; 1903, c. 516, ss. 13, 14, 15, 28; C. S. 1926.)

§ 113-198. Dredging prohibited in certain waters of Pamlico sound.—It shall be unlawful for any person to use any rakes, scrapes, scoops or dredges, or any other instrument or implement other than ordinary hand-tongs, for the purpose of taking or catching oysters from the public oyster grounds or natural oyster beds in any of the waters of Pamlico sound or its tributaries north of a line running from West Bluff bay to the center of Ocracoke inlet; any person found guilty of the violation of this prohibition shall be punished by a fine not less than twenty-five dollars or imprisoned not less than thirty days. (1909, c. 559; C. S. 1927.)

§ 113-199. Culling required; size limit.—All oysters taken from the public grounds of this state, with whatsoever instrument or implement, shall be culled, and all oysters whose shells measure less than two and one-half inches in longest diameter, except such as are attached to a large oyster and cannot be removed without destroying the small oyster, and all shells taken with the said oysters shall be returned to the public ground when and where taken, and no oysters shall be allowed by the inspectors to be marketed which shall consist of more than ten per cent of such small oysters and shells, except "coon" oysters and oysters largely covered with mussels: Provided, these musseled oysters must not contain more than five per cent of shells or small oysters under regulation size. (Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525; 1907, c. 969, s. 8; Ex. Sess. 1913, c. 42, s. 1; C. S. 1928.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1929.

§ 113-200. Taking unculled oysters for planting permitted to residents.—Residents of the state of North Carolina shall be permitted to take oysters without culling from natural rocks at any time

during the year for planting purposes only, in the waters of North Carolina. (1917, c. 153; C. S. 1930.)

§ 113-201. Unculled oysters seized and scattered on public grounds.—Whenever oysters are offered for sale or loaded upon any vessel, car or train, without having been properly culled according to law, the commissioner of commercial fisheries, assistant commissioner, or inspector shall seize the boat, vessel, car or train containing the same and shall cause the said oysters to be scattered upon the public grounds, and the costs and expenses of said seizure and transportation shall be a prior lien to all liens on said boat, vessel, car or train, and if not paid on demand the officers making the seizure shall, after advertisement for twenty days, sell the same and make title to the purchaser, and after paying expenses as aforesaid pay the balance, if any, into the commercial fisheries experimental and oyster demonstration fund. For the towing of said boat, a charge of three dollars and fifty cents per hour shall be charged against said boat for towage. (Rev., s. 2416; 1903, c. 516, s. 3; 1907, c. 969, ss. 9, 13; C. S. 1931.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1931.

§ 113-202. Shells to be bought and scattered on public beds.—The commissioner of commercial fisheries is hereby empowered to expend one-half of the balance to the credit of the commercial fisheries experimental and oyster demonstration fund on the fifteenth day of April in each year for the purpose of buying oyster shells and scattering the same on the natural oyster grounds of the state during the months of April and May. (Rev., s. 2421; 1903, c. 516, s. 20; C. S. 1932.)

§ 113-203. Perjury in application for oyster license.—If any person shall make any false statement for the purpose of procuring any license, which may be required by law, to catch oysters, or to engage in the oyster industry, he shall be guilty of perjury and punished as provided by law. (Rev., s. 2390; 1903, c. 516, s. 17; C. S. 1933.)

§ 113-204. Catching oysters without license.—If any person shall catch oysters from the public grounds of the state without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2386; 1903, c. 516, s. 6; C. S. 1934.)

§ 113-205. Oyster dealing without license.—If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the state, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2395; 1903, c. 516, s. 9; 1915, c. 136, s. 1; C. S. 1935.)

§ 113-206. Use of unlicensed boat in catching oysters.—If any person shall use any boat or vessel in catching oysters, which boat has not been licensed according to law, and which is not in all respects complying with the law regulating the use of such vessels, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars nor less than ten dollars or imprisoned not more than thirty nor less than ten days for the first offense, but for the second or subsequent offense he shall be guilty of a misdemeanor and punished at the discretion of the court. (Rev., s. 2387; 1903, c. 516, s. 8; C. S. 1936.)

§ 113-207. Failure to stop and show license.—If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and exhibit his license when commanded to do so by the commissioner of commercial fisheries, assistant commissioner or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars. (Rev., s. 2389; 1903, c. 516, s. 26; C. S. 1937.)

§ 113-208. Displaying false number on boat.—If any person shall display any other number on the sail than the one specified in his license or display a number when the boat or vessel has not been licensed, he shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars. (Rev., s. 2388; 1903, c. 516, s. 27; C. S. 1938.)

§ 113-209. Catching oysters for lime.—If any person shall take or catch any live oysters to be burned for lime or for any agricultural or mechanical purpose, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that shells may be taken which do not contain more than five per cent of live oysters. (Rev., s. 2400; Code, s. 3389; 1885, c. 182; 1907, c. 969, ss. 12, 13; C. S. 1939.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1939.

§ 113-210. Catching oysters Sunday or at night.—If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the state at night or on Sunday, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2384; 1903, c. 516, s. 16; C. S. 1940.)

Cross Reference.—As to prohibition against Sunday fishing, see § 113-247.

§ 113-211. Unloading at factory Sunday or at night.—If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector. (Rev., s. 2394; 1903, c. 516, s. 16; C. S. 1941.)

§ 113-212. Oyster-laden boats in canals regulated.—No boat or vessel loaded with oysters shall be permitted by the inspectors of South Mills and Coinjock to pass through the canals, which does not have a certificate showing that the cargo has

been inspected and the tax paid thereon. (Rev., s. 2420; 1903, c. 516, s. 17; C. S. 1942.)

§ 113-213. Sale or purchase of unculled oysters.—If any person shall sell or offer for sale, transport or offer to transport out of the state, or from one point in the state to another, or have in his possession any oysters which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation he shall upon conviction be fined two hundred dollars or be imprisoned in the discretion of the court. (Rev., s. 2392; 1903, c. 516, s. 3; 1907, c. 969, ss. 5, 13; C. S. 1943.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1943.

§ 113-214. Boat captain's purchase of unculled oysters.—The captain of any run or buy boat who shall purchase oysters which have not been properly culled according to law shall upon conviction be fined two hundred dollars or imprisoned in the discretion of the court, and the having of unculled oysters aboard of his boat shall be prima facie evidence of his having purchased them. When any person, firm or corporation shall furnish the captain of any run or buy boat with funds with which to purchase oysters, they shall not be held responsible for his acts and shall not be deemed the purchaser of such oysters. (1907, c. 969, ss. 5, 13; C. S. 1944.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1944.

§ 113-215. Larceny from private grounds.—Any person who shall feloniously take, catch or capture or carry away any shellfish from the bed or ground of another shall be guilty of larceny and punished accordingly. (Rev., s. 2401; 1887, c. 119, s. 15; C. S. 1945.)

§ 113-216. Injury to private grounds; work at night.—If any person shall willfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove, destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish. (Rev., s. 2402; 1887, c. 119, s. 11; C. S. 1946.)

Art. 17. Experimental Oyster Farms.

§ 113-217. Establishment of experimental oyster farms.—There shall be established in the sounds or other bodies of suitable water in North Carolina in the manner hereafter set forth two or more experimental and demonstration oyster farms for the purpose of showing proper scientific and practical procedure for the private cultivation of oysters. (1941, c. 159, s. 1.)

§ 113-218. Construction and management.—The construction and management of said oyster farms shall be vested in the Division of Commercial Fisheries of the North Carolina Department of Conservation and Development, with the cooperation of the Fishery Biological Laboratory of the United States Fish and Wildlife Service at Beaufort, North Carolina. (1941, c. 159, s. 2.)

§ 113-219. Disposition of proceeds from sale of oysters.—Proceeds from the sale of oysters and any other income derived from the operation of the said oyster farms shall be kept in a separate fund and expended only for the maintenance of such farms as may be established or for the further development of the oyster and other shellfish resources of the State. (1941, c. 159, s. 3.)

Art. 18. Propagation of Oysters.

§ 113-220. Board to plant natural oyster beds; material; selection of planting ground.—The board of conservation and development is authorized, empowered, and directed to make all necessary and proper arrangements and to take the necessary steps to provide for the planting in the natural oyster beds of the public waters of North Carolina all shells, "coon oysters," or "seed oysters," or such other material as is well adapted for the propagation of oysters. The said board shall select such territory or planting ground in the public waters of North Carolina as is best adapted to the culture of oysters, and is most conveniently located with reference to existing beds or shells, "coon oysters," or "seed oysters," or other material well adapted for the propagation of oysters. (1921, c. 132 s. 1; C. S. 1959(a).)

§ 113-221. Location and boundaries of planting; propagating material; manner and time of planting; supervision of work.—The said board may designate the location and boundaries of said territory for such planting, and may further designate what oyster propagating materials shall be planted in said territory, the manner and time of said planting, and from what territory the said materials can be secured. The said board shall carefully supervise or cause to be carefully supervised by its properly designated agents, the planting of such beds and the distribution of said oyster propagating materials in said territory or beds. (1921, c. 132, s. 2; C. S. 1959(b).)

§ 113-222. Purchase of material; pay for work; contracts; limit of cost.—The said board may purchase the necessary shells, "coon oysters," "seed oysters," or other propagating materials, and may cause same to be distributed in a designated territory or territories, and the said board may provide proper compensation for any work or labor connected with the procuring of said materials, or the planting or distributing of said materials; or the said board may let out by private contract any part of the said procuring or distributing materials, or both: Provided, that the complete and entire cost of planting any of said propagating materials shall not exceed the sum of ten cents per bushel of said material so distributed, and the said board may not make any contract which will result in making the cost of planting of any quantity of said material exceed ten cents per bushel. (1921, c. 132, s. 3; C. S. 1959(c).)

§ 113-223. Marking boundary of planted

grounds; protection.—It shall be the duty of the said board to plainly and clearly mark and define the limits and boundaries of any territory which may be planted with oyster propagating materials under the provisions of this article. The said board may prohibit the taking of any oysters from any such territory or area for such length of time as the board may determine, and the said board may regulate the manner of such taking as the said board may determine: Provided, that the said board shall prohibit any taking oysters from any territory or area so planted for at least two years after such planting. (1921, c. 132, s. 5; C. S. 1959(e).)

§ 113-224. Acts violative of law constituting misdemeanor.—Any person violating any proper regulations or prohibitions of said board may, under the authority of § 113-223, or any person who shall take oysters from any territory or area within two years after the planting of oyster propagating material in such territory or area under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1921, c. 132, s. 6; C. S. 1959(f).)

§ 113-225. Enforcement of law.—It shall be the duty of the said board and its assistants to enforce the provisions of this article, and the regulations and prohibitions of said board may, under the authority of this article, be enforced in the same manner as is provided for enforcing the fishing laws of this state, and the regulations of said board adopted under the authority of said laws, and the said board and its assistants shall have the same powers and duties and obligations with respect to the enforcement of this article as said board and its assistants have with respect to other fishing laws of this state. (1921, c. 132, s. 7; C. S. 1959(g).)

§ 113-226. Planting of certain kinds of oysters prohibited.—It shall be unlawful for any person, persons, firm or corporation to plant, store, distribute or in any way deposit the Japanese, Portugese or Mongolian oysters in any of the waters of North Carolina. Any person, persons, firm or corporation violating or attempting to violate this section shall be guilty of a felony, and, upon conviction, shall be fined not less than one thousand ($1,000.00) dollars or imprisoned not less than one (1) year, or both, in the discretion of the court. (1933, c. 235.)

Art. 19. Terrapin.

§ 113-227. Drag-nets prohibited to nonresidents.—If any person who is not a citizen and who has not resided in the state continuously for the preceding two years shall use any drag-net or other instrument for catching terrapin he shall be guilty of a misdemeanor. (Rev., s. 2369; Code, ss. 3375, 3376; C. S. 1957.)

§ 113-228. Diamond-back terrapin protected.—If any person shall take or catch any diamond-back terrapin between the fifteenth day of April and the fifteenth day of August of any year, or any diamond-back terrapin at any time, of less size than five inches in length upon the bottom shell, or shall interfere with, or in any manner destroy any eggs of the diamond-back terrapin, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten dollars for each and every diamond-back terrapin so taken or caught, and a like sum for each and every egg interfered with or destroyed: Provided, this section shall not apply to parties empowered by the state to propagate the said diamond-back terrapin; and the possession of any diamond-back terrapin between the fifteenth days of April and August shall be prima facie evidence that the person having the same has violated this section. It shall be the duty of all sheriffs and constables to give immediate information to some justice of the peace of any violation of this section. (Rev., s. 2370; Code, s. 3377; 1899, c. 582; 1881, c. 115, ss. 1, 6; C. S. 1958.)

Local Modification.—Carteret: C. S. 1959.

Art. 20. Salt Fish and Fish Scrap.

§ 113-229. Inspectors for salt fish; duties; fees.—The board of county commissioners of every county where fish are packed for sale or shipment shall appoint and qualify one or more sworn inspectors of fish at or near all packing localities, whose duty it shall be to inspect all salt fish packed for sale or shipment; and all barrels, half-barrels and packages of fish inspected and approved by them shall be branded with the word "inspected" and the name of the inspector. Said board shall regulate and prescribe the duties, powers and fees of said inspector, which fees shall not exceed five cents per barrel of two hundred pounds net and two and one-half cents per half-barrel of one hundred pounds net and smaller packages, to be paid by the shipper. This section shall not apply to fishermen who may sell their fish to packers and shippers by weight or otherwise, as they may agree: Provided, that in any county where the board of county commissioners have not already appointed an inspector as is provided in this section, upon a petition of two or more persons it shall be mandatory upon the said board of county commissioners to immediately appoint an inspector in accordance with the provisions above. Upon failure to do so for five days after said petition has been filed, said board shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars for each member or be imprisoned not more than thirty days: Provided, said petition be filed with the clerk of the board of commissioners five days before regular meeting of said board. (1909, c. 663, s. 1; 1911, c. 171; C. S. 1960.)

§ 113-230. Salt fish sold by weight; marked on package.—All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court. (1909, c. 663, s. 2; C. S. 1961.)

§ 113-231. Salt mullet; special marking.—Each package of salt mullets packed and offered for sale shall be marked or stamped "large," "me-

dium" or "small," and all packages containing any other kind of fish shall be marked plainly with the name of the fish contained, and any person who shall pack as principal or shall have the same done by others for him shall be deemed the packer and shall stamp his name and place of packing, together with net weight and size of fish, as prescribed in this section, on the head of each package before offering for sale or shipment, and on failure to pack and stamp as herein prescribed, or if any person shall pack or stamp said package falsely, so as to misrepresent the weight or size of the fish in said package, he shall be guilty of a misdemeanor and fined not less than five nor more than fifty dollars for each offense, and may be imprisoned at the discretion of the court, not to exceed thirty days: Provided, this section shall not apply to packages containing less than fifty pounds net fish: Provided further, this section shall not apply to fishermen themselves, but shall apply only to merchants and others who may be classed as packers or brokers, within the proper meaning of the term. (1909, c. 663, s. 3; C. S. 1962.)

§ 113-232. Measures for fish scrap and oil.—For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the state of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this state, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense. (1911, c. 101; C. S. 1963.)

Art. 21. Commercial Fin Fishing; General Regulations.

§ 113-233. Right of fishing in grantee of land under water.—Whenever any person acquires title to lands covered by navigable water under the subchapter Entries and Grants of the chapter entitled State Lands, the owner or person so acquiring title has the right to establish fisheries upon said lands; and whenever the owner of such lands improves the same by clearing off and cutting therefrom logs, roots, stumps or other obstructions, so that the said land may be used for the purpose of drawing or hauling nets or seines thereon for the purpose of taking or catching fish, the person who makes or causes to be made the said improvements, his heirs and assigns, shall have prior right to the use of the land so improved, in drawing, hauling, drifting or setting nets or seines thereon, and it shall be unlawful for any person, without the consent of such owner, to draw or haul nets or seines upon the land so improved by the owner thereof for the purpose of drawing or hauling nets or seines thereon. This section shall apply where the owner of such lands shall erect platforms or structures of any kind thereon to be used in fishing with nets and seines. Every person who shall willfully destroy or injure the said platforms or structures, or shall interfere with or molest the owner in the use of such lands as aforesaid, or in any other manner shall violate this section, shall be guilty of a misdemeanor. This section shall not relieve any person from punishment for the obstruction of navigation. (Rev., s. 2460; Code, s. 3384; 1874-5, c. 183, ss. 1-6; C. S. 1964.)

Cross References.—See § 146-1 under which lands covered by navigable waters are made not subject to entries for the purpose of obtaining grants. As to injuries to nets by boats, see § 113-249.

In General.—Where the owner of a beach has used the adjoining navigable waters to fish with a seine for many years but it was not contended that the owner had improved the land under the water by removing logs, roots, stumps, and other obstructions, no exclusive right to fish in the adjoining waters was acquired by user. Under Revisal § 1693 (now § 146-1) an express grant of the land covered by navigable water would have been void under the circumstances. Bell v. Smith, 171 N. C. 116, 87 S. E. 987.

The right of fishing in a navigable river is subordinate to the right of navigation. Lewis v. Keeling, 46 N. C. 299.

§ 113-234. Seines prohibited to nonresidents; exceptions.—If any person who has not resided in the state continuously for at least twelve months next preceding the day on which he shall begin to take fish shall use, or cause to be used, in any of the waters of the state, any weir, hedge, net, or seine, for the purpose of taking fish for sale or exportation, or if any person shall assist in using, or be interested in using or causing to be used, in any such waters for the purpose aforesaid, any weir, hedge, net, seine or tongs in the use of which any such nonresident person may have an interest, he shall be guilty of a misdemeanor. Nothing herein shall prevent any person from fishing with seines hauled to the shore at any fishery, the title to which fishery or any interest therein having been acquired by such person by lease, purchase or inheritance. This section shall not extend to servants employed to fish by any persons allowed to fish in the navigable waters of the state. No nonresident of the state shall make any sale, assignment or transfer of any fishery, weir, or other fishing apparatus, or privilege mentioned in this section, to any citizen of the state for the purpose of operating and working said fishery, weir, or other fishing apparatus as aforesaid, under the name and ownership of such citizen, or as the servant or employee of any citizen; and any sale, transfer or assignment not made bona fide and for a full consideration shall be null and void.

Upon affidavit founded upon information and belief that any nonresident of the state is operating any such fishery, weir, or other fishing apparatus as aforesaid in the waters of the state, under such sale, assignment or transfer, as the pretended servant or employee of any citizen of the state, it shall be the duty of the justice of the peace before whom said affidavit is made to issue a warrant against the said nonresident and citizen under whose name said fishery is operated, and upon conviction the said offenders shall be guilty of a misdemeanor, and shall, for every offense, be fined not more than fifty dollars, or imprisoned not more than thirty days. Upon the said trial, the burden of proof shall be on the defendants to prove the bona fides and full consideration of said sale or transfer. (Rev., s. 2467; Code, ss. 3379, 3380; R. C., c. 81, s. 5; 1844, c.

40, s. 1; 1876-7, c. 33; 1883, c. 171; 1931, c. 81; C. S. 1965.)

Editor's Note.—The Act of 1931 inserted the word "lease" in the second sentence of this section.

In General.—The defendants were indicted for unlawfully taking oysters. It was proved that they were residents of the State of Virginia, but were in the employment of one W., who was a resident of North Carolina. It was held that the defendants were not guilty if they, in good faith, were acting as servants of W. State v. Conner, 107 N. C. 931, 11 S. E. 992.

§ 113-235. Fishing with nets, etc., by non-residents prohibited.—It shall be unlawful for any person, firm or corporation, which has not been a bona fide resident of the state for twelve months continuously, next preceding the date on which the fishing shall commence, to use or cause to be used in the waters of the state, which shall include the distance of three nautical miles, measured from the outer beaches or shores of the state of North Carolina out and into the waters of the Atlantic Ocean, any seines, trawls or nets of any kind for the purpose of taking fish for sale or exportation. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, for the first offense shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), or imprisoned for not less than six months nor more than twelve months, or both in the discretion of the court. And for any subsequent conviction for a violation of this section such defendant shall be fined not less than one thousand dollars ($1,000.00) nor more than two thousand dollars ($2,000.00), or imprisoned for not let less than twelve months nor more than two years in the discretion of the court.

The finding by the commissioner of commercial fisheries, or any of his duly authorized agents, of any vessel, boat, or other craft within the distance of three nautical miles, as defined in this section, having any seines, trawls, or nets of any kind or a similar device aboard with fresh or live fish on deck or in the hold thereof or in any portion of the said vessel, boat, or craft, shall be prima facie evidence that the operator or operators and masters and members of the crew of said vessel, boat, or other craft are guilty of a violation of this section.

It shall be the duty of the commissioner whenever he has reasonable grounds to believe that this section is being violated in any particular place, to go himself or send a duly authorized deputy to such place and such officer finding that the provisions of this section are being violated is hereby authorized and empowered to seize and remove all nets, machinery, or other appliances or paraphernalia being used in violation of this section, and to sell the same at public auction, after advertisement for ten days at the court house door in the county in which the seizure was made, or in which the seized property is taken under the provisions of this section, and apply the proceeds from said sale, first to payment of costs and expenses of such sale and removal, and pay the balance of said proceeds remaining, if any, to the school fund of the county in which or nearest to where the offense is committed.

Such commissioner, or his authorized deputy, is further authorized and empowered to seize any boat, vessel or ship of any kind or nature, used in thus violating the law, and to bring the same into the nearest port in said state having sufficient depth of water to properly accommodate such boat, vessel or ship so seized. Such boat, vessel or ship so found being used contrary to the provisions of this statute, shall be forfeited to the state and the said commissioner is hereby authorized, empowered and directed to institute proceedings for the purpose of condemning and selling such boat, vessel or ship, in the name of the state, in the superior court in the county in which such seized boat, vessel or ship is taken under the provisions of this section. The owner of such boat may execute and deliver to the commissioner a bond, with adequate security, not less than the value of such boat, conditioned to return said boat to the custody of said commissioner, if upon the trial of the cause in the superior court as aforesaid it should be determined that the said boat was forfeited.

This authority to seize the said boat, under the circumstances hereinbefore detailed, shall in no way affect the liability of the owners and those operating the boat and thus using it in fishing, to be prosecuted for the misdemeanor hereinbefore defined. Provided, nothing contained in this section shall be construed to prevent any person, firm or corporation, which has been a bona fide resident of the state of North Carolina for twelve months continuously next preceding the date on which the fishing shall commence from employing non-resident employees in connection with fishing as authorized by law. (1931, c. 36, s. 1; 1937, c. 261.)

Editor's Note.—This section empowers the Fisheries Commissioner [now the commissioner of commercial fisheries] or his deputies to seize nets and appliances used in violation of law and sell the same at public auction, after advertisement for ten days, or to seize any boat engaged in violation of the law and institute proceedings for condemnation in the name of the state. Such power in administrative agencies is held to be due process (Daniels v. Homer, 139 N. C. 219, 51 S. E. 992. See 3 N. C. L. Rev. 27), since the owner has recourse to the courts to recover his property before condemnation by injunction or by claim and delivery proceedings and may maintain an action for damages for the value of the property against the officials who seized it, if such taking prove to be wrongful. 9 N. C. Law Rev. 389.

The 1937 amendment struck out the last sentence of the first paragraph and inserted the present last two sentences in place thereof. It also inserted the second paragraph, and omitted a provision as to compromise with boat, etc., owner for violation of section formerly appearing in the present fourth paragraph.

§ 113-236. Fishing within three-mile limit permitted with pound nets.—It shall be lawful to set pound nets of not less than one and one-quarter inch bar, when fished, in the Atlantic ocean within the three-mile limit and between Cape Hatteras and the Virginia line, but not nearer to any inlet than three miles nor nearer the beach or ocean shore than four hundred yards. (1931, c. 118, s. 1.)

§ 113-237. Permission to set up apparatus to be granted by department of conservation and development and federal government; license fee.—Application for entry for the purpose of constructing permanent and semi-permanent, or stationary fishing apparatus within the three-mile limit under the provisions of this and the preceding section shall be made to the department of conservation and development. Permits for the erection of such fishing apparatus, nets, wires or

devices, may be granted by the department of conservation and development if such construction is deemed not to be a menace to public safety or navigation. No construction, or any part of a construction, to be erected under the authority of this section shall be made until permission is secured from the department of conservation and development and from the federal government. The license fee for the erection of fishing apparatus, nets, wires, or other construction which is an integral part of such fishing device, under the authority of this and the preceding section, shall be at the rate of twenty-five dollars per pocket per year, and said license shall expire each year on December thirty-one: Provided, however, the license fee herein levied shall not apply where the investment for such apparatus does not exceed the sum of one thousand dollars. (1931, c. 118, s. 2.)

§ 113-238. Taking of shrimp by non-residents prohibited. — It shall be unlawful for a person, who has not in good faith resided in the State of North Carolina for a period of twelve months to take shrimp within the territorial waters of the State. (1931, c. 117, s. 2.)

Editor's Note.—The act from which this and the succeeding section were taken was amended by Public Laws 1931, c. 331, which made its provisions, regulating the taking of shrimp in the public waters of the State, subject to the approval and supervision of the department of conservation and development under the general law theretofore existing.

Such restrictions against non-residents taking shrimp and fish are justified under the police power which may be exercised in favor of residents as to the state's natural resources. Corfield v. Coryell, Fed. Cas. No. 3230, 4 Wash. C. C. 371. 9 N. C. Law Rev. 389.

§ 113-239. Closed season for residents taking shrimp. — It shall be unlawful for any resident of the State of North Carolina to take shrimp for commercial purposes in any of the waters of said State between the fifteenth day of May and the fifteenth day of August in any year: Provided, however, that any such resident may take such shrimp to be used as bait only, but not exceeding one bushel per day per boat. (1931, c. 117, s. 3.)

§ 113-240. Violation of two preceding sections made misdemeanor.—Any person, firm or corporation offending against the provisions of §§ 113-238 and 113-239 shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1931, c. 117, s. 4.)

§ 113-241. Regulations subject to approval of department.—The provisions of §§ 113-238, 113-239, and 113-240 and all other provisions of chapter one hundred seventeen of the Public Laws of 1931, regulating the taking of shrimp in the public waters of the State, are made subject to the approval and supervision of the department of conservation and development under the general law theretofore existing. (1931, c. 331.)

§ 113-242. Menhaden fishing forbidden to non-residents.—It is unlawful for any person, firm, or corporation, not a citizen or resident of the state of North Carolina, to catch, capture, or otherwise take any menhaden or fatbacks within the waters of the state of North Carolina to the extreme limits of the state's jurisdiction in and over said waters; and for the purpose of this section the following boundaries are hereby declared to be the boundaries to which the waters of the said state extend, to wit: a distance of three nautical miles, measured from the outer beach or shores of the state of North Carolina out and into the waters of the Atlantic ocean; and any portions or portion of any water within a distance of three nautical miles from said waters of the Atlantic ocean to any beach or shore of said state shall be deemed, for the purposes of this section, within the waters of said state: Provided, that any citizen or resident of the state of North Carolina, whether person, firm, or corporation, may take, capture, or catch any menhaden or fatbacks at any time, subject to existing laws; provided, it shall be lawful for non-residents of the State to catch, or capture menhaden (fat-backs) from the waters of North Carolina, North of Cape Hatteras, on the payment to the commissioner of commercial fisheries of seventy-five cents per ton on gross tonnage of such boats as they may operate, licenses issued under this proviso to expire December thirty-first of each year.

It is unlawful for any nonresident person, persons, firm, or corporation knowingly to buy, cook, or manufacture into fertilizer any menhaden or fatbacks caught, taken, or captured contrary to the provisions of the above.

Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction in any county opposite the place at which said act is done, shall be fined not less than twenty-five hundred dollars or imprisoned for two years, or both, in the discretion of the court: Provided, that each catch, or taking, or purchase, or act of manufacture, shall constitute a distinct and separate offense.

It is the duty of the commissioner or assistant commissioner, whenever an affidavit is delivered to him stating that the affiant is informed and believes that this section is being violated at any particular place, to go himself or send a duly authorized deputy to such place, to investigate the same, and such officer shall seize and remove all nets, machinery, or other appliances and paraphernalia setting or being used in violation of this section, sell same at public auction and apply the proceeds of such sale to the payment of costs and expenses of such removal, and pay any balance remaining into the school fund of the county nearest to the place where the offense is committed. (1911, c. 102; 1921, c. 234; 1923, c. 154, ss. 2, 3; 1927, c. 59, s. 4; C. S. 1966.)

§ 113-243. Menhaden fishing with nets regulated.—If any person shall catch any menhaden or fatbacks within the waters of the state of North Carolina, to the extreme limits of the state's jurisdiction as defined in the preceding section, in any purse net or purse seine with a bar of less than one inch and with a mesh of less than two inches, or shall knowingly cook or manufacture for fertilizer any menhaden or fatbacks caught in any net or seine having bars of less than one inch or having meshes of less than two inches, at any place within the state of North Carolina, he shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than five hundred dollars or imprisoned for one year, or both, in the discretion of the court. Every person found fishing with such illegal nets for menhaden or fatbacks within three miles of the shore of any county shall be presumed to have violated this

section. And all such persons, firms or corporations shall be subject to all the pains and penalties prescribed in this section, and they may be prosecuted in the courts of any county in this state. All persons aiding and abetting shall be guilty as principals. (Rev., s. 2438; 1905, cc. 274, 508; C. S. 1967.)

Local Modification.—Brunswick, Dare, New Hanover, Pender: C. S. 1967.

§ 113-244. Poisoning streams.—If any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor. (Rev., s. 3417; Code, s. 1094; 1883, c. 290; C. S. 1968.)

§ 113-245. Putting explosives in waters forbidden.—No person, firm or corporation shall put or place in any waters within or on the boundaries of this State any electricity, explosives or poisonous substances whatsoever for the purpose of catching, injuring or killing fish. No person, firm or corporation shall allow substances, poisonous to fish to be turned into or allowed to run, flow, wash or be emptied into any waters within this commonwealth, designated by the board as fish producing waters, unless it be shown to the satisfaction of the board or to the proper court that every reasonable and practicable means has been used to abate and prevent the pollution of waters in question by emptying into same any deleterious or poisonous substances: Provided this section shall not apply to dyestuffs or sewage discharged from cotton mills.

In prosecutions under this section for pollution of water by substances known to be injurious to fish or fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish.

No person shall fish or trespass with intent to fish in or upon any waters or bed or banks of any water, or any land controlled or owned, or occupied by the Board. No person shall wilfully or maliciously destroy or damage any ponds, property or appliance whatsoever of the board, nor interfere, obstruct, pollute or diminish the natural flow of water into or through any State fish hatchery.

Any person violating any of the provisions of this section shall, on conviction, be fined not less than one hundred dollars for each and every offense: Provided, further, that this section shall apply only to such fish producing streams designated as such by the board, and that no prosecution under this section shall be instituted except by said board. (1927, c. 107.)

§ 113-246. Fish offal in navigable waters.—If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the state, any fish offal, in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw or cause to be thrown into the waters known as the Frying Pan, tributary to the Great Alligator river, in Tyrrell county, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor. (Rev., s. 2444; Code, ss. 3386, 3389, 3407; C. S. 1969.)

§ 113-247. Sunday fishing.—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months. (Rev., s. 3841; Code, s. 1116; 1883, c. 338; 1933, c. 438; C. S. 1970.)

Local Modification.—Onslow: 1933, c. 51.

Cross Reference.—As to provisions concerning catching and unloading oysters on Sunday or at night, see §§ 113-210, 113-211.

§ 113-248. Robbing nets.—If any person shall, without authority of the owner, take any fish from any nets of any kind, he shall be guilty of a misdemeanor. (Rev., s. 2478; Code, s. 3418; 1883, c. 137, s. 5; C. S. 1971.)

§ 113-249. Vessel injuring nets.—If any master or other person having the management or control of a vessel or boat of any kind, in the navigable waters of the state, shall willfully, wantonly, and unnecessarily do injury to any seine or net which may be lawfully hauled, set or fixed in said waters for the purpose of taking fish, he shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars, and shall be guilty of a misdemeanor. (Rev., s. 2465; Code, ss. 3385, 3389; C. S. 1972.)

In General.—The right of navigation is paramount but not exclusive. If nets are across the channel of a river, or are in any other way a bar to navigation, they may be run over with impunity by any vessels that may find it reasonably necessary to do so. Lewis v. Keeling, 46 N. C. 299, 62 Am. Dec. 188; State v. Baum, 128 N. C. 600, 38 S. E. 900. But there must be some such necessity. As was said by the court in Lewis v. Keeling, supra, "There must be no wantonness or malice, no unnecessary damage, but a bona fide exercise of the paramount right of navigation." Hopkins v. Norfolk, etc., R. Co., 131 N. C. 463, 465, 42 S. E. 902.

§ 113-250. Injury to fishing structures.—If any person shall willfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be guilty of a misdemeanor. If any person shall willfully destroy or injure any platform or structure erected in any navigable waters by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor. (Rev., ss. 3414, 3415; Code, s. 2753; 1874-5, c. 183, ss. 2-4; C. S. 1973.)

§ 113-251. Obstructing passage of fish in streams.—If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance, across any such river or creek any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir, or hedge, in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, and shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor. (Rev., s. 2457; Code, ss. 3387, 3388, 3389; 1909, c. 466, s. 1; C. S. 1974.)

Local Modification.—Onslow: C. S. 1974.

§ 113-252. Dams for mills and factories regulated; sluiceways.—No person shall place or allow to remain any dam for mill or factory purposes in the Chowan river between Holliday's island and the Virginia line; in the Meherrin river between its mouth and the Virginia line; in the Roanoke river from the mouth of the Cashie river to the Virginia line; in the Dan river from the crossing of the state line to a point nearest Danbury; in the Neuse river from New Bern to Neuse station in Wake county; in Contentnea creek from its junction with the Neuse to the junction of Turkey and Moccasin creeks; in the Cape Fear river from Wilmington to the junction of Haw and Deep rivers and thence in Haw river to the line of Chatham and Alamance counties, and also in Deep river to the Randolph and Chatham line; in Rocky river from its mouth to the crossing of the Pittsboro and Ashboro road; in the New Hope river from its mouth to the Orange county line; in Northeast Cape Fear river from Wilmington to South Washington; in Black river from its mouth to the junction of the Coharie; in the South river from its junction with the Black river to the crossing of the Fayetteville and Warsaw public road; in Lumber river from the state line to the northern boundary of Robeson county; in the Yadkin river from the state line to Patterson's factory; in Elk creek, a tributary of the Yadkin river, from its mouth to Daniel Wheeler's in Watauga county; in Stony Fork creek, a tributary of the Yadkin river, from its mouth to John Jones's old store; in Ararat river from its mouth to the bridge at Mount Airy; in North Fork of Catawba from its mouth to Turkey Cove; in Broad river from the state line to Reedy Patch creek; in Green river from its mouth to its junction with North Pacolet; in the Tennessee river from the state line to its junction with the Nantahala; in Pigeon river from the state line to the Forks of Pigeon; in the French Broad river from the state line to Brevard and in the Swannanoa river; in Toe river from the state line to the confluence of the North and South Forks of Toe; in New river from the state line to the point of divergence from the western boundary line of Alleghany county; in Little river in Johnston county from its junction with Neuse river in Wayne county to the Wake county line; in Cane river from the mouth of same to mouth of Bolling creek in Yancey county, also Old Fields of Toe on North Toe river in Mitchell county; Johns river from its mouth to the forks of said river near Carrell Moore's in Caldwell county; Catawba river from the South Carolina line to the town of Old Fort in McDowell county, unless the owner thereof shall construct thereon at his own expense a sluiceway for the free passage of fish, of a width not less than three feet nor more than ten feet: Provided, such sluiceway shall be constructed according to plans and specifications to be furnished by the board of agriculture, and shall not injure the water-power of such owner: Provided further, in order to ascertain whether sluiceways will or will not injure the water-power aforesaid, the owner of such dam may select two disinterested persons and the board of agriculture two others, who may select the fifth person to aid in the arbitration and settlement of such complaint: Provided further, this section shall not apply to Pigeon river in Haywood county: Provided also, it shall be lawful for any person to remove any obstruction in the main channel of the Cape Fear river to the width of one hundred feet, for the free passage of fish in the county of Harnett. This proviso, however, shall not apply to any dam or obstruction placed or kept upon said river by the Cape Fear iron and steel company. (Rev., s. 2462; Code, s. 3410; 1901, c. 208; 1880, c. 34; 1881, cc. 21, 32, 250, 320; 1905, c. 278; P. L. 1913, c. 758; C. S. 1975.)

Cited in regard to obstructions in French Broad River in Gwaltney v. Scottish Carolina Timber, etc., Co., 111 N. C. 550, 16 S. E. 692.

§ 113-253. Sluiceways and fish passages; regulation and enforcement.—The sluiceways referred to in the preceding section shall be so constructed and placed upon such dams by the owner thereof within sixty days after notice has been given by the board of agriculture, under a penalty of one hundred dollars per day for each day thereafter that such dam shall remain without such sluiceway, and shall be kept open by him during the months of February, March, April, May, June, October and November, and at all other times when there is sufficient water to supply both the water-power and the sluiceway, a fine of fifty dollars per day for each day said sluiceway shall be allowed to remain closed, and any person who shall fish with net, trap, hook and line, or who shall take in any way whatsoever any fish within two hundred feet of said sluiceway, shall be subject to a fine of one dollar for each fish so taken, or a fine of fifty dollars for each offense, or imprisonment for thirty days.

No other obstruction to the passage of fish shall exist or be built between the designated points in the streams mentioned in this and the preceding section unless an opening of not less than twenty-five feet, and not more than seventy-five feet, embracing the main channel of said streams, shall be made by the owner of such obstructions within twenty days after notice from the board of agriculture to make such opening under penalty of fifty dollars per day for each day such obstruction shall remain unopened. Said notice shall be served by the sheriff of the county, and his return shall be prima facie evidence of notice in any suit for such penalty. (Rev., ss. 2463, 2464; Code, ss. 3411, 3412; 1880, c. 34, ss. 2, 3; C. S. 1976.)

Art. 22. Cooperation with United States Bureau of Fisheries.

§ 113-254. Fish cultural operations by U. S.—The United States Fish and Wild Life Service is hereby granted the right to conduct fish cultural operations and scientific investigations in the several waters of North Carolina and to erect such fish hatcheries and fish propagating plants as are duly authorized by the Congress of the United States at such times as may be considered necessary and proper by said commissioner and his agents, any laws of the State to the contrary notwithstanding. (1931, c. 268.)

Art. 23. Propagation of Fish.

§ 113-255. By Whom issued.—The department

of conservation and development is authorized to issue an artificial propagation license for the propagation of all species of trout and all species of bass, upon written application therefor signed by the applicant and upon the payment to said department the sum of five dollars; for all other species of fish, the sum of fifty cents: Provided, that any commercial fisherman who has paid the required license or licenses upon his fishing nets, devices or gear shall not be required to pay an additional license to deal in live fish for propagation purposes. (1929, c. 198, s. 1; 1933, c. 430, s. 1.)

Editor's Note.—Public Laws 1933, c. 430, added the proviso at the end of this section relating to payment of license by commercial fisherman.

§ 113-256. Applications; when licenses expire.—Applications shall be made on blanks prepared by the department of conservation and development and shall show the size, character and purpose of the propagation plant and such other matters as the department may require. All licenses issued under this article shall expire on the first day of January next following the date of issue. (1929, c. 198, s. 2.)

§ 113-257. Erection of dams, ponds, etc.—No dams, ponds, or other devices which will prevent the free migration of fish shall be erected or placed by a person licensed under this article, in any stream, flowing over his property. No person shall use the ponds so licensed for any purpose other than for commercial fish purposes. (1929, c. 198, s. 3.)

§ 113-258. What license authorizes.—The license issued under this article authorizes the licensee to carry on the business of propagation and sale of the species of fish authorized by the license, or the eggs thereof, during the year for which the license is issued. The license authorizes the licensee to catch and kill the fish authorized by the license from the licensed ponds in any manner whatsoever except with explosives or poisonous substances. The license further authorizes the licensee to sell or dispose of in any manner whatsoever the fish authorized by the license, or the eggs thereof, at any time of the year, and it authorizes express and railroad companies to receive and transport same. (1929, c. 198, s. 4.)

§ 113-259. Catching fish from streams.—The license issued under this article does not authorize the catching of fish out of any streams flowing over the property of the licensee. (1929, c. 198, s. 5.)

§ 113-260. Certificate or invoice of sale.—A person selling fish under the license provided by this article shall furnish the purchaser with a certificate or invoice of the sale, bearing the date of sale, the number of the license under which sold, the number of fish, and number of pounds sold. The certificate or invoice must be shown by the holder on demand of any fish or game protector or any other person authorized to enforce the fishing laws. The certificate or invoice shall authorize the sale of the fish so purchased for a period of six days after its date of issue. (1929, c. 198, s. 6.)

§ 113-261. Annual reports of transactions.—A person holding an artificial propagation license under this article shall annually on the first day of January file with the department of conservation and development a written statement duly sworn to, showing the number, value, and number of pounds of fish or the eggs thereof sold or disposed of during the year. The books and property of the person licensed under this article shall be open to the department or its agents for inspection at all reasonable times. (1929, c. 198, s. 7.)

§ 113-262. From what waters stock taken.—No person licensed under this article shall in any manner stock or maintain his establishments with any species of fish or eggs thereof taken from any waters within this state not owned, occupied or controlled by them. This section does not prohibit the exchange of fish eggs or the fry of any species of fish with the department of conservation and development. (1929, c. 198, s. 8.)

§ 113-263. Killing domestic and predatory birds and animals.—A license issued under this article authorizes the licensee or his agent to kill, after five days' notice to their owner if known, any domestic bird or fowl trespassing on the waters or lands controlled, used, or occupied entirely for the artificial propagation of fish. Such license also authorizes the licensee or his agent to kill any wild birds or wild animals destructive to fish life whenever found on such waters or lands. (1929, c. 198, s. 9.)

§ 113-264. Necessity for license; trespassing upon licensees' property.—No person shall artificially propagate any species of fish without first procuring the license provided by this article. No person receiving a license, as provided by this article, shall operate a propagating plant different from that designated in the license. No person operating a propagating plant for which a license has been issued for the operation of such a plant shall catch fish out of any stream flowing over the property of the licensee. No person shall fish or trespass with intent to fish in or upon any waters, or ponds or banks of any waters, or any banks owned, controlled or occupied by persons licensed by this article. No person shall wilfully or maliciously destroy or damage any ponds, property, or appliances whatever of a propagating plant licensed under this article. No person shall interfere or obstruct, pollute or diminish the natural flow of water into or through a propagation plant licensed under this article. (1929, c. 198, s. 10.)

§ 113-265. Punishment for violation.—Any person violating any provisions of this article shall on conviction be sentenced to pay a fine of not less than one hundred dollars or imprisoned in the discretion of the court. (1929, c. 198, s. 11.)

Art. 24. Shellfish; Local Laws.

§ 113-266. New Hanover, Onslow and Pender: Close season for oysters.—If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this state between the first day of April and the first day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken

with hand-tongs only during the month of April in any year, to be used for planting on private grounds, entered and held under the laws of this state: Provided further, that oysters may be taken with hand-tongs only for home consumption: Provided further, that coon oysters may be taken from October first to May first of each year in the waters of Onslow and Carteret counties: Provided also, that it shall be lawful to take or catch oysters on public oyster grounds north of the line running from Point Peter to Duck island, except between a line running from the east end of Hog island to the beach and from Ballast point to the beach in Dare county, to be sold to residents or nonresidents, from April first to May fifteenth of each year, upon the payment by the purchaser of a tax of one and one-half cents per tub.

This section applies only to the counties of New Hanover, Onslow and Pender. (Rev., s. 2383; 1903, c. 516, s. 22; 1905, c. 525, ss. 5, 8; 1907, c. 936, s. 4; C. S. 1947.)

§ 113-267. Brunswick, New Hanover and Pender: Clams protected.—It shall be unlawful for any person, firm or corporation to take clams in the counties of Brunswick, New Hanover or Pender, from any of the waters thereof, for the purpose of bedding, for market, or for shipment from the said counties, from the twenty-fifth day of March to the fifteenth day of December of each year: Provided, however, that citizens of the said counties shall have the privilege at all times of the year to catch clams for selling in any of the said counties, in small quantities, for table use only. It shall be unlawful for any person, firm or corporation to purchase clams in the counties of New Hanover or Pender for the purpose of shipping from the said counties, or for any person, firm or corporation to ship from the said counties of Brunswick, New Hanover or Pender any clams at any time from the twenty-fifth day of March to the fifteenth day of December of every year, and in Brunswick county from the first day of March to the first day of December of every year. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined for each offense not exceeding fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1909, c. 879; P. L. 1913, c. 805; C. S. 1948.)

§ 113-268. Brunswick: Clams; size limit. — It shall be unlawful for any person or persons to catch any clams for use or for sale under one and one-half inches in diameter in the waters of Brunswick county; and upon conviction shall be guilty of a misdemeanor. (P. L. 1913, c. 805; C. S. 1949.)

§ 113-269. Brunswick: Fire on oyster beds; raking.—In Brunswick county it shall be unlawful for any person or persons to build a fire upon any natural oyster bed or rock at a place where oysters are in a state of growth. It shall be unlawful for any person or persons to rake with clam rake any oyster bed or oyster rock. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1915, c. 138; C. S. 1950.)

§ 113-270. Carteret: Clams in Newport River.—It shall be unlawful for any person or persons, firm or corporation, between the fifteenth day of April and the fifteenth day of October of any year, to take any clams from the waters of Newport river and its tributaries, for the purpose of shipping, selling, marketing or bedding the same. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars for each offense, or imprisoned not exceeding thirty days, or both, in the discretion of the court. (1907, c. 840; C. S. 1951.)

§ 113-271. New Hanover: Catching oysters in Myrtle Grove Sound.—If any person shall take or catch any oysters from Myrtle Grove sound, from Perrine's or Whitaker's creek to the headwaters of said sound in New Hanover county, from the first day of May until the first day of September, except for his own consumption, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days. (Rev., s. 2426; Code, s. 3423; 1883, c. 358, ss. 1, 2; C. S. 1952.)

§ 113-272. New Hanover: Clams in Masonboro sound.—It shall be unlawful for any person or persons to use any rake or other instrument with more than two prongs for the purpose of taking clams from any natural oyster rock or the other waters of Masonboro sound, in the county of New Hanover, between what is known as Fowler's landing to Cockle Shell point, in said county, a distance of about one mile. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 521; C. S. 1953.)

§ 113-273. Onslow: Catching oysters and clams in certain waters.—It shall be unlawful for any person to take or catch any oysters or clams from the natural oyster beds heretofore staked off and defined by the shellfish commissioners of Onslow county, or from any ground, between the first days of April and October of each year, lying north of the following lines, to wit: Beginning at triangulation point "Mount Millow," on the western shore of New river, and running thence eastwardly to triangulation point "pond," the eastern shore of New river. It shall be unlawful for any person during the months of May, June and July of each year to take or catch oysters or clams from the natural oyster beds within the grounds lying south of the line mentioned above. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction or confession in open court shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It shall be the duty of the commissioner of commercial fisheries to keep the lines marking the natural oyster beds in said waters properly marked and staked off. (1907, c. 949; C. S. 1954.)

§ 113-274. Onslow: Catching oysters in Stump sound.—It shall be unlawful for any person, firm or corporation to catch, take or carry away from the oyster beds in the waters of Stump sound, in Onslow county, between Alligator bay and the

Pender county line, any oysters except for home consumption between the first day of March and the twenty-fifth day of October in any year. Any person, firm or corporation violating this section shall, upon conviction, be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. (1915, c. 130; C. S. 1955.)

§ 113-275. Onslow: Clams in Brown sound and Queen's creek.—It shall be unlawful for any person, firm or corporation to catch or take any clams from the waters herein described between the first day of April and the first day of October. Said territory shall be as follows: Beginning at the mouth of Queen's creek, in Onslow county, and running the various courses of the said Queen's creek channel to Bogue inlet, including all the waters south of said channel to the Horse ford, between Brown sound and New river: Provided, this shall not be so construed as to prohibit any one from catching clams for their own table use only. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 514; C. S. 1956.)

Art. 25. Commercial Fin Fishing; Local Regulations.

§ 113-276. Inlets; nets in, regulated.—If any person shall set any pound net, , dutch net or hedge net within two miles of Oregon inlet or Hatteras inlet or within ten miles of New inlet in Dare county, or shall between the first day of January and the first day of May following of any year, set or operate any seine or stationary nets of any kind in the main channels within three miles of the inside mouths of Ocracoke, Hatteras, Oregon, or any other inlet north of Ocracoke inlet, connecting the waters of the Atlantic ocean with any of the sounds or other inland waters, or shall fish with seines or nets of any description in the waters of Bear inlet or Brown's inlet or within one mile of Bear inlet or Brown's inlet, on the eastern or western beach of said inlets, except at regularly established fisheries on said Bear or Brown's inlet beaches, or shall fish with seines or nets on the inside of said Bear or Brown's inlet within one-fourth mile of said inlets between the first day of October and the first day of April, he shall be guilty of a misdemeanor. (Rev., s. 2450; 1893, c. 216; 1903, c. 724; 1903, c. 416; C. S. 1977.)

Cross Reference.—See also, § 113-236.

Held not applicable in Bell v. Smith, 171 N. C. 116, 87 S. E. 987.

§ 113-277. Pamlico and sounds to the north: Net stakes to be removed. — Every person who shall set or use any net in the waters of Pamlico, Croatan, Currituck or Albemarle sounds or their tributaries, except Perquimans river, shall be required to pull up and remove his broken, decayed and abandoned net stakes within thirty days from the day the nets are taken from them, and not later than the first day of June, and any person failing to pull up and remove his stakes, as required by this section, shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2448; Code, ss. 3382, 3414; 1883, c. 69; R. C., c. 81, s. 8; 1844, c. 40, s. 7; 1852, c. 13; 1893, c. 147; Ex. Sess. 1908, c. 19, s. 1; C. S. 1978.)

Pod-Nets Interfering with Seines.—When stakes of pod-net fishermen interfere with the use of Albemarle sound for seining they may be removed by any party with whom they interfere. Hettrick & Bro. v. Page, 82 N. C. 65.

§ 113-278. Pamlico, Croatan, and Albemarle sounds and inlets: Fishing regulated. — If any person shall set or fish any net, seine or appliance of any kind for catching fish at any place within a radius of two and one-half miles either way from Roanoke marshes lighthouse, at a distance more than five hundred yards from the shore of Roanoke island or the mainland on the western side of Croatan and Pamlico sounds, except that on the western side of Pamlico and Croatan sounds fishing shall be permitted in that territory extending one thousand yards from the shore, beginning at the two-and-one-half-mile limit heretofore defined and extending to the southern end of the Roanoke marshes, on the Pamlico sound side, and to the north end of the same marshes of the Croatan side, but in neither case shall the nets within this one-thousand-yard limit be within one and one-quarter miles in any direction from the Roanoke marshes lighthouse; or shall set or fish any pound or dutch net on the eastern side of Pamlico sound within ten miles of the Roanoke marshes lighthouse, except such as shall be fished within one thousand yards of Roanoke island or Hog island shores; or shall set or fish any dutch or pound net on the eastern side of Pamlico sound more than two thousand yards west of a line running south-southeast (magnetic) from Big island to a point on the twelve-foot curve westerly of Chicamacomico or south of said point more than two thousand yards from the twelve-foot curve, as marked on the chart of the coast and geodetic survey, corrected from data obtained to November twenty-second, one thousand nine hundred and four; or shall set or fish any dutch or pound net on the west side of Pamlico sound, in said sound, extending into the water more than two thousand yards from the shore; or shall set or fish any pound or dutch net in Croatan sound farther from the shore than one-fifth of the width of said sound at that point; or shall set or fish any net, seine or appliance of any kind for catching fish at any place within the area of one-sixth the width of the sound or river on either side of a line passing through the middle of the channel of Croatan sound and the middle of Albemarle sound, up Chowan river as far as Cannon's ferry, and other tributaries of Albemarle sound (provided, this clause does not apply to seines used on the rivers); or shall set or fish any pound or dutch net in the Albemarle sound more than two thousand yards from the shore of the mainland, or in Chowan river farther from the shore than one-third of the width of said river, at the place where said nets are fished or set, or within one-fourth mile of any wharf used by a steamer on said river; or shall set or fish any net or appliance of any kind for catching fish within one mile on either side of a line running westerly or southwesterly from the center of New inlet to an intersection with the line extending from Big island southwest (magnetic), or within one mile

on either side of a line six miles long running southwesterly from the center of Oregon inlet to a point two thousand yards west of the continuation of the said line running from Big island south-southeast (magnetic), or within one mile on either side of a line six miles long running from the center of Hatteras inlet in a northwesterly direction, these restricted areas to include the channels extending from Oregon, New and Hatteras inlets, respectively, he shall be guilty of a misdemeanor and be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. The provisions of this section shall apply only to that part of each year in which shad and herring fishing are permitted by law in the several waters, except that in Albemarle and Croatan sounds the provisions of this section shall apply for the entire year, as far as it relates to pound nets. The commissioner of commercial fisheries is authorized, in determining the boundaries of the restricted areas on either side of Roanoke marshes, to run straight lines from the stake two thousand yards from the shore in the two-and-one-half-mile radius from Roanoke marshes lighthouse to the stake five hundred yards eastward from the point of Roanoke marshes, and shall run straight lines from the stake one-fifth the width of Croatan sound in the two-and-one-half-mile radius from Roanoke marshes lighthouse south to the stake five hundred yards from the eastward point of Roanoke marshes; that the boundary lines marking the restricted areas in these sounds shall be run in straight lines from stake to stake, located at certain points, but said stakes not to be in any case more than three miles apart. The place of trial for offenses under this section shall be the county opposite where the act was committed. (1909, c. 540, s. 3; C. S. 1979.)

§ 113-279. Albemarle and Croatan sounds and inlets: Drift nets.—If any person shall drift or fish any drift nets between the first day of February and the first day of May of any year, within two miles of the mouth of any river emptying into Albemarle sound, or within three miles of any seine-beach on the Albemarle or Croatan sounds while being fished, or within ten miles of Ocracoke, Hatteras, Oregon or New inlets, or within ten miles of the Roanoke marshes, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars or imprisoned not less than thirty days: Provided, the people of Dare county shall be allowed to use drift nets for herring. (Rev., s. 2446; Code, s. 3390; 1881, c. 274, ss. 1, 2; 1883, c. 145; C. S. 1980.)

§ 113-280. Albemarle sound and tributaries: Nets and net stakes.—No person shall set or fish any dutch net or pound net in Roanoke river, Cashie or Middle and Eastmost rivers, or within two miles of the mouth of said rivers, or within one mile of the mouth of any other river emptying into Albemarle sound, or less than two miles in width at its mouth, and any such net set within one mile of the mouth of any other river emptying into said sound shall not extend into the main channel at its mouth. No person shall set or fish with a dutch net or pod net within half a mile to the eastward or westward of the outside windlasses or snatch-blocks of any seine fishery in operation on said sound; and any such net set or fished within one mile of such windlasses or snatch-blocks of any seine fishery in operation shall run at right angles to the shore from the shore, and shall not extend farther into the sound from the water's edge than the distance from such windlasses or snatch-blocks to the line of such net; and all persons who shall set or fish any such net in said sound shall pull up and remove the stakes used for the same by the first day of June next succeeding the fishing season, and if any person shall set or fish any dutch net or pod net in said sound in violation of this section he shall be guilty of a misdemeanor, and be subject to a penalty of three hundred dollars: Provided, that dutch nets may be used in Cashie river two and one-half miles from its mouth, if they do not extend more than one-third the width of said river from the shore, and such nets may be along the sound shore on the Bertie county side between the following points along said shore, to wit: Commencing at the mouth of Cherry Tree Cut branch, Kentrock field and Landing field, and running around the shore to the mouth of Morgan swamp, thence to Rock Spring branch, and that any nets set or fished within that line shall not extend from the shore in any direction a greater distance than six hundred and fifty yards measured at high water, and within this distance of six hundred and fifty yards is to be included the nets, hedges and all parts thereof. (Rev., s. 2439; Code, s. 3383; 1889, c. 122; 1891, c. 322; 1895, c. 245; 1899, c. 310; 1899, c. 412; 1909, c. 540, s. 2; 1911, c. 23; C. S. 1981.)

§ 113-281. Albemarle sound in certain parts: Gill nets.—It is unlawful to set, fish or use any gill nets of any description, either stake, anchor or drift, for commercial purposes in the Albemarle sound west of a line drawn straight from Batt's island on northern side of Albemarle sound to mouth of Scuppernong river on south side of said sound, except between the hours of four o'clock and eleven o'clock p. m., and then said nets or combinations of such nets shall not be more than six hundred yards in length, and there shall not be allowed to any boat more than six hundred yards of such gill nets.

It is the duty of the commissioner of commercial fisheries or other persons entrusted with the enforcement of the fishery laws of the state to seize and remove any gill net of any description being set, setting or being used in violation of this article, or which is more than six hundred yards in length, and to dispose of the same as provided by law.

It is the duty of the commissioner to keep a deputy, assistant or inspector on the waters of Albemarle sound to enforce this section and the other fish laws applicable to Albemarle sound, and the failure of the commissioner to perform this duty shall render his official bond liable to the penalty prescribed in the third preceding section which regulates fishing in Pamlico, Croatan and Albemarle sounds and inlets.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars (one-half to go to the informant and the other half to the school fund), or imprisoned in the discretion of the court. (1911, c. 18; 1913, c. 43; C. S. 1982.)

Constitutionality.—A provision, similar to the provision in this section giving one-half the fine to the informant, was held unconstitutional as contrary to Art. IX, sec. 5, of the North Carolina Constitution, which directs the appropriation of the clear proceeds of fines for educational purposes in State v. Maultsby, 139 N. C. 583, 51 S. E. 956.

§ 113-282. Albemarle sound off Tyrrell county: Gill nets.—It is unlawful for any person, firm or corporation to set or use for catching fish any anchor gill net within fourteen hundred yards of any stake gill net of from four and one-half inch to five and one-half inch mesh in that part of the Albemarle sound embraced in the following area: Commencing on the east shore of the Scuppernong river where said river empties into the Albemarle sound, thence north to the middle of the Albemarle sound, thence along the middle of the Albemarle sound to a point in the sound opposite Newberry pier, thence to the shore at Newberry pier, and along the sound shore to the beginning. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned for not more than thirty days. (1915, c. 112; C. S. 1983.).

§ 113-283. Albemarle sound in certain parts: Anchor, drift, and stake nets.—If any person shall set or fish an anchor, drift or staked gill net in the waters of Albemarle sound or its tributaries west of a line running from Skinner's point buoy to Roanoke lighthouse, or if any person shall east of said line set or fish in the waters of said sound or its tributaries any anchor, drift or staked gill net longer than one thousand yards, or combination of such nets longer than one thousand yards; or shall set or fish any anchor, drift or staked gill nets within one and one-half miles of any seine grounds on the said sound or rivers emptying therein or within one-half mile of any dutch net stand where the same is now located in said sound or rivers, unless said seine ground or dutch-net stand is owned by the person setting such nets; or shall set or fish any line or row of anchor, drift or staked gill nets anywhere in said sound or rivers nearer to any other row of such nets than half the length of the longer of said row he shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or be imprisoned not more than thirty days. And any person who shall willfully violate the provisions of this section shall forfeit and pay for each violation of the same the sum of one hundred dollars, to be recovered in a civil action by any one who will sue therefor; one-half of said recovery shall inure to the benefit of the public school fund: Provided, that nothing in this section shall prevent the setting of gill nets in the Chowan river or its tributaries above Holliday's island: Provided further, that one-third of said stream, along the channel, shall be kept free from any class of net: Provided further, that no pound net shall be set within one hundred yards of any other pound net set by another person in Chowan river, north of Holliday's island. (Rev., s. 2451; 1897, c. 51; 1899, c. 41; 1899, c. 130; 1911, c. 104; C. S. 1984.)

§ 113-284. Albemarle sound: Nets near wharves or Norfolk Southern railroad bridge.—It is unlawful to set any pound or dutch nets in Albemarle sound nearer to either side of the Norfolk Southern railroad bridge across said sound than three hundred yards, or to set any stake, drift, or anchor gill nets nearer to either side of said bridge than one-half mile. It is unlawful to set any net of any description in front of a wharf, that is, between the pier of any wharf now used as a landing for any steamboat and the middle of the stream on which the wharf is built. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court. (1911, c. 163; C. S. 1985.)

§ 113-285. Croatan marshes: Nets and fishing apparatus near.—If any person, for the purpose of taking fish, shall between the first day of February and the first day of May, of the same year, use or cause to be used, at or within half a mile of the marshes separating the waters of Croatan and Pamlico sounds, any weir, hedge, net or seine, he shall be guilty of a misdemeanor. (Rev., s. 2424; Code, s. 3378; R. C., c. 81, s. 4; 1844, c. 40, s. 3; C. S. 1986.)

§ 113-286. Currituck sound: Nets used regulated.—It is unlawful for any person or persons, firm or corporation to fish in the waters of Currituck sound with a drag, haul, seine or any other kind of net of whatsoever kind with a bar of less than one and three-eighths inches, or a mesh of less than two and three-quarters inches. Any person or persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned more than thirty days, in the discretion of the court. (1913, c. 29; C. S. 1987.)

§ 113-287. Pamlico sound: Nets to be set north and south. — Every net (unless the same be a drag-net and hauled to the shore) which may be used for catching shad in that portion of the waters of Pamlico sound lying between a line drawn eastwardly from Stumpy Point and Mount Pleasant in Hyde county to a point ten miles south of Hatteras inlet in said sound, shall be set and fixed in said waters in a direction from north to south, and shall not be used in any other manner; and any person offending against this section shall, for every offense, forfeit five dollars. (Rev., s. 2433; Code, s. 3381; 1889, c. 261; R. C., c. 81, s. 7; 1844, c. 40, s. 6; C. S. 1988.)

§ 113-288. Pamlico sound; tributaries, rivers, and waters of Carteret county: Nets regulated.—There shall be no pound or other tarred nets with a mesh smaller than one and one-half inches bar, before tarring, fished in Pamlico, Tar, and Neuse rivers, Pamlico sound and the waters of Carteret county, and there shall be no pound or stake nets fished within three miles of the inside mouths of Ocracoke inlet nor in the principal channel or channels of said inlet nor within one mile of said channel or channels until the said channel or channels reach deep water, at any time, and the other inlets north of it shall be left under § 113-278 of this chapter. No stake or pound net which shall be fished in any of the waters mentioned in this section, without being tarred, shall have a mesh of less than one and three-eighths inches bar. The bunt, which must not be longer than thirty yards, of all

seines and haul-nets fished in the waters of Pamlico, Tar and Neuse rivers and Pamlico sound shall not be smaller than one and one-eighth inches bar net, but nothing herein shall apply to nets fishing for menhaden. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars and imprisoned at the discretion of the court: Provided, this section shall apply only to that part of the year beginning January fifteenth and ending May fifteenth. (1907, c. 948, ss. 1-4; 1909, c. 540, s. 4; C. S. 1989.)

§ 113-289. Pamlico sound; waters of Pamlico county: Nets regulated.—It is unlawful for any person or association of persons or corporation to set or cause to be set, fish or cause to be fished in Pamlico sound from the mouth of Bay river to Neuse river and in Neuse river, more than four pound, pod or dutch nets in any one string, with leads of more than two hundred yards in length for each pound or net, or at a greater distance than one and one-half miles from the shore at right angles or thereabouts from the place opposite where such net may be set; and it is unlawful for any person, association of persons or corporation to set or cause to be set any pound, pod, or dutch net or string of nets of any kind, or fish any such nets nearer to a net or string of nets already set and being fished than five hundred yards, and no pound, pod, or dutch net nor any lead thereto shall be set other than at right angles or thereabouts from the shore. It is unlawful for any person or persons, firm or corporation to use, set or fish any drag or haul net in the waters of Smith's creek or its tributaries in Pamlico county.

It is unlawful for any person or persons or corporation to set or fish or cause to be set or fished any pound, pod, or dutch net in the waters of Pamlico county on the south or east side thereof, or in Neuse river, of a size smaller than one and one-quarter mesh or bar measure or two and one-half inches string measure

Any person, persons or corporation who shall violate any of the above provisions shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court, and shall also forfeit such net or nets any portion of which may be set beyond such distance from the shore or set in any manner or place forbidden in this section.

It is the duty of the sheriff of Pamlico county, upon reliable information that any person or persons or corporation has set or caused to be set any pound or dutch net, or that any portion of any such net has been set at a greater distance than one and one-half miles from the shore from the mouth of Bay river to Neuse river and from Neuse river to Baird's creek, or nearer than five hundred yards to any nets already set, to ascertain the truth thereof, and if such report be correct, take into possession at once any such net so set, and after ten days public notice at three public places in his county sell the same at public sale, and from the proceeds he shall retain the actual cost of taking such net, and a fee for services of two and one-half dollars and the remainder of said proceeds he shall pay one-half to the informer and the other to be paid to the county treasurer, who shall place the same to the credit of the public school fund of the county.

It is lawful for any person or persons to set pound, pod, or dutch nets in the manner prescribed in this section in the waters of Pamlico county and in Neuse river upon the north side thereof from its mouth to Baird's creek, at any time during the year, and from the northern end of outer Swan island to Adams creek on the south side of Neuse river, from the first day of January to the first day of May. (P. L. 1913, c. 752, s. 5; C. S. 1990.)

§ 113-290. Roanoke sound: Nets in.—It is unlawful for any person or persons to set any pound nets or any other kind of nets east of a line beginning at a point one thousand yards east of Hog Island point and running direct to a point two hundred yards east of Broad creek point; thence following the east shore of Roanoke island to Ballast point; or set or fish any pound or dutch nets or any other kind of net in that portion of Roanoke sound north of a line extending from Ballast point east ten degrees north farther from the shore than one-fifth of the width of said sound. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. This section shall not prevent the setting of pound nets inside of Shallow Bag bay, and shall apply only to that part of each year in which shad and herring fishing is permitted by law in the several waters. (1911, c. 26; C. S. 1991.)

§ 113-291. Black river: Fishing regulated.—It is unlawful for any person or persons to catch or take fish, either by rod or hook, seines, nets, striking, muddying the pools or lagoons, feeling by hand, gigging or in any other method or in any manner whatsoever, during the months of May, June, July and August, excepting Tuesday and Friday of each week in each year, in the waters of Black river and its tributaries, in the counties of Pender and Bladen. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not less than five dollars nor more than ten dollars or imprisoned not more than thirty days, one-half of the fine to be paid to the informer and one-half to the school fund. (1909, c. 478; C. S. 1992.)

Cross Reference.—See note under § 113-281.

§ 113-292. Black river and Mingo creek: Only hook and line.—If any person shall fish in that part of Black river in Sampson and Cumberland counties and below the Atlantic coast line railway bridge, or Mingo creek in said counties below the Averasboro and Clinton road otherwise than with a hook and line, he shall be guilty of a misdemeanor. (Rev., s. 2471; 1895, c. 276; C. S. 1993.)

§ 113-293. Black river in Bladen, Cumberland and Sampson: Close season.—It is unlawful for any person to catch with hook and line, seine, or destroy with gun or any gig or striking iron the fish in the waters of Black river and its tributaries in the counties of Bladen, Cumberland and Sampson from the fifteenth of May until the fifteenth of August in each year. Any person violating this section shall be guilty of a misdemeanor and shall

be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned in the county jail not more than thirty days, for each and every offense. (P. L. 1913, c. 623, s. 1; C. S. 1994.)

§ 113-294. Black river and Six Runs; Obstructing channel; lay days.—It is unlawful for any person or persons to fish in that part of Black river from the Cape Fear river to the mouth of Great Coharie, and in that part of Six Runs river from its mouth to where it is crossed by the Atlantic coast line railroad, with any wire trap, net or contrivance whatever that will obstruct the free passage of fish in said waters, from the first day of March to the fifteenth day of June of each year, except from six o'clock p. m. to six o'clock a. m. on Tuesday, Thursday and Saturday nights. It is unlawful for any person or persons fishing as permitted in the foregoing to leave, or permit being left, in the parts of the said streams defined in the foregoing, any wire trap, net or contrivance whatever that will obstruct the free passage of fish, or any parts of any such wire trap, net or contrivance, at any time during which such fishing is prohibited. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 169; C. S. 1995.)

§ 113-295. Cape Fear river: Nonresidents may not fish.—If any person who is a nonresident of the state shall catch fish, for marketable purposes, in the waters of the Cape Fear river, or any of its tributaries, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. (Rev., s. 3416; 1895, c. 230; C. S. 1996.)

§ 113-296. Cape Fear river: Nets and seines regulated.—If any person shall use any net for catching sturgeon in the waters of New Hanover county, the bars of the meshes of which net shall be less than ten inches in the diamond; or shall haul a seine or nets or pod fish within three hundred yards of any established fishery, except with the nets of such fishery; or shall set or fish any stationary nets in the waters of the Cape Fear river, except on the east side there f and in New Hanover county; or shall set any net in said river otherwise than east or west; or shall own or control more than one line of nets; or shall operate or fish any shad nets in Cape Fear river below the mouth of Brunswick river between the twentieth day of April and the fifteenth day of January; or shall set any set net or stationary net of any kind in the Cape Fear river north of the mouth of the Brunswick river, or in the Brunswick river; or shall operate any drift net in the Cape Fear river of more than three hundred yards in length, or shall catch shad in said river with seines or nets from the twentieth of April to the fifteenth of January, he shall be guilty of a misdemeanor. The possession of a sturgeon net with meshes of a size smaller than allowed by this section shall be prima facie evidence of having fished the same. In setting nets in Cape Fear river as allowed by this section the following rules shall prevail: They shall begin at a point one hundred yards from the edge of the channel on the east side of said river and running thence due east one hundred and twenty yards, then leaving a gap of one hundred and twenty yards. Then from the east end of said gap another net may be set one hundred and twenty yards only, and to continue in the same proportion, always requiring a gap of one hundred and twenty yards to intervene between each one hundred and twenty yards of nets so set, and no net or sets of nets of any kind shall be placed opposite said gaps, within a distance of a half mile of same, and none of the nets so set shall be nearer than a half-mile of the west shore of said Cape Fear river. An established fishery in the meaning of this section is one where there is a camp for the use of the hands, and where the seine or nets and boats used by the said fishery are kept, and where the said fishery was established prior to the first day of January, one thousand eight hundred and ninety-nine. (Rev., s. 2468; Code, s. 3403; 1901, c. 173; 1899, c. 440; 1881, c. 280; 1907, c. 752; C. S. 1997.)

§ 113-297. Cape Fear river: Fish traps regulated.—If any person shall construct, operate or maintain any fish traps in the Cape Fear river, or shall fail to remove all traps now in the channel of said river within sixty days from the first day of March, one thousand nine hundred and five; or shall fail on the first day of June of each year to remove the slats or fingers from any fish trap allowed to be operated in said river under this section, he shall be guilty of a misdemeanor. This section shall not apply to Brunswick or New Hanover counties or to a fish trap which extends to not more than one-third the channel of said river. (Rev., s. 2483; 1905, c. 500; C. S. 1998.)

§ 113-298. Cape Fear and Northeast rivers: Nets in.—It is unlawful to fish with dutch, pod, fyke or other pound nets, or stake or stationary nets, or nets of like kind, in the waters of the Cape Fear river below the mouth of Black river, twelve miles above Wilmington, or in the waters of Northeast river below the Castle Hayne bridge. Drift nets shall be permitted in the waters of the Cape Fear river within the territory as above described in this section, and its tributaries, between February first and May first of each year. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days. (1909, c. 841; P. L. 1911, c. 278; C. S. 1999.)

§ 113-299. Cape Fear, Northeast, and Black rivers: Obstructing fish; fishing between Saturday evening and Monday evening.—If any person shall with seines or nets of any kind catch any fish in the waters of the Cape Fear river from its mouth to the Bladen county line, or in the waters of the Northeast Cape Fear or Black rivers in Pender county between six o'clock p. m. on Saturday and six o'clock p. m. on Monday, or shall obstruct the free passage of fish in the waters of said rivers, he shall be guilty of a misdemeanor. (Rev., s. 2470; 1885, c. 226; 1887, c. 71; 1907, c. 811; C. S. 2000.)

§ 113-300. Cape Fear river, northeast branch: Seines, nets and traps.—If any person shall fish in the northeast branch of the Cape Fear river with seine, net or trap, from the twenty-third day of February to the first day of July of any year, between the hours of six o'clock p. m. on Saturday and six o'clock p. m. on Monday of each

week, or shall at any time use more than one seine at a time in any fishing hole in said river, or use, set or place in said river any hedge, trap or other obstruction which will prevent the free passage of fish up said river, which said hedge, trap or other obstruction shall extend more than one-third across the main channel of the said river, he shall be guilty of a misdemeanor. This section shall not apply to that portion of said river which lies between the city of Wilmington and a point on said river known as The Three Cypresses, twelve miles distant from said city of Wilmington. (Rev., s. 2469; 1889, c. 182; 1891, c. 198; C. S. 2001.)

§ 113-301. Goose and Oyster creeks: Drag or haul nets unlawful.—It is unlawful for any person or persons to fish with a drag or haul net of any description in the waters of Oyster creek and its tributaries and Goose creek or its tributaries (said creek being a dividing line between the counties of Pamlico and Beaufort). Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1907, c. 222; P. L. 1911, c. 381; C. S. 2002.)

§ 113-302. Little river: Obstructions in.—If any person shall place any obstruction in Little river, dividing the counties of Pasquotank and Perquimans, and allow it to remain for a longer time than ten days, he shall be guilty of a misdemeanor, and fined not less than five dollars nor more than ten dollars: Provided, nothing in this section shall be so construed as to prohibit citizens from fishing with dip-nets in said river during the months of March and April in each year. (Rev., s. 2443; Code, s. 3400; 1881, c. 18; C. S. 2003.)

§ 113-303. Lumber river: Close season for traps in.—It is unlawful for any person to set any trap for the purpose of catching fish in Lumber river or its tributaries in Columbus and Robeson counties, between the first day of April and the first day of September in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 608; C. S. 2004.)

§ 113-304. Lumber river and waters of Robeson, Columbus, Hoke, and Scotland: Fishing regulated.—It is unlawful for any person, firm or corporation to fish with seine, trap, nets, or by gigging, muddying, striking, dynamiting, shooting, or using lime or other chemicals by which fish may be killed, in Lumber river or any of its tributaries, or other rivers, lakes, ponds, or swamps of Robeson, Columbus, Hoke and Scotland counties: Provided, that gill nets may be set in these waters during six months in each year, beginning with October and ending with March: and Provided further, that in Robeson and Hoke counties owners of private lakes and ponds may fish therein with seines, nets or traps from July first to September thirtieth.

Any person, firm, or corporation violating this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars nor less than ten dollars, the fine to be paid to the school fund of the county in which the offense was committed, or imprisoned not more than thirty days nor less than ten days in the county jail, the county commissioners of said counties having the privilege of sending the said person or persons so convicted to the chain-gang of their respective counties or to hire them out in case there is no chain-gang. The police force of said counties have full power and authority to arrest, without warrant, any and all persons violating this section. (P. L. 1915, c. 358; P. L. 1917, cc. 368, 415; C. S. 2005.)

Local Modification.—Columbus: Pub. Loc. 1917, c. 394.

§ 113-305. Moccasin river and Big and Little Contentnea creeks: Obstructions and nets in.—It is unlawful for any person or persons to hedge or otherwise obstruct the free passage of water, fish, timber, rafts or boats in the run of Moccasin river or Big Contentnea creek, from Rountree's bridge in Wilson county to the mouth of said river or creek, or to make any like obstruction in the run of Little Contentnea creek. It is unlawful for any person or persons to fish with traps of any description in the waters of either of said streams, except from Rountree's bridge to Barefoot's mill: Provided, no hedge or trap shall obstruct more than one-third of the waters of Contentnea creek. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars and not more than fifty dollars or imprisoned not more than thirty days; and one-half of the fine so imposed shall be paid to the person who reports such offenses to the proper lawful officer, and the other half to the common school fund of the county in which the misdemeanor is committed. (1907, c. 615; Ex. Sess. P. L. 1913, c. 252; C. S. 2006.)

Cross Reference.—See note under § 113-281.

§ 113-306. Neuse and Trent rivers: Stationary, set, or dutch nets.—No person or association of persons shall set or place or cause to be set or placed any stationary, set or dutch nets in either Neuse or Trent rivers above the point of conflux of the said Neuse and Trent rivers. No person or association of persons or corporation shall set, cause to be set, fish or cause to be fished, use or cause to be used any dutch net, pound net or other stationary trap net or seine of similar description, by whatever name known, in the waters of Neuse river above Wilkinson's point, on Pamlico side. Any person or association of persons setting or placing any nets, as described above, on any day or part of a day, above the point of conflux of the said Neuse and Trent rivers, shall be guilty of a misdemeanor. Any person or association of persons or corporation setting or placing or causing to be set or placed any nets, as described above, on any day or part of a day, above Wilkinson's point, in Neuse river, shall be guilty of a misdemeanor. Any person or association of persons or corporation violating the provisions of this section shall upon conviction be fined fifty dollars or imprisoned thirty days for each and every violation. Any party who is the informant against any one violating this section shall, upon conviction of such person so violating the section, receive one-half of the fine prescribed. (1909, c. 801; P. L. 1911, c. 616; C. S. 2007.)

Cross Reference.—See note under § 113-281.

§ 113-307. Neuse and Trent rivers: Size of seine bars regulated.—If any person shall use any drag-net or seine with bars of less size than one and a quarter inch in the Neuse and Trent rivers, or in any of the tributaries thereof, except for the purpose of catching herring, from the fifteenth day of January to the fifteenth day of May of each year, he shall be guilty of a misdemeanor, and fined not less than five nor more than fifty dollars for every offense. This section shall not apply to the waters of the Neuse and its tributaries above the Wayne and Johnston county line. (Rev., s. 2454; Code, s. 3395; 1881, c. 146, ss. 1, 2; C. S. 2008.)

§ 113-308. Neuse river: Obstructions in, by dams, nets, etc.—Any person who shall construct a dam, put in traps, dutch net, wire seine, or anything else in Neuse river between its mouth and the Falls of Neuse in Wake county, for the purpose of obstructing the passage of fish in said river, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to seines, set nets, running or skimming nets: Provided, this section shall not prevent the use of traps in Wayne county, where the trap and its wings do not extend more than one-third across the stream. (Rev., s. 2474; Code, s. 3422; 1885, c. 391; 1893, c. 354; 1883, c. 301, ss. 1, 2; 1895, c. 403; 1901, c. 395; C. S. 2009.)

§ 113-309. Neuse river: Certain nets regulated.—If any person shall use or cause to be used any dutch net, pound net, or other stationary trap net, or seine of similar description, by whatever name known, in the waters of Neuse river for the purpose of taking fish therefrom, except the ordinary set net in use in said river prior to the first day of January, one thousand eight hundred and ninety-seven, he shall for each day's use thereof as aforesaid forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by warrant before any justice of the peace in the counties of Carteret, Craven and Pamlico or Lenoir, and shall be applied to the use of the public schools of said counties, and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, that a resident and citizen of the state may fish with dutch, trap or pound nets in the waters of Neuse river on the Pamlico side of said river between the mouth of said river and Upper Broad creek not more than five hundred yards from the shore. (Rev., s. 2453; Code, s. 3397; 1897, c. 145; 1899, cc. 299, 422, 435; 1901, c. 74; 1903, c. 704; 1905, c. 817; C. S. 2010.)

§ 113-310. Neuse, Trent, Moccasin, White Oak and New Rivers; perch traps prohibited, minimum size of other traps.—It shall be unlawful for any person, firm or corporation to place perch traps in the commercial waters of Neuse River, Trent River, Moccasin River, White Oak River and New River or any of the tributaries thereof and it shall be unlawful to place any fish traps in the commercial waters of said streams with a mesh smaller than five inches. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1931, c. 333.)

§ 113-311. Pamlico and Tar rivers: Dutch, etc., nets prohibited.—If any person shall set down or fish any dutch, pod, fyke or pound net or net of like kind in the waters of Pamlico or Tar rivers or their tributaries except in the manner, and in the part, and during the time, which such nets are by law allowed to be fished, he shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, and shall be imprisoned in the county jail not less than thirty and not more than sixty days. (Rev., s. 2428; Code, s. 3417; 1903, c. 52; C. S. 2011.)

§ 113-312. Pamlico and Tar rivers: Lay days.—If any person, from the fifteenth day of February to the tenth day of May of every year, from twelve o'clock meridian of Saturday until sunrise Monday morning of each week, shall fish any seine, set net, drift net, or any other net of any name or kind whatever, in the waters of Pamlico or Tar rivers and tributaries, except bow or skim nets, he shall be guilty of a misdemeanor. (Rev., s. 2427; Code, s. 3416; 1883, c. 137, s. 3; C. S. 2012.)

§ 113-313. Pamlico river: Dutch, etc., nets allowed under regulation. — It shall be lawful to fish with dutch, pod, fyke or other pound nets, or nets of like kind, in the waters of Pamlico river below a line beginning on the southern shore of Pamlico river at Maule's point, and running due north to a point on the northern shore of said river: Provided, that no dutch, pod, fyke or pound net, or other net of like kind, shall extend out in said river more than one-fourth of the distance across said river from the shore, and that none of said dutch, pod, fyke or pound nets shall be set, placed down or fished nearer to each other than five hundred yards, measuring up and down the river; nor shall they be placed, set down or fished within five hundred yards of any seine beach in actual use for hauling a seine, nor within one mile of the mouth of Bath creek: Provided, no nets of the kind enumerated in this section, or other nets of like kind, shall be placed down, set or fished in said rivers between the tenth day of May and the first day of July in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, in the discretion of the court. (Rev., s. 2429; Code, s. 3417; 1903, c. 52; 1909, c. 540, s. 1; 1909, c. 700; C. S. 2013.)

§ 113-314. Perquimans river: Nets in, regulated.—If any person shall fish with any seine, or set any dutch net or hedge within one mile of a straight line commencing at Stephenson's point on the north side of Perquimans river and running in a southwesterly direction to the nearest point of land on the south side of said river known as Belgrade bluff, or shall haul any seine or set any dutch net or other kind of net so as to extend beyond the middle of said river at any part thereof, he shall be guilty of a misdemeanor. (Rev., s. 2441; 1893, c. 147, ss. 1, 2, 4; C. S. 2014.)

§ 113-315. Roanoke river: Drift nets in, regulated.—It is unlawful to fish any drift nets in the Roanoke river over twenty yards in length, and no net shall drift within three hundred yards of another net and no two nets shall drift abreast of each other. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court: Provided, it shall be lawful on the Roanoke River from Halifax to the Power Dam at Roanoke Rapids to fish from January 1st to June 1st of each year with skim nets, dip nets, and fish traps with or without wings or hedgings. (1911, c. 163, s. 3; 1933, c. 336; C. S. 2015.)

Editor's Note.—Public Laws 1933, c. 336, added the proviso at the end of this section.

§§ 113-316 to 113-319: Repealed by Session Laws 1943, c. 582.

§ 113-320. Trent river: Use of nets regulated.—If any person shall set any trap, dutch, pound or pod net of any description whatever in Trent river, or shall at any time extend his set nets more than one-third the distance across the Trent river from either side, or shall set any net nearer to any other net than one hundred yards either on the same or on the opposite side of the river, or shall fish with seines or set nets of any description in Trent river from its mouth to upper Tucker bridge, between the hours of twelve o'clock noon on Saturday and twelve o'clock noon on Monday of each week, or shall set or haul a net or seine of any description between the town of Trenton and Brown's mill on said river from the sixteenth day of May to the first day of August in each year, he shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or be imprisoned not less than ten nor more than thirty days. (Rev., s. 2455; Code, s. 3397; 1893, c. 447; 1897, c. 294; C. S. 2020.)

§ 113-321. Counties on Pamlico sound: Size of fish caught or sold.—It is unlawful for any person to buy, sell, offer for sale, or to have in his possession any blue fish, trout or drum under eight inches in length, or any mullet under six inches in length, or any croakers, spots and hogfish under five inches in length, or sea mullet, flounders, mackeral and hickory shad less than eight inches long, or butterfish and steerfish less than four and one-half inches long, at any time during the year. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars. This section shall only apply to the counties of Beaufort, Carteret, Dare, Hyde, and Pamlico. (1909, c. 474, ss. 3, 4; 1909, c. 906; C. S. 2021.)

§ 113-322. Brunswick, New Hanover and Pender: Size of bars in nets.—If any person shall use in any of the waters of Brunswick, New Hanover and Pender counties any nets, seines, set-downs, fish traps or any other nets of any description for the purpose of taking fish, the bars of the meshes of which nets, seines, set-downs, or fish traps shall be less than one and one eighth inches in length, he shall be guilty of a misdemeanor. (Rev., s. 2470; 1885, c. 226; 1887, c. 71; C. S. 2022.)

§ 113-323. Brunswick, Cumberland, New Hanover, Sampson, and Harnett: Close season for fish.—If any person shall catch or destroy with seines, nets, firearms, bows and arrows, or by muddying or stirring the waters, or by striking any fish of any kind in the waters of Black or South rivers, or the waters of Big Coharie, Little Coharie, Bear Skin and Big swamps in the counties of New Hanover, Sampson, Cumberland and Harnett, and of the waters of Six Runs in the counties of New Hanover and Sampson, and of the waters of the Cape Fear river in the counties of New Hanover and Brunswick, and of the northeast branch of the Cape Fear river in the county of New Hanover, between the fifteenth days of May and August of each year, he shall be guilty of a misdemeanor, and fined not to exceed five dollars. (Rev., s. 2472; Code, s. 3409; 1889, c. 414; 1871-2, c. 152; 1879, c. 283; 1881, c. 369; C. S. 2023.)

§ 113-324. New Hanover, Onslow, and Pender: Purse nets and seines for food fish.—It is unlawful for any person, firm, or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of New Hanover, Onslow and Pender counties, extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said counties to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of said counties out into the waters of the Atlantic ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said counties for the purpose of this section. It is unlawful for any person, firm, or corporation to purchase, trade for, or deal in, or sell any food fish caught as is set forth above. Any person, firm, corporation, partnership, or association who knowingly rents, leases or permits to be used any purse seine or purse net, rents or leases any vessel, boat or steamer upon which is used a purse seine or purse net in the catching of food fish in the waters of said counties shall be guilty of a misdemeanor. Any person who furnishes information upon which any person, firm, or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor. (P. L. 1913, c. 717; C. S. 2024.)

Cross Reference.—See note under § 113-281.

§ 113-325. Beaufort: Nets regulated in certain creeks.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets, fyke nets, thrash nets or any set or gill nets longer than thirty yards on top line, in the waters of Bath creek, Blount's creek, Jordan's creek, Pungo creek, Wright's creek, or their tributaries, in Beaufort county, during the months of March, April, May, June and July of each and every year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense. (1909, c. 586; C. S. 2025.)

§ 113-326. Beaufort: Fishing by residents in Bath creek.—It is lawful for any person or persons who are resident citizens of Beaufort county to fish with any kind of nets, except pound nets

or purse nets, in the waters of Bath creek from Bath creek bridge to the mouth of said creek. (P. L. 1911, c. 547; C. S. 2026.)

§ 113-327. Beaufort: Certain nets in Blount's creek.—It is unlawful for any person or persons to use or fish with any drag net or slash net in the waters of Blount's creek or its tributaries. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days for each offense. (P. L. 1911, c. 120; C. S. 2027.)

§ 113-328. Beaufort: Certain nets in Durham and Lee's creeks.—It is unlawful for any person to catch fish with seine, drag nets, purse nets, thrash nets or hauling nets of any description in the waters of Durham creek, Lee's creek, or their tributaries, in Beaufort county. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than ten dollars for each and every offense. (1907, c. 439; C. S. 2028.)

§ 113-329. Beaufort: Certain nets in Nixon's creek.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, or pound nets in the waters of Nixon's creek in Beaufort county. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding thirty dollars or imprisoned not more than twenty days for each offense. (P. L. 1911, c. 525; C. S. 2029.)

§ 113-330. Beaufort: Certain nets in North creek.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets or fyke nets in the waters of North creek and its tributaries in Beaufort county. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense. (1907, c. 629; C. S. 2030.)

§ 113-331. Bladen: Manner of fishing in Brown Marsh and Horseshoe swamps.—It is unlawful for any person to fish with a seine or by muddying the water or by means of any lime, dynamite, or any other such material or substance in Brown Marsh and Horseshoe swamps in Bladen county. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned for thirty days. This section shall apply only to Brown Marsh township in Bladen county. (P. L. 1915, c. 187; C. S. 2031.)

§ 113-332. Bladen: White lake; hook and line only.—It is unlawful to catch, kill, or destroy fish in White lake in Bladen county by means of nets, traps, by gigging, by shooting, or by any other means or methods, except by hook and line: Provided, that set hooks, bobs, and trolls shall be construed as being hooks and lines. Any person violating the provisions of this section shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (P. L. 1913, c. 295; C. S. 2032.)

§ 113-333. Brunswick: Mullet fishing; purse nets.—If any person, firm or corporation shall fish for and catch any mullets with any purse seine or purse net in the waters within the limits of Brunswick county, extending to the extreme limits of the state's jurisdiction in and over said waters—and for the purpose of this section, any portion of any water within a distance of three nautical miles from the outer shores of said county shall be deemed the waters of said county—or if the master or any employee on any steamboat engaged in fishing for menhaden or fatbacks shall discharge from said boat fish offal, blood or slime within a distance of one-half of a mile of any established mullet fishery on the Brunswick county coast between the first of August and the thirty-first of December of each year, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. For the purposes of this section an established fishery is declared to be that point on the beach occupied by the surfboat and seine in regular use. (Rev., s. 2481; 1905, c. 748; C. S. 2033.)

§ 113-334. Brunswick: Nonresidents must have license. — It is unlawful for any nonresident of this state to engage in the business of gathering oysters, clams and terrapins for gain, or for market, within the limits of Brunswick county without first obtaining from the county commissioners of said county a license to carry on such business, which license may be granted by the county commissioners of said county upon paying to the treasurer of said county, to be used for county purposes, the sum of fifty dollars for each nonresident engaged in such business, and twenty-five dollars for each nonresident hand employed: Provided, that such license so granted shall be for one year and shall expire on the first day of October of each year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor. (1907, c. 68; C. S. 2034.)

§ 113-335. Carteret: Cedar Island township; hauling nets with power.—It is unlawful for any person or persons, firm or corporation to pull any haul net within the waters of Cedar Island township, Carteret county, with steam, gasoline or any other motor power. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and be fined or imprisoned, or both, in the discretion of the court. (1915, c. 281; C. S. 2035.)

§ 113-336. Carteret: Use of dutch nets.—If any person shall use or cause to be used any dutch net, pound net or other stationary trap, net or seine of similar description, by whatever name known, in the waters of Carteret county for the purpose of taking fish therefrom, he shall for each day's use thereof forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by a warrant before any justice of the peace in the county of Carteret, and shall be applied to the use of the public schools of said county; and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor, and fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, this section shall not apply to the ordinary set nets heretofore in use in the waters of said county. (Rev., s. 2435; Code, s. 3420; 1883, c. 199; C. S. 2036.)

§ 113-337. Carteret: Size of seine mesh.—If any person shall catch mullets in the waters of Carteret county with a seine or net having a mesh of less than one and one-eighth inch, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2434; 1895, c. 25; 1903, c. 508; C. S. 2037.)

§ 113-338. Carteret: Length of nets.—It is unlawful for any person, firm, corporation, or syndicate, to fish any net or seine in the waters of the state of North Carolina within the boundaries of Carteret county more than two hundred and seventy-five yards in length: Provided, this length shall not apply to purse seines used for the purpose of catching menhaden (fatbacks) only. Any person, firm, corporation, or syndicate violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned not more than thirty days, in the discretion of the court. Each day said nets or seines are fished shall constitute a separate offense under this section. (1911, c. 130, s. 1; C. S. 2038.)

§ 113-339. Carteret: Joining nets together.—When a condition arises that a crew of fishermen find it advantageous to join two or three nets together for the purpose of temporary fishing, it shall be lawful under this section to do so under the following rules and regulations, namely: Provided: (a) The total length of nets joined together shall not exceed eight hundred and twenty-five yards. (b) That not more than one of the nets, whose length shall not exceed two hundred and seventy-five yards, as provided in the preceding section, shall be owned by any one person, firm, corporation, or syndicate thus fishing. (c) That not less than two men shall be permitted to fish with each net thus joined together. (d) That no position or haul shall be held by anchoring boat (except when occupied by men fishing same), buoys, stakes, or any other device. (e) That no seines or nets shall be hauled by capstans. (f) That no nets of smaller mesh than 1⅜ inch bar or 2 6/8 inch stretched measure shall be joined together for the purpose of fishing under this section. (g) That each net thus joined shall have two staffs. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months.

This section applies only to the waters of the state within the boundaries of Carteret county, and within such waters it does not authorize the fishing of nets joined as specified at any stationary fishery, or where the said waters are of less width than one and one-fourth miles. (1911, c. 130, s. 2; C. S. 2039.)

§ 113-340. Carteret: Obstructions to fish prohibited.—If any person shall obstruct any navigable water or passageway for fish in Carteret county by placing bushes, posts or any stationary material or fixtures in such a manner as to prevent the free passage of fish, he shall be guilty of a misdemeanor and fined not less than one hundred dollars. Nothing in this section shall be construed to prohibit any person from using a lawful net or seine in any way or manner except as a stop net or seine. This section shall not apply to any net that the fish can pass freely by one end. (Rev., s. 2436; 1903, c. 520; C. S. 2040.)

§ 113-341. Carteret: Pound nets in Neuse river.—It is lawful to fish pound nets from January first to May fifteenth of each year within the waters of that portion of Carteret county with a line beginning at the northwest point of outward Swan island, running a due north course; from such line running up the Neuse river to the spar buoy at the entrance of Adams creek: Provided, that not more than five nets shall be set in any one stand: Provided further, that not more than one-fourth of the river in width shall be used for the purpose of fishing under this section. Any person, firm, corporation, or syndicate fishing with pound nets in the waters of Carteret county at any other time except as prescribed in this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months, in the discretion of the court. It is expressly enacted that every day such fishing is done in violation of this section shall constitute a separate offense. (1911, c. 128; C. S. 2041.)

§ 113-342. Carteret: Purse nets for mullet prohibited.—If any person shall fish for or catch any mullets with any purse seine or purse net in any waters within the limits of Carteret county, extending to the extreme limits of the state's jurisdiction in and over such waters, he shall be guilty of a misdemeanor and be fined not less than five hundred dollars or imprisoned not less than one year. For the purposes of this section the following boundaries are hereby declared to be the boundaries to which the waters of said county extend, to wit: A distance of three nautical miles, measured from the outer beach or shores of Carteret county out and into the waters of the Atlantic ocean; and any portions of any water within a distance of three miles from said waters of the Atlantic ocean to any beach or shore of said county shall be deemed the waters of said county for the purposes of this section. (Rev., s. 2437; 1903, c. 583; 1905, cc. 274, 508; C. S. 2042.)

§ 113-343. Carteret and Onslow: Purse nets prohibited for food fish.—It is unlawful for any person, firm or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of Carteret and Onslow counties extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said county to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of Carteret and Onslow counties out into the waters of the Atlantic ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said county for the purposes of this section. It is unlawful for any person, firm or corporation to purchase, buy, or trade for, or deal in, or sell any food fish caught as is set forth in this section. Any person, firm or corporation violating any provision of this section shall be deemed

guilty of a misdemeanor, and shall be fined not less than three hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court. Any person who shall furnish information upon which any person, firm or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor. (1907, c. 857; 1911, cc. 126, 204; C. S. 2043.)

Cross Reference.—See note under § 113-281.

§ 113-344. Chatham: Fishways in Haw river.—All persons maintaining dams across Haw river in the county of Chatham shall, upon thirty days' notice from the board of commissioners of said county, establish fishways in said dams; and if said fishways shall not be made within three months from the service of the notice, said persons so offending shall be guilty of a misdemeanor, and fined at the discretion of the court. (Rev., s. 2476; Code, s. 3402; 1881, c. 343, ss. 1, 2; C. S. 2044.)

§ 113-345. Clay: Fishing regulated.—It is unlawful for any person or persons to fish the waters of Clay county in any other manner than hook and line. Any violator of this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars, or imprisoned not less than thirty days. (P. L. 1919, c. 407; C. S. 2045.)

§ 113-346. Columbus: Traps and nets in Porter swamp.—It is unlawful for any person or persons to set any fish traps or nets in the waters of Porter swamp in Columbus county in such manner as to prevent the free passage of fish. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned not less than ten days nor more than thirty days for each offense. (P. L. 1911, c. 748; C. S. 2047.)

§ 113-347. Currituck county: Fishing in Atlantic township.—It is unlawful for any person or persons to catch fish with seine or set net, or nets of any kind, in the waters of Atlantic township between the fifteenth day of April and the twentieth day of October in each year, within the following boundaries in said township: Beginning at a cedar stump standing on the beach north of Caffie's inlet life-saving station and extending a west course five hundred yards from the shore; thence paralleling the shore a southerly course to the Dare county line. It is unlawful to set any pound or dutch nets in the waters of said township. Nothing herein shall prevent the catching or selling of twenty-five pounds of fish on any one day for home consumption; nor prevent the catching of eels, mullets and herrings at any time during each year; nor prohibit fishing at night. Any person violating the provisions of this section or any part thereof shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not more than fifty dollars nor less than twenty dollars or imprisoned not more than thirty days. (1909, c. 619; C. S. 2048.)

§ 113-348. Currituck county: Dutch nets in Currituck sound.—If any firm, company or corporation shall operate or cause to be operated in the waters of Currituck county, or be interested in any manner whatsoever in more than six pound or dutch nets, or use more than one hundred yards of hedging to a net, or set a stand of such nets exceeding eight hundred yards in length from land to the extreme outward end; or if any person shall set any pound or dutch nets to the east of the center of Currituck sound, except that part from the west point of Mackey's island north of the Virginia line; or if any person shall leave any landing or anchorage before sunrise for the purpose of fishing in Currituck sound or tributaries, or shall continue to fish after dark, he shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than fifty dollars. This section shall not prohibit fishing after dark in that part of said sound west of a line beginning at the north point of Bell's island, thence north not more than one thousand yards from the mainland to the mouth or entrance of Tull's creek, nor night fishing between the thirty-first day of March and the twentieth day of October five hundred yards from the shore from Martin's point to Kitty Hawk bay. (Rev., s. 2430; 1905, c. 273, ss. 3-7; C. S. 2049.)

§ 113-349. Currituck county: Shipping or selling fish.—If any person shall catch or capture any fish with nets or other appliances in the waters of Currituck county between the fifteenth day of April and the twentieth day of October of each year, or shall sell or ship out of the county or state any fresh fish between said dates; or if any person shall be found with more than twenty-five pounds of freshwater fish in his possession between the thirty-first day of March and the twentieth day of October of each year, herrings, mullets, shad and eels excepted; or if any person shall in said county catch eels for market between the thirtieth day of April and the twentieth day of September following in each year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars and not less than twenty-five dollars. Any citizen may catch not to exceed twenty-five pounds at any time for home consumption, and sell or give not more than ten pounds to any one person in one day. (Rev., s. 2431; 1905, c. 273, s. 1; 1907, c. 520; C. S. 2050.)

§ 113-350. Currituck county: Right of search.—If any constable, game warden or justice of the peace of Currituck county shall be informed, or have cause to suspect, that either of the two preceding sections is being violated, he is hereby authorized and empowered to examine the contents of any fishing boat, or packages in transit, and any person or common carrier refusing to exhibit the contents of any fishing boat or package to such officer shall be guilty of a misdemeanor, and shall be fined not less than twenty-five and not more than fifty dollars. (Rev., s. 2432; 1905, c. 273, ss. 2, 7; C. S. 2051.)

§ 113-351. Dare: Dutch and pound nets prohibited.—It is unlawful for any person, firm or corporation to set any dutch or pound net within the space or area of water bounded and described as follows: Beginning at Hollowell's wharf, at Nag's Head, and running thence a due west course to the channel in Roanoke sound; thence northwest to the Currituck county line; thence with said Currituck county line to the shore.

Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be

fined fifty dollars or imprisoned thirty days in the discretion of the court. (1913, c. 113; C. S. 2052.)

§ 113-352. Dare: Fishing in Kitty Hawk bay regulated.—If any person shall take, catch or capture any fish with nets or other appliances in that part of the waters of Kitty Hawk bay and its tributaries lying in Dare county, between the thirtieth day of April and the fifteenth day of October of each year, or shall sell or ship out of the county any chub or perch between said dates, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. Nothing in this section shall prevent any citizen from catching fish at any time for home consumption. (Rev., s. 2484; 1905, c. 363; C. S. 2053.)

§ 113-353. Greene: Size of mesh; fishing on another's land.—It is unlawful for any person or persons to fish with or set any nets with less meshes than one and one-fourth inches square. No person or persons shall fish with nets of any kind on another person's land without first getting permission from the owner of the lands to do so, except in navigable streams, as rivers or large creeks. Any person or persons violating this section shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than five dollars nor more than twenty dollars for each offense. This section shall apply to Greene county only. (P. L. 1915, c. 494; C. S. 2054.)

§ 113-354. Hertford and Northampton: Fish in Potecasi creek protected.—It is unlawful for any person to use, set or in any manner to fish with any fish trap, fyke net, seine or drag net in the waters of Potecasi creek, in Hertford and Northampton counties, from its mouth to the Creeksville mill, in Northampton county. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 662; C. S. 2055.)

§ 113-355. Hyde: Pound and dutch nets prohibited.—It is unlawful for any person to set or use any pound or dutch net south of the dividing line between Dare and Hyde counties on the west side of Pamlico sound along the shores of Hyde county, more than two thousand yards from a line drawn from point to point along said shore. Any person violating this section shall be deemed guilty of a misdemeanor and upon conviction shall remove said nets at once: Provided, that any person failing to remove said nets after conviction shall be subject to a fine of not less than ten nor more than fifty dollars. (1915, c. 59; C. S. 2056.)

§ 113-356. Hyde: Drag nets prohibited in Rose bay.—It is unlawful for any person to use or take fish from the waters of Rose bay, or any of its tributaries, in Hyde county, with drag nets or drop nets. Any person violating this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than fifty dollars. (P. L. Ex. Sess. 1913, c. 264; P. L. 1915, c. 349; C. S. 2057.)

§ 113-357. Hyde: Drag nets prohibited in Slade's river and Fortescue creek.—The name of Slade's creek in Hyde county is hereby changed to Slade's river, and by such name the said watercourse shall in future be designated in all official maps, records, laws and other official documents authorized by the state of North Carolina. Fishing with drag nets is prohibited in said river and tributaries and in the waters of Fortescue's creek, in said county. Any violation of the provisions of this section relating to the manner of fishing shall be a misdemeanor, and shall be punished by a fine of not exceeding fifty dollars or imprisonment not exceeding thirty days, in the discretion of the court. (1909, c. 520; C. S. 2058.)

§ 113-358. Hyde: Slade's river; nets in.—The mouth of Slade's river in Hyde county is hereby fixed and located by running a straight line from Aquillas point on Pungo river to Sandy point on said Pungo river. It is unlawful for any person, firm or corporation to set, fish, or use any kind of net except stake gill nets on the east of said line. Any one violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not more than thirty days, in the discretion of the court. (1911, c. 59; C. S. 2059.)

§ 113-359. New Hanover: Nets in Masonboro and Myrtle Grove sounds. — If any person shall use any fyke nets or set down seines, or place any fish trap for the purpose of catching fish in the waters of Masonboro and Myrtle Grove sounds in New Hanover county, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days. (Rev., s. 2425; Code, s. 3421; 1883, c. 288, ss. 1, 2; C. S. 2061.)

§ 113-360. New Hanover: Seines in Atlantic ocean.—It is unlawful for any person, firm or corporation to fish with seines, purse, pod or pound nets, or with any kind of nets, except cast nets, in the waters of the Atlantic ocean in New Hanover county within the following limits:

Beginning at a point on the beach on the north side of the mouth of Moore's inlet and extending southwardly along the strand of the Atlantic ocean to a point on the north of the mouth of Masonboro inlet, and extending one mile out from the shore line. The above shall not apply to the use of set nets between the first day of November and the first day of May next following. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars and imprisoned not more than sixty days. (1915, c. 104; C. S. 2062.)

§ 113-361. Onslow: Obstructions in Cypress swamp and Haws run.—It is unlawful for any person, firm or corporation to fell any trees in or in any way obstruct the natural flow of the waters of Cypress swamp and Haws run in Onslow county. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 772; C. S. 2063.)

§ 113-362. Onslow: Stop nets prohibited.—It is unlawful for any person, firm or corporation to

set, place, fix, establish or operate any stop net that will prevent or interrupt the passage of any fish in the water of any creek or sound in Onslow county, between New river and the Carteret county line in said county. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1915, c. 133; C. S. 2064.)

§ 113-363. Onslow: Nets and seines in ocean regulated.—It is unlawful for any person, firm or corporation to set any net or seine on the coast of Onslow county for a longer time than one hour at any one time. Any person violating this provision shall, upon conviction, be fined not less than one hundred dollars or imprisoned not less than three months. One-half of said fine shall go to the party or parties reporting such offenses and furnishing sufficient evidence to convict. In the event any offender shall be unable to pay fine, his boats, nets and other fishing paraphernalia shall be forfeited and sold to the highest bidder for cash at courthouse door after twenty days notice, and proceeds of said sale be applied to cost and fine and any surplus paid to the defendant: Provided, however, this section shall not tend to convict any party who shall catch more fish than can be taken up in one hour. (1915, c. 184; C. S. 2065.)

Cross Reference.—See note under § 113-281.

§ 113-364. Onslow: Seines and nets in New river.—It is unlawful for any person, firm, corporation or association to catch fish with haul seine, purse net, or drop net in the waters of New river in the main channel between Hatche's Rock and New River inlet, or within one-half mile of said inlet in the Atlantic ocean. Any person, firm, corporation or association violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court; fifty dollars of said fine to be paid to the person or persons furnishing evidence sufficient to convict. (P. L. 1913, c. 707; C. S. 2066.)

§ 113-365. Onslow County: Ban on use of haul nets and seines in New River.—It shall be unlawful to haul or drag seines or nets of any size, length or description by any means whatsoever within the waters of New River and its tributaries in Onslow County: Provided, that this section shall not be construed to prevent the transportation of seines or nets by boat: Provided further, that this section shall not apply to shrimp seines not over one hundred and fifty yards in length operated exclusively by hand and for the purpose of catching shrimp only as provided by law or regulation on April 10, 1933.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 253.)

§ 113-366. Pamlico county: Use of nets regulated.—If any person shall set or fish any dutch or pound nets in the waters of Pamlico county, or shall use any seine or drag net in the waters of said county, including the north side of Neuse river from the mouth of the river to the mouth of upper Broad creek, from the first day of May to the first day of January next ensuing, or shall at any time catch fish with a seine or drag net along the shores of said county on any day of the week except Monday, Wednesday and Friday, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2452; 1885, c. 198; 1889, c. 544; 1893, c. 334; C. S. 2067.)

§ 113-367. Pamlico county: Nets in Dawson's creek.—It is unlawful for any person to fish with drag or haul net of any description in the waters of Dawson's creek, in Pamlico county. Any person violating this section shall be deemed guilty of a misdemeanor, and fined or imprisoned, at the discretion of the court. (P. L. 1911, c. 470; C. S. 2068.)

§ 113-368. Pamlico county: Drag nets prohibited in certain streams.—It is unlawful for any person to haul or use any drag net in the waters of Vandemere creek and its tributaries, Smith's creek, Chappel's creek and its tributaries, Trent creek and its tributaries, and Bay river and its tributaries, from the mouth of Trent creek to the head of both its northwest and southwest prongs, for the purpose of catching or taking fish from said waters. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or imprisoned not less than five days nor more than ten days for each and every offense. (1909, c. 692; C. S. 2069.)

§ 113-369. Pasquotank county: Pound or fyke nets in Pasquotank river.—It is unlawful for any person, firm or corporation to fish in Pasquotank river above Stinking Gut on either side of said river with pound or fyke nets, or any other kind of net with mudge or leads: Provided, this section shall not be construed to prohibit fishing in said territory with gill nets. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days, in the discretion of the court. (P. L. 1913, c. 752, s. 6; C. S. 2070.)

§ 113-370. Pasquotank county: Nets in Hatley creek.—If any person shall haul or fish with a drag net, or set a pound net in Big Hatley creek, or Little Hatley creek, within two hundred yards of the mouth of either of said creeks, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2442; 1895, c. 389; 1903, c. 497; 1911, c. 127; C. S. 2071.)

§ 113-371. Pasquotank and Perquimans: Gill nets allowed.—It is lawful for fishermen fishing in the Albemarle sound lying opposite to Perquimans and Pasquotank counties, and its tributaries lying and being in said counties, to set gill nets as near as one hundred and fifty yards of any pound or dutch nets fished in said waters: Provided, that any net shall not be set beyond the line now prohibited in said waters. (1911, c. 138; C. S. 2072.)

§ 113-372. Robeson: Fishing in Lumber river.—It is unlawful for any person to fish with

seine, nets, traps, gigging, or by muddying, striking or dynamiting, in Lumber river or the other rivers, creeks, lakes or ponds in Robeson county: Provided, that this does not apply to persons fishing on their own premises. Any person violating this section shall be guilty of a misdemeanor and on conviction shall be fined not more than fifty dollars nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days in jail, with privilege to county commissioners of Robeson county, or adjacent county, to hire out. (P. L. 1911, c. 529; P. L. Ex. Sess. 1913, c. 272; C. S. 2073.)

§ 113-373. Robeson: Nets and traps; close season; limit catch.—It is unlawful for any person to set any trap or net for the purpose of catching fish in Lumber river or any of its tributaries in Robeson county between the first day of April and the first day of September in any year. It is unlawful at all times for any person to catch or take more than twelve of the fish known as "red breasts" and trout from Lumber river or any of its tributaries in Robeson county, in any one day, whether said fish be caught with hook and line, net, trap or in any other manner. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (P. L. 1911, c. 703; C. S. 2074.)

§ 113-374. Sampson: Fishing regulated.—It is unlawful for any person to fish in any of the rivers, creeks, or other streams of Sampson county by means of lime, dynamite, pod nets, bag nets, traps, or by any means or contrivance whereby the free passage of fish is obstructed. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (P. L. 1915, c. 464, ss. 2, 3; C. S. 2075.)

§ 113-375. Tyrrell: Alligator river and Frying Pan creek; nets in.—If any person shall fish any pound net, gill net, seine or nets of any kind in Alligator river within one mile of the mouth of Frying Pan creek in Tyrell county, or shall set any weir or fish net of any kind or any other obstruction that prevents the passage of fish in said creek from its mouth to Jarmin's point, at the two pines and low cypress, he shall be guilty of a misdemeanor. If any person shall set any pound net or dutch net in Alligator river within one-half mile of the mouth of Frying Pan creek in Tyrrell county, or in Frying Pan creek within three miles of where it enters into Alligator river, he shall be guilty of a misdemeanor and shall be fined fifty dollars or imprisoned thirty days, or both, at the discretion of the court. (Rev., ss. 2447, 2449; 1889, c. 105; 1899, c. 465; 1905, c. 282; C. S. 2076.)

§ 113-376. Wayne: Nets and traps in Neuse and Little rivers.—The citizens of Wayne county are hereby permitted to put in fish traps and gill stick nets in Neuse and Little rivers, within the limits of Wayne county. (P. L. 1911, c. 465; C. S. 2077.)

§ 113-377. Taking shad prohibited in certain area.—It shall be unlawful for any person, firm or corporation to take shad fish from the waters of the Atlantic Ocean anywhere within five miles of the Cape Fear river bar. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not less than one hundred dollars or imprisoned not less than sixty days; for the second offense shall be fined not less than five hundred dollars or imprisoned not less than four months, for each and every offense. (1935, c. 137.)

Chapter 114. Department of Justice.

Art. 1. Attorney General.

§ 114-1. Creation of department of justice under supervision of attorney general. — There is hereby created a department of justice which shall be under the supervision and direction of the attorney general, as authorized by article III, section eighteen, of the constitution of North Carolina. (1939, c. 315, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 375.

§ 114-2. Duties.—It shall be the duty of the attorney general—

1. To defend all actions in the supreme court in which the state shall be interested, or is a party; and also when requested by the governor or either branch of the general assembly to appear for the state in any other court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested.

2. At the request of the governor, secretary of state, treasurer, auditor, utilities commission, commissioner of banks, insurance commissioner or superintendent of public instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

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

4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

5. To give, when required, his opinion upon all questions of law submitted to him by the general assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer.

6. To pay all moneys received for debts due or penalties to the state immediately after the receipt thereof into the treasury.

7. To compare the warrants drawn by the auditor on the state treasury with the laws under which they purport to be drawn. (Rev., s. 5380; Code, s. 3363; 1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; 1893, c. 379; 1901, c. 744; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; C. S. 7694.)

Cross References.—As to proceedings against corporations when reports filed by corporation commission, see § 62-63; as to actions by the attorney-general, see § 1-515; as to duty to bring actions for failure of charitable trust to file account, see § 36-20; as to duty to appear in contempt cases, see § 15-3; as to duty in prosecuting violations of laws governing monopolies and trusts, see § 75-13; as to investigating violations of certain local government acts and duties connected therewith, see §§ 159-40, 159-41.

Opinions Advisory Only.—An opinion of the attorney-general, given in the performance of his statutory duty under subsection 5 is advisory only. Lawrence v. Shaw, 210 N. C. 352, 186 S. E. 504.

§ 114-3. To devote whole time to duties. — The attorney general shall devote his whole time to the duties of the office and shall not engage in the private practice of law. (1929, c. 1, s. 1.)

§ 114-4. Assistants; compensation; assignments. —The attorney general shall be allowed to appoint three assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the director of the budget. One assistant attorney general shall be assigned to the state department of revenue, and the salary of the assistant attorney general so assigned shall be paid by the state department of revenue. The other assistant attorneys general shall perform such duties as may be assigned by the attorney general: Provided, however, the provisions of this section shall not be construed as preventing the attorney general from assigning additional duties to the assistant attorney general assigned to the state department of revenue. (1925, c. 207, s. 1; 1937, c. 357.)

Editor's Note.—The 1937 amendment repealed the former section and inserted the above in lieu thereof.

§ 114-5. Additional clerical help.—The attorney general shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Budget Bureau and the attorney general. (1925, c. 207, s. 2.)

§ 114-6. Duties of attorney general as to civil litigation.—The attorney general shall continue to perform all duties now required of his office by law and to exercise the duties now prescribed by law as to civil litigation affecting the state, or any agency or department thereof, and shall assign to the members of the staff all duties to be performed in connection with criminal prosecutions and civil litigation authorized by this article or by existing laws. (1939, c. 315, ss. 7, 8.)

§ 114-7. Salary of attorney general.—The attorney general shall receive an annual salary of seven thousand five hundred dollars, payable monthly. (1929, c. 1, s. 2.)

Cross References.—As to salary of assistants, see § 114-4; as to additional clerical help, see § 114-5.

§ 114-8. Fees of attorney general.—In all appeals to the supreme court of persons convicted of criminal offenses, a fee of ten dollars against each person who shall not reverse the judgment shall be allowed the attorney general, to be taxed among the costs of that court. The attorney general shall pay these fees into the state treasury. (Rev., s. 2747; Code, s. 3737; 1873-4, c. 170; 1907, c. 994, s. 1; C. S. 3871.)

Cross Reference.—As to fees of state officers, disposition and accounting, see § 138-3.

Art. 2. Division of Legislative Drafting and Codification of Statutes.

§ 114-9. Creation of division; powers and duties. —The attorney general shall set up in the department of justice a division to be designated as the division of legislative drafting and codification of statutes. There shall be assigned to this division by the attorney general duties as follows:

(a) To prepare bills to be presented to the general assembly at the request of the governor, and the officials of the state and departments thereof, and members of the general assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the general assembly.

(b) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated.

(c) In order that the laws of North Carolina, as set out in the General Statutes of North Caro-

lina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the division of legislative drafting and codification of statutes to establish and maintain a system of continuous statute research and correction. To that end the division shall:

1. Make a systematic study of the general statutes of the state, as set out in the General Statutes and as hereafter enacted by the general assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

2. Consider such suggestions as may be submitted to the division with respect to the existence of such defects and the proper correction thereof.

3. Prepare for submission to the general assembly from time to time bills to correct such defects in the statutes as its research discloses. (1939, c. 315, s. 5; 1941, c. 35; 1943, c. 382.)

Editor's Note.—For note on the responsibilities of the division, see 17 N. C. Law Rev. 376.

For article on the recodification of the statutes, see 19 N. C. Law Rev. 25.

Art. 3. Division of Criminal and Civil Statistics.

§ 114-10. Division of criminal and civil statistics.—The attorney general shall set up in the department of justice a division to be designated as the division of criminal and civil statistics. There shall be assigned to this division by the attorney general duties as follows:

(a) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(b) To collect and correlate similar information on the operations of the various courts of the state engaged in civil law administration so as to show the volume of civil litigation, including quasi judicial proceedings before all of the commissions set up under the laws of this state, such information to provide a geographical distribution, the condition of the dockets in the several courts and counties, and such other information as may appear significant and helpful.

(c) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the governor and the general assembly with the information so collected biennially, or more often if required by the governor.

(d) To perform all the duties heretofore imposed by law upon the attorney general with respect to criminal statistics.

(e) To perform such other duties as may be from time to time prescribed by the attorney general. (1939, c. 315, s. 2.)

§ 114-11. Courts and officials thereof to furnish statistical data. — All courts, officers and officials thereof, shall furnish all statistical data with respect to such courts as is hereinbefore mentioned, such information to be furnished on forms provided by the attorney general, and to be furnished at such time or times as may be required by the attorney general. Any clerk or officer of any court in the state of North Carolina who shall willfully fail or refuse to furnish such statistical data, after demand therefor has been made by the attorney general, shall be subject to be amerced, upon motion of the attorney general, in the sum of two hundred dollars ($200.00) in the superior court of the county in which such officer resides. (1939, c. 315, s. 4.)

Art. 4. State Bureau of Investigation.

§ 114-12. Bureau of investigation created; powers and duties.—In order to secure a more effective administration of the criminal laws of the state, to prevent crime, and to procure the speedy apprehension of criminals, the attorney general shall set up in the department of justice a division to be designated as the state bureau of investigation. The division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

§ 114-13. Director of the bureau; personnel. — The attorney general shall appoint a director of the bureau of investigation, who shall serve at the will of the attorney general, and whose salary shall be fixed by the Budget Bureau under §§ 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the bureau. The salaries of such assistants shall be fixed by the Budget Bureau under §§ 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other state departments and bureaus. (1937, c. 349, s. 4; 1939, c. 315, s. 6.)

§ 114-14. General powers and duties of director and assistants.—The director of the bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The director of the bureau and his assistants shall, at the request of the governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the commissioner of paroles in the

investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the governor. (1937, c. 349, s. 5.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of governor; witness fees and mileage for director and assistants.—The bureau shall, through its director and upon request of the governor, investigate and prepare evidence in the event of any lynching or mob violence in the state; shall investigate all cases arising from frauds in connection with elections when requested to do so by the board of elections, and when so directed by the governor. Such investigation, however, shall in no wise interfere with the power of the attorney general to make such investigation as he is authorized to make under the laws of the state. The bureau is authorized further, at the request of the governor, to investigate cases of frauds arising under the Social Security Laws of the state, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the governor so to do. In all such cases it shall be the duty of the department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the director of the bureau, and of his assistants, may be required by the governor in connection with the investigation of any crime committed anywhere in the state, when called upon by the enforcement officers of the state, and when, in the judgment of the governor, such services may be rendered with advantage to the enforcement of the criminal law.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the director and any of his assistants who are witnesses in cases arising in courts of this state. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the treasurer of the state of North Carolina, and there credited to the bureau of identification and investigation fund. (1937, c. 349, s. 6.)

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by state; radio system.—In the said bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the state in the discharge of their duties. In the personnel of the bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the state, both educational and departmental, shall be made available to the bureau, and scientists and doctors now working for the state through its institutions and departments may be called upon by the governor to aid the bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the governor for such service.

The state radio system shall be made available to the bureau for use in its work. (1937, c. 349, s. 7.)

§ 114-17. Co-operation of local enforcement officers.—All local enforcement officers are hereby required to co-operate with the said bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ 114-18. Governor authorized to transfer activities of central prison identification bureau to the new bureau; photographing and finger printing records.—The records and equipment of the identification bureau now established at Central Prison shall be made available to the said bureau of investigation, and the activities of the identification bureau now established at Central Prison may, in the future, if the governor deem advisable, be carried on by the bureau hereby established; except that the bureau established by this article shall have authority to make rules and regulations whereby the photographing and finger printing of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this state to service upon the roads, may be taken and filed with the bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

Chapter 115. Education.

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SUBCHAPTER I. THE PUBLIC SCHOOL SYSTEM.

Art. 1. Interpretations.

§ 115-1. A general and uniform system of schools.—A general and uniform system of public schools shall be provided throughout the state, wherein tuition shall be free of charge to all children of the state between the ages of six and twenty-one years. The length of term of each school shall be as authorized by the provisions of the School Machinery Act; however, unless the term is suspended as provided by § 115-351 the term shall not be less than nine months or one hundred and eighty days.

Every man or woman twenty-one years of age or over who has not completed a standard high school course of study, or who desires to study the vocational subjects taught in such school, shall be given equal privileges with every other student in

school. (1923, c. 136, s. 1; 1939, c. 358, s. 4; 1943, c. 255, s. 2; C. S. 5383.)

Cross References.—As to age requirement at time of enrollment, see § 115-371. As to extension of school term under provisions of the School Machinery Act, see § 115-351.

Editor's Note.—By enacting the School Machinery Act of 1933, which was re-enacted each biennium thereafter until 1939 when it was made permanent (G. S. §§ 115-347 to 115-382), a policy of state support for public schools was adopted so that such schools would be operated under a uniform system throughout the entire state. Thus, much of the old law was annulled or subordinated to the new. The notes, therefore, in this chapter to the several sections, which have been revised to reflect the changes made by the 1939 School Law, should be read with this in mind as the majority of cases cited were decided prior to the present scheme of public school administration.

The 1943 amendment changed the term from eight to nine months. The amendatory act provided that wherever the state supported school term is described or limited by the words "eight months" or "one hundred and sixty days" in the sections codified under this chapter, or in any other law, the same shall be construed to refer to the state supported nine months or one hundred and eighty days school term.

Cited in Reid v. City Coach Co., 215 N. C. 469, 2 S. E. (2d) 578, 123 A. L. R. 140.

§ 115-2. Separation of races. — The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Robeson, Sampson, and Richmond counties, shall have separate schools for their children. (1923, c. 136, s. 1; C. S. 5384.)

Cross References.—As to constitutional provision against racial discrimination, see Const. Art. IX, s. 2. As to separate schools for certain Indians, see § 115-66.

Constitutional.—This section is constitutional and valid. Art. XIV, sec. 8, of the Constitution, relating to marriages between the races, has no application. Johnson v. Board, 166 N. C. 468, 82 S. E. 832.

Croatan Indians.—The Legislature is not prohibited by the Constitution from providing separate schools for Croatan Indians, and an act providing for such schools is valid. See McMillan v. School Committee, 107 N. C. 609, 12 S. E. 330.

The provision in regard to Croatan Indians does not embrace only those residing in Robeson, Sampson and Richmond counties, but Croatan Indians who put themselves within the limits of the schools, although they may come from other territory. See Goins v. Trustees Indian Training School, 169 N. C. 736, 86 S. E. 629.

But children of negro blood are not entitled to admission into the schools provided for Croatan Indians. See McMillan v. School Committee, 107 N. C. 609, 12 S. E. 330.

Cited in Medlin v. County Board, 167 N. C. 239, 83 S. E. 483.

§ 115-3. Schools provided for both races; taxes. —When the school officials are providing schools for one race it shall be a misdemeanor for the officials to fail to provide schools for the other races, and it shall be illegal to levy taxes on the property and polls of one race for schools in a district without levying it on all property and polls for all races within said district. (1923, c. 136, s. 1; C. S. 5385.)

Cross Reference.—See note to § 115-2.

§ 115-4. The school system defined. — The school system of each county shall consist of eleven years or grades, except when the provisions of §§ 115-5 to 115-7 have been complied with, in which event the system shall consist of twelve years or grades; and shall be graded on the basis of a school year of not less than one hundred and eighty days. The first seven or eight years or grades shall be styled the elementary school, and the remaining years or grades shall be styled the high school: Provided, the system, for convenience in administration, may be divided into three parts, the elementary school, consisting of the first six or seven grades, and a junior and senior high school, embracing the remaining grades, if better educational advantages may be supplied. (1923, c. 136, s. 2; 1941, c. 158, s. 1; 1943, c. 255, s. 2; C. S. 5386.)

Editor's Note.—The 1943 amendment substituted "eighty" for "sixty" in line eight.

§ 115-5. Twelve grades authorized upon request by local unit.—Upon the request of the county board of education or the board of trustees of a city administrative unit, the state board of education shall provide for the operation of a school system to embrace twelve grades in accordance with such plans as may be promulgated by the state superintendent of public instruction in any high school district for which such request is made at the time the organization statement is submitted. (1941, c. 158, s. 1; 1943, c. 721, s. 8.)

Cross References.—As to the organization statement, see § 115-355.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission." The amendatory act provided that "any reference to the said school commission shall be deemed a reference to the state board of education."

For comment on this section, see 19 N. C. L. Rev. 512.

§ 115-6. Provision for cost of operating twelve grades. — When the request for the extension of the system of the public school to embrace twelve grades is submitted as provided in § 115-5, the cost of the same shall be paid from the appropriation made for the operation of the state nine months' school term in the same manner and on the same standards, subject to the provisions of §§ 115-5 to 115-7, as provided in the "School Machinery Act." (1941, c. 158, s. 2; 1943, c. 255, s. 2.)

Cross Reference.—As to the School Machinery Act, see §§ 115-347 et seq.

Editor's Note.—The 1943 amendment changed the term from eight to nine months.

§ 115-7. Application blanks for requesting twelve grades; allotment of teachers. — The state superintendent of public instruction and the state board of education shall provide the necessary blanks and forms for requesting an extension of the public school system to embrace twelve grades as herein provided, in the organization statements to be submitted by the several administrative units of the state in preparation for the school term of one thousand nine hundred and forty-two-forty-three, and annually thereafter, and the state board of education shall allot teachers for the school year one thousand nine hundred and forty-two-forty-three for any district heretofore operating a school program embracing twelve grades upon the basis of attendance for the preceding year: Provided, that for any district requesting to operate for the first time a system embracing twelve grades the allotment of teachers shall be based on a fair and equitable estimate of the

prospective increase in attendance, as submitted by the requesting unit, and the average attendance for the preceding year. (1941, c. 158, s. 3; 1943, c. 721, s. 8.)

Cross Reference.—As to the organization statement, see § 115-355.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-8. Administrative units classified. — Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the executive officer. A city administrative unit shall be classified as an area within a county that comprises a school population of 1000 or more and which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of trustees or school commissioners with a city superintendent as the administrative officer. (1943, c. 721, s. 8.)

Cross Reference.—As to school organization and administration generally, see § 115-352.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-9. The term "district" defined.—The term "district" as used in this chapter is hereby defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include an incorporated town or city, or a township, or a part of a township. There shall be two different kinds of districts: (1) The non-local tax district, that is, one attendance area of the county administrative unit under the control of the county board of education, or the attendance area in a City Administrative Unit under the control of a Board of Trustees, but having no special local tax funds for supplementing the State and county funds; (2) The local tax district, that is, one or more attendance areas of a county administrative unit having a school population of 1000 or more and under the control of the county board of education, or the attendance area in a City Administrative Unit under the control of a Board of Trustees, but having in addition to State and county funds a special local tax fund voted by the people for supplementing State and county funds. A local tax district may embrace one or more elementary schools and/or a high school. (1923, c. 136, s. 3; C. S. 5387.)

Cross References.—As to school organization and administration generally, see § 115-352. As to power of state board of education to divide state into convenient number of school districts, see § 115-19.

Cited in Plott v. Board, 187 N. C. 125, 133, 121 S. E. 190.

§ 115-10. Schools classified and defined. — The different types of public schools are classified and defined as follows: (1) An elementary school, that is, a school that embraces a part or all of the eight elementary grades; (2) A high school, that is, a school that embraces a high school department of one or more grades above the elementary grades and containing not less than twenty pupils in average daily attendance; (3) A union school, that is, a school embracing both elementary and high school grades. (1923, c. 136, s. 4; C. S. 5388.)

§ 115-11. Officials defined. — The governing board of the county administrative unit is "The County Board of Education". The governing board of a school district is "The District Committee". The governing board of a city administrative unit is "The Board of Trustees"; and wherever any other name is used to designate the governing board of a city administrative unit, the name "Board of Trustees" is hereby declared to be its equivalent.

The executive officer of the county administrative unit, and the executive officer of the city administrative unit, shall be called "Superintendent". The executive head of a district or school shall be called "Principal". (1923, c. 136, s. 5; C. S. 5389.)

§ 115-12. School day defined.—A school day is defined to mean the number of hours each day the public schools are conducted and the time teachers are employed to instruct pupils or to supervise their activities. (1923, c. 136, s. 6; C. S. 5390.)

Cross Reference.—For definition of school month, see § 115-351.

§ 115-13. Part-time classes defined. — The term "part-time classes" is defined to mean the period provided for those pupils who may be able to attend school for only one or more recitations or exercises daily. (1923, c. 136, s. 7; C. S. 5391.)

§ 115-14. A standard high school defined.—A standard high school is defined as a high school that presents the following minimum requirements: A school term of not less than one hundred and eighty days; four years or grades of work beyond the elementary school; three teachers holding required certificates; not less than forty-five pupils in average daily attendance, a program of studies approved by the state superintendent of public instruction, and such equipment as may be deemed necessary by the state superintendent of public instruction to make the instruction beneficial to pupils: Provided, however, that in schools maintaining a nine months' term, meeting all other requirements, and offering superior instruction, fewer than forty-five pupils in average daily attendance may be considered. (1923, c. 136, s. 8; 1927, c. 40; 1943, c. 255, s. 2; C. S. 5392.)

Editor's Note.—The 1943 amendment substituted "eighty" for "sixty" in line five.

§ 115-15. Public school funds defined.—All revenues of the state for the maintenance and support of the public school system of the state shall be divided into three funds, as follows:

(a) The state literary fund—or all funds of the state heretofore derived from the sources enumerated in section four, Article IX of the state constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon, shall be a fund separate and distinct from the other funds of the state, to be known as the state literary fund, and shall be loaned by the state board of education to county boards of education, in accordance with law, for the purpose of aiding in the erection and equipment of schoolhouses.

(b) The special building fund—or all funds derived from the sale of state bonds authorized by

the general assembly to be sold and loaned by the state board of education to county boards of education for the special purpose of aiding in the erection and equipment of schoolhouses, and designated by the general assembly as a special building fund.

(c) The state public school fund—or all other funds derived from all other sources in accordance with law, and deposited in the state treasury for the support and maintenance of the public school system and all forfeitures, fines and penalties imposed by the state board of education for the failure of any company or corporation to keep any contract entered into between the state board of education and said company. (1923, c. 136, s. 9; C. S. 5393.)

Cross Reference.—As to how school funds shall be paid out, see § 115-368.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Art. 2. The State Board of Education.

§ 115-16: Repealed by Session Laws 1943, c. 721, s. 2.

§ 115-17. Power to purchase at mortgage sales; payment of drainage assessments.—The State Board of Education is authorized to purchase, at public sale, any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district already constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual. (Ex. Sess. 1924, c. 24.)

§ 115-18. Power to adjust debts for purchase price of lands sold; sale of mortgages, etc. — The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds or other evidence of indebtedness without payment, when, in the discretion of the said board, it appears that it is proper to do so. Said Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness. (1925, c. 220.)

§ 115-19. Powers and duties of the board.—The state board of education shall succeed to all the powers and trusts of the president and directors of the literary fund of North Carolina and the state board of education as heretofore constituted. The state board of education shall have power to divide the state into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the state; and generally to supervise and administer the free public school system of the state and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with the constitution and subject to such laws as may be enacted from time to time by the general assembly. (Const., Art. IX, s. 10; Rev., s. 4033; Code, s. 2506; 1881, c. 200, s. 4; R. C., c. 66; R. S., cc. 66, 67; 1943, c. 721, s. 3; C. S. 5395.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 115-19.1. Succeeds to property, powers, functions and duties of abolished commissions and boards; power to take, hold and convey property. —The state school commission, the state textbook commission, the state board of vocational education, and the state board of commercial education are abolished from and after the first day of April, one thousand nine hundred and forty-three and from and after said date the state board of education as constituted under section eight of article nine of the constitution of North Carolina, as amended at the November election of one thousand nine hundred and forty-two, shall succeed to the title to all property, real and personal, and shall succeed to and exercise and perform all the powers, functions and duties of said commissions, boards, and of the state board of education as constituted prior to the first day of April, one thousand nine hundred and forty-three, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this state. (1943, c. 721, s. 1.)

§ 115-20. Administration of public school system and educational funds; membership of board; officers; vacancies; quorum; compensation and expenses.—The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a state board of education to consist of the lieutenant governor, state treasurer, the superintendent of public instruction, and one member from each congressional district to be appointed by the governor. The state superintendent of public instruction shall have general supervision of the public schools and shall be secretary of the board. There shall be a comptroller appointed by the board, subject to the approval of the governor as director of the budget, who shall serve at the will of the board and who, under the direction of the board, shall have supervision and management of the fiscal affairs of the board. The appointive members of the state board of education shall be subject to confirmation by the general assembly in joint session. A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the state. The first appointments under this section shall be members from odd numbered congressional districts for two years, and members from even numbered congressional districts for four years, and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the governor for the unexpired term, which appointments shall not be subject to confirmation. The board shall elect a chairman and a vice-chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members of the board shall be provided by the

general assembly. (Const., Art. IX, ss. 9, 12, 13; Rev., s. 4031; Code, s. 2504; 1881, c. 200, s. 2; 1943, c. 721, s. 4; C. S. 5396.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 115-21. Record of proceedings. — All the proceedings of the board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the superintendent of public instruction. (Rev., s. 4032; Code, s. 2505; 1881, c. 200, s. 3; C. S. 5397.)

§ 115-22. Reports to general assembly. — The state board of education shall report to the general assembly the manner in which the state literary fund has been applied or invested, with such recommendations for the improvement of the same as to it shall seem expedient. (Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1; C. S. 5398.)

§ 115-23. Investments.—The state board of education is authorized to invest in North Carolina four per cent bonds or in other safe interest-bearing securities, the interest on which shall be used as may be directed from time to time by the general assembly for school purposes. (Rev., s. 4035; 1891, c. 369; C. S. 5399.)

§ 115-24. State treasurer keeps accounts of literary fund; reports to general assembly. — The state treasurer shall keep a fair and regular account of all the receipts and disbursements of the state literary fund, and shall report the same to the general assembly at the same time when he makes his biennial account of the ordinary revenue. (Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1; C. S. 5400.)

§ 115-25. Acceptance of federal aid for physical education.—The state board of education is authorized to accept any federal funds that may be appropriated now or hereafter by the federal government for the encouragement of physical education and to make all needful rules and regulations for promoting physical education. (1921, c. 146, s. 14; C. S. 5401.)

Art. 3. State Superintendent of Public Instruction.

§ 115-26. Office at capital; copies of papers therein.—The superintendent of public instruction shall keep his office at the seat of government. Copies of his acts and decisions and of all papers kept in his office and authenticated by his signature and official seal shall be of the same force and validity as the original. (Rev., s. 4089; 1900, c. 525; C. S. 5402.)

§ 115-27. Salary of state superintendent of public instruction. — The salary of the state superintendent of public instruction shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2745; Code, s. 2737; 1879, c. 240, s. 8; 1901, c. 4, ss. 9, 11; 1903, c. 435, s. 2; 1903, c. 567, s. 6; 1903, c. 603; 1905, c. 533, ss. 2, 15, 16; 1907, c. 830, ss. 6, 11; 1907, c. 994; 1915, c. 247; 1917, cc. 167, 285; 1919, c. 293; 1919, c. 247, s. 5; 1921, c. 11, s. 1; 1935, c. 441; 1941, c. 1; C. S. 3869.)

Editor's Note.—The 1941 amendment increased the salary of the superintendent of public instruction from $6,000 to $6,600 per annum.

§ 115-28. Powers and duties.—The state superintendent of public instruction is empowered and it shall be his duty:

1. Looks after Schools, Reports to Governor.—To look after the school interests of the state, and to report biennially to the governor at least five days previous to each regular session of the general assembly. His report shall give information and statistics of the public schools, and recommend such changes in the school law as shall occur to him.

2. Directs Schools, Enforces and Construes School Law. — To direct the operations of the public schools and enforce the laws and regulations in relation thereto.

3. Receives Evidence as to Superintendents' Performance of Duties. — To receive evidence as to unfitness or negligence of any superintendent, and when necessary to report it to the local school authorities for action.

4. Sends Circular Letter to School Officers.—To send to each school officer a circular letter enumerating his duties as prescribed in this chapter.

5. Investigates Other School Systems.—To correspond with leading educators in other states, to investigate systems of public schools established in other states, and, as far as practicable, to render the results of educational efforts and experiences available for the information and aid of the legislature and the state board of education.

6. Acquaints Himself with Local Educational Wants, Delivers Lectures, etc.—To acquaint himself with the peculiar educational wants of the several sections of the state, and to take all proper means to supply such wants, by counseling with local school authorities, by lectures before teachers' institutes, and by addresses before public assemblies on subjects relating to public schools and public school work.

7. Travels in Connection with Loan Fund, etc. —To go to any county when necessary for the due execution of the law creating a permanent loan fund for the erection of public schoolhouses. He shall include in his annual reports a full showing of everything done under the provisions of the law creating such permanent loan fund.

8. Signs Requisitions on Auditor.—To sign all requisitions on the auditor for the payment of money out of the state treasury for school purposes.

9. Has Publications Made, etc.— To have the school laws published in pamphlet form and distributed on or before the first day of May of each year; to have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education; and to have printed all forms necessary and proper for the purposes of this chapter. (Rev., ss. 4089, 4090, 4091, 4092; 1900, c. 525; 1901, c. 4, ss. 8, 9; 1903, c. 435, s. 1; 1903, c. 751, ss. 11, 12; 1909, c. 525, s. 2; 1923, c. 198; C. S. 5403.)

§ 115-29. Division of professional service. — There shall be created in the office of the superintendent of public instruction a division of professional service, having a director and such assistants, clerks, and stenographers as may be necessary and consistent with the appropriation made for this division. All rules and regulations gov-

erning the certification of teachers passed by the state board of examiners and institute conductors, and now in force, shall be continued in full force and effect until amended or repealed by the authority of the state board of education, which is hereby constituted the legal board for certificating or providing for the certification of all teachers. (1921, c. 146, s. 16; C. S. 5404.)

§ 115-30. Division of negro education. — To secure better supervision of negro education in all normal schools, training schools, high schools, elementary schools, and teacher training departments in all colleges for negroes over which the state now or hereafter may have any control, the state board of education is authorized, upon the recommendation of the superintendent of public instruction, to employ a director of negro education, and such supervisors, assistants, both clerical and professional, as may be necessary to carry out the purposes of this section not inconsistent with the amount of the appropriation, and to define the duties of the same. (1921, c. 146, s. 17; C. S. 5405.)

§ 115-31. Division of publications.—There shall be created in the office of the superintendent of public instruction a division of publications, having a director and such assistants as may be needful to carry out the provisions of this law. The director shall be appointed by the superintendent of public instruction, and the salary and expenses shall be fixed by the budget bureau.

All publications issued from the office of the superintendent of public instruction shall be edited by the director and no printing shall be authorized until approved by the superintendent of public instruction.

The director of publications, with the approval of the superintendent of public instruction, shall have control of all publications and such other duties as may be assigned him by the superintendent of public instruction. All county or city superintendents and other public school officials receiving publications from the office of the superintendent of public instruction shall be required to keep a record of publications received, the number of each on hand at the close of the year, and whenever it shall appear that the county or city superintendent or other school officials are careless or negligent in using or distributing the publications, bulletins, blanks, etc., received from the office of the superintendent of public instruction, the state superintendent of public instruction shall report the same to the county board of education, which board shall investigate the matter, and the county superintendent shall be required by the board of education to carry out the provisions of this law. The salary and expenses of the director shall be paid out of the state public school fund. (1921, c. 146, s. 18; C. S. 5406.)

Art. 4. Boys' Road Patrol.

§ 115-32. Boys' road patrol organized. — The state board of education, whose duty it shall be to appoint a director of the work of the boys' road patrol in the state of North Carolina is hereby charged with the duty of organizing a brigade of school boys in this state to be called the Boys' Road Patrol, and to be composed of boys who attend the public schools of the state. (1915, c. 239, s. 1; 1925, c. 300, s. 1; 1937, c. 399, s. 1; C. S. 4931.)

Editor's Note.—The duty imposed upon the state board of education by this section was formerly placed on the board of agriculture. This provision is new with Public Laws 1925 ch. 300.

Prior to the 1937 amendment, this section applied only to boys who attended rural public schools.

§ 115-33. Duties of patrol.—The duties of such patrol shall be to look after the maintenance of the road lying near the home of each member of the patrol, to drag and ditch same by the use of machinery placed in the care of the patrol by the state and county in such manner as the state board of education shall direct, to prevent forest fires by extinguishing fire along the public highway, to study safety rules and methods, and to practice research along safety lines to the end of removing hazards from the highways. (1915, c. 239, s. 2; 1925, c. 300, s. 2; 1937, c. 399, s. 2; C. S. 4932.)

Editor's Note.—By Public Laws 1925, ch. 300, the State Board of Education has the supervisory power over the boy's road patrol instead of the board of agriculture as formerly provided for, and the duty of preventing forest fires is also new.

The 1937 amendment added the latter part of this section relating to study of safety rules, etc.

§ 115-34. Regulations for patrol; prizes authorized.—The State Board of Education is specially empowered and directed to devise, organize, and adopt all such rules and regulations as may be necessary for effectually carrying out the purposes of this article; may award suitable prizes and pay all expenses of successful competitors and others engaged in such work in attendance upon meetings and for other purposes. (1915, c. 239, s. 3; 1925, c. 300, s. 3; C. S. 4933.)

Editor's Note.—The authority delegated to the State Board of Education under this section was formerly given to the board of agriculture, the change taking effect by Public Laws 1925, ch. 300.

§ 115-35. Funds for support. — All moneys for the carrying out of this article shall be provided by the counties themselves in coöperation with the State of North Carolina. The commissioners of the counties of North Carolina are empowered to make annual donations out of the county funds for the purposes of this article. (1915, c. 239, ss. 4, 6; 1925, c. 300, s. 4; C. S. 4934.)

Editor's Note.—By Public Laws 1925, ch. 300, the State of North Carolina is substituted for the board of agriculture, to co-operate with the counties, in raising the funds necessary to carry out the provisions of this article.

§ 115-36. Minimum preliminary appropriation by county.—Said brigade shall not be organized in any county until the commissioners of said county set apart and appropriate not less than one hundred dollars for the purposes of this article, to be spent in said county by the State Board of Education. (1915, c. 239, s. 5; 1925, c. 300, s. 5; C. S. 4935.)

Editor's Note.—By Public Laws 1925, ch. 300, the one hundred dollars set apart under this section is to be spent by the State Board of Education and not by the board of agriculture as formerly provided for.

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION.

Art. 5. The Board: Its Corporate Powers.

§ 115-37. How constituted. — The county board of education in each county shall consist of the

number of members which have been or may be appointed by the General Assembly in its biennial act or acts appointing members of boards of education. The term of office shall be for two years, except as may be otherwise provided in the said act or acts.

The members appointed under said act or acts shall qualify by taking the oath of office on or before the first Monday in April. (1923, c. 136, ss. 10, 11, c. 175, ss. 1, 3; Pub. Loc., Ex. Sess., 1924, cc. 63, 189; 1925, c. 104; Pub. Loc. 1925, c. 153; Pub. Loc. 1927, cc. 579, 583; 1929, cc. 202, 215; Pub. Loc. 1929, c. 335; 1931, cc. 39, 278, 313, 363; 1933, c. 208; 1935, c. 485; 1937, cc. 38, 79, 395; 1939, c. 392; 1941, c. 380; 1943, c. 511; C. S. 5410.)

Effect of Failure to Qualify on Day Prescribed.—A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, § 115-45, and where the members of the board appointed by the General Assembly fail to take the oath of office on the date prescribed by this section, but take the oath on the next succeeding day, their failure to qualify on the day prescribed does not impair the existence of the corporate body, and where they have discharged the statutory duties imposed upon them, and no vacancy has been declared by the State Board of Education, and no proceedings in the nature of quo warranto have been instituted to determine their right to office, the acts of the appointees as members of the board cannot be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its statutory duties. Crabtree v. Board of Education, 199 N. C. 645, 155 S. E. 550.

Cited in Board of Education v. Walter, 198 N. C. 325, 328, 151 S. E. 718.

§ 115-38. How nominated and elected. — In all the counties of the state there shall be nominated in the year one thousand nine hundred and twenty-four, and biennially thereafter, at the party primaries or conventions, at the same time and in the same manner as that in which other county officers are nominated, a candidate or candidates, by each political party of the state, for member or members of the county board of education to take the place of the member or members of said board whose term next expires. The names of the persons so nominated in such counties shall be duly certified by the chairman of the county board of elections, within ten days after their nomination is declared by said county board of elections, to the superintendent of public instruction, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education in the next session of the general assembly within ten days after it convenes. The general assembly shall elect or appoint one or more, from the candidates so nominated, members of the county board of education for such county. Upon failure of the general assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the state board of education. The term of office of each member shall begin on the first Monday of April of the year in which he is elected, and shall continue until his successor is elected and qualified. (1923, c. 136, s. 12; C. S. 5412.)

Local Modification.—Jackson: 1943, c. 740.

§ 115-39. County board of elections to provide for nominations.—The county board of elections, under the direction of the state board of elections, shall make all necessary provisions for such nominations as are herein provided for. (1923, c. 136, s. 13; C. S. 5413.)

§ 115-40. Members to qualify. — Those persons who shall be elected members of the county board of education by the general assembly must qualify by taking the oath of office on or before the first Monday in April next succeeding their election. A failure to qualify within that time shall constitute a vacancy. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification thereof. A failure to qualify within that time shall constitute a vacancy. (1923, c. 136, s. 14; C. S. 5414.)

Cited in Crabtree v. Board of Education, 199 N. C. 645, 650, 155 S. E. 550.

§ 115-41. Vacancies in nominations. — If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the general assembly of the member or members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate. (1923, c. 136, s. 15; C. S. 5415.)

§ 115-42. Vacancies in office.—All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the general assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the general assembly in such cases shall have occurred before the primary or convention held in such county, then in that event nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or convention of such county. All vacancies that are not filled by the county executive committee under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the state board of education. (1923, c. 136, s. 16; 1931, c. 380; C. S. 5416.)

Editor's Note. — The Act of 1931 struck out the words "remaining members of said county board of education" formerly appearing in lines four and five of this section and inserted in lieu thereof the words "action of the county executive committee of the political party of the member causing such vacancy."

The Act also repealed paragraph two of this section which had been added by Public Laws 1923, c. 136, s. 16 and was as follows: "In the event that all or a majority of the members of the board die, resign or are removed from office, the vacancies shall be filled at once by the State board of education."

Cited in Board of Education v. Pegram, 197 N. C. 33, 34, 147 S. E. 622.

§ 115-43. Eligibility for the office. — No person shall be eligible as a member of the county board of education who is not known to be a man of intelligence, of good moral character, of good business qualifications, and known to be in favor of public education. No person, while actually engaged in teaching in the public schools or engaged in teaching in or conducting a private school in connection with which private

school there is in any manner conducted a public school, and no member of a district committee or board of trustees, shall be eligible as a member of the county board of education. (1923, c. 136, s. 17; C. S. 5417.)

Constitutional Office.—Under sec. 7, Art. XIV, of the Constitution, one person cannot hold the office of county commissioner and also be a member of the county board of education. State v. Thompson, 122 N. C. 493, 29 S. E. 720.

§ 115-44. Organization of the board.—At the first meeting of the new board in April the members of the board shall organize by electing one of its members as chairman for a period of one year or until his successor is elected and qualified. The superintendent of public instruction shall be ex officio secretary to the board. He shall keep the minutes of the meetings of the board, but shall have no vote: Provided, that in the event of a vacancy in the county superintendency the board may elect one of its members to serve temporarily as secretary to the board. (1923, c. 136, s. 18; C. S. 5418.)

§ 115-45. The board a body corporate.—The board of education shall be a body corporate by the name and style of "The Board of Education of ..... County." By that name it shall hold all school property belonging to the county, and it shall be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January first, one thousand nine hundred, or who became bodies corporate by special act of the general assembly, but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January first, one thousand nine hundred, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education of the county or the board of trustees of a special charter district wherein same are located the clerk of the superior court of the county wherein such property or such land or lands are located shall convey said property or land or lands to the county board of education, unless same is located in a special charter district. In that event said property or land or lands shall be conveyed to the board of trustees of the special charter district. (1923, c. 136, s. 19; C. S. 5419.)

Cited in Board v. Board, 192 N. C. 274, 134 S. E. 852; Hickory v. Catawba County, 206 N. C. 165, 173, 173 S. E. 56; Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733.

§ 115-46. Compensation of members. — The board of education may fix the compensation of each member at not to exceed five dollars per diem and five cents a mile to and from the place of meeting. And no member of the board shall receive any compensation for any services rendered except the per diem provided in this section for attending meetings of the board and traveling expenses when attending meetings of the board, or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board. (1923, c. 136, s. 20; C. S. 5420.)

§ 115-47. Removal for cause.—In case the state superintendent shall have sufficient evidence that any member of the county board of education is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of the county board of education, who shall call a meeting of the board at once to investigate the charges, and if found to be true, the board shall declare the office vacant. (1923, c. 136, s. 21; C. S. 5421.)

§ 115-48. Meetings of the board. — The county board of education shall meet on the first Monday in January, April, July and October. It may elect to hold regular monthly meetings, and to meet in special sessions as often as the school business of the county may require. (1923, c. 136, s. 22; C. S. 5422.)

§ 115-49. Powers; suits and actions. — (a) The county board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all moneys or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the county commissioners as is hereinafter provided.

(b) In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school by the order of the board, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary. (1923, c. 136, s. 23; C. S. 5423.)

Cited in Board v. Board, 192 N. C. 274, 134 S. E. 852.

§ 115-50. Power to subpœna and to punish for contempt.—The board shall have power to issue subpœnas for the attendance of witnesses. Subpœnas may be issued in any and all matters which may lawfully come within the powers of the board, and which in the discretion of the board require investigation; and it shall be the duty of the sheriffs, coroners and constables to serve such subpœnas upon payment of their lawful fees.

The county board of education of each county shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt it in the transaction of official business. (1923, c. 136, s. 24; C. S. 5424.)

§ 115-51. Witness failing to testify, misdemeanor.—Any witness who shall willfully and without legal excuse fail to appear before the county board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 25; C. S. 5425.)

§ 115-52. Appeals to board from county officers.

—An appeal shall lie from all county school officers to the county board of education, and such appeals shall be regulated by rules to be adopted by the county board of education. (1923, c. 136, s. 26; C. S. 5426.)

§ 115-53. Superior court to review board's action.—The superior courts of the state may review any action of the county board of education affecting one's character or right to teach. (1923, c. 136, s. 27; C. S. 5427.)

Where the county board of education orders the removal of school committeemen, § 115-74, who appeal under the provisions of this section, the judgment of the Superior Court judge holding the act of the board of education in removing the committeemen invalid and dismissing the appeal for want of jurisdiction is inconsistent and erroneous. Board of Education v. Anderson, 200 N. C. 57, 156 S. E. 153.

Art. 6. The Direction and Supervision of the School System.

§ 115-54. To provide for all the children of the county.—It is the duty of the county board of education to provide an adequate school system for the benefit of all the children of the county, as directed by law. (1923, c. 136, s. 28; C. S. 5428.)

Cross Reference.—As to school organization generally, see § 115-352.

When Court Will Interfere.—The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. McInnish v. Board, 187 N. C. 494, 122 S. E. 182.

Discretion of Boards.—In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish high schools in the districts of their several counties. In the absence of abuse, this discretion cannot be set aside or controlled by the courts. The principle stated and applied in deciding the question presented by the appeal in Newton v. School Committee, 158 N. C. 186, 187, 73 S. E. 886, is well settled. Clark v. McQueen, 195 N. C. 714, 716, 143 S. E. 528.

This section and section 115-61 vest in the sound discretion of the board of education of a county the right to transfer an existing school in one district to an adjoining district for the advantage of the residents of the county, and with the fair exercise of this discretion, or in the absence of manifest abuse, the courts will not interfere, or give injunctive relief. Clark v. McQueen, 195 N. C. 714, 143 S. E. 528. But see § 115-352.

§ 115-55. General powers.—All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other officials, are conferred and imposed upon the county board of education. (1923, c. 136, s. 29; C. S. 5429.)

Authority to Employ Janitors.—Under the provisions of this section the county board of education is authorized to select and employ janitors for a school building in a local tax district in preference to one appointed by the district school committee for the same position. Wiggins v. Board of Education, 198 N. C. 301, 151 S. E. 730.

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school the county is not liable on the note, the purchasing agent having no connection with the county board of education. Keith v. Henderson County, 204 N. C. 21, 167 S. E. 481.

Cited in Wilkinson v. Board of Education, 199 N. C. 669, 155 S. E. 562.

§ 115-56. General control.—The county board of education, subject to any paramount powers vested by law in the state board of education or any other authorized agency, shall have general control and supervision of all matters pertaining to the public schools in their respective counties, and they shall execute the school laws in their respective counties. But whenever duties are assigned to the county board of education in this subchapter, they shall not be construed so as to take away from the board of trustees of any city administrative unit any duties or other powers assigned to said board of trustees by the general assembly. (1923, c. 136, s. 30; 1943, c. 721; C. S. 5430.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

Power Discretionary.—The courts may compel the county board of education to act upon discretionary powers conferred on them by the legislature, but cannot tell them how they must act. Key v. Board, 170 N. C. 123, 86 S. E. 1002.

§ 115-57. Fixing time of opening and closing schools.—The time of opening and closing the public schools in the several public school districts of the state, except in city administrative units, shall be fixed and determined by the county board of education in their respective counties. The board may fix different dates for opening the schools in different townships, but all the schools of each township must open on the same date, as nearly as practicable. (1923, c. 136, s. 32; C. S. 5432.)

§ 115-58. Determination of length of school day.—The length of the school day shall be determined by the county board of education for all public schools under its jurisdiction and by the board of trustees of all other schools: Provided, the minimum time for which teachers shall be employed in the schoolroom or on the school grounds supervising the activities of children shall not be less than six hours. But county boards of education may authorize rural schools in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day: Provided further, it shall be the duty of the county boards of education and boards of trustees, wherever needs are presented, to provide part-time classes for pupils above the compulsory school age and for such other pupils as are unable because of physical defects to attend school for the full time designated for the classes in which they may be enrolled. (1923, c. 136, s. 33; C. S. 5433.)

Cross Reference.—As to authority to suspend the operation of schools for a limited time when low attendance or necessity demands it, see § 115-351.

§ 115-59. Duty to enforce the compulsory school law.—It shall be the duty of teachers, principals, county or city superintendents of public instruction and attendance officers to enforce the compulsory school law in accordance with the rules and regulations adopted by the state board of education; and if they shall fail to perform their duties in this respect, it shall be the duty of the county board of education or board of trustees of the city administrative unit to withhold the salary of such a person or to remove such a one from office. Any school official failing to obey the law in regard to compulsory attendance shall be guilty of a misdemeanor and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 34; C. S. 5434.)

§ 115-60. Continuous school census.—The state board of education shall adopt such rules and

regulations as may be necessary for taking a complete census of the school population and for installing and keeping in the office of the county superintendent in each county of the state a continuous census of the school population. The cost of taking and keeping the census shall be a legitimate item in the budget and shall be paid out of the incidental fund. If any parent, guardian, or other person having the custody of a child, refuses to give any properly authorized census taker, teacher, school principal, or other school official charged with the duty of obtaining the census of the school population of any district, the necessary information to enable such person to obtain an accurate and correct census, or shall knowingly and willfully make any false statement to any person duly authorized to take the school census of any district relative to the age or the mental or physical condition of any child, he shall be deemed guilty of a misdemeanor and shall be fined not to exceed twenty-five dollars or imprisoned not to exceed thirty days in the discretion of the court. (1921, c. 179, s. 16; 1925, c. 95; C. S. 5435.)

Editor's Note.—By amendment, Public Laws 1925, c. 95, the last sentence of this section was added.

§ 115-61. The location of high schools. — Since the cost of good high school instruction is too great to permit the location of small high schools close together, it shall be the duty of the county board, wherever the needs demand it, to locate not more than one standard high school in each township or its equivalent: Provided, it shall be discretionary with county boards of education to continue standard high schools in existence in 1923 contrary to the provisions of this section, and to establish such high schools in townships in which city schools are already located. (1923, c. 136, s. 36; C. S. 5437.)

Cross Reference.—As to requirements which must be met in establishing high schools and as to school organization in general, see § 115-352.

§ 115-62. Subjects taught in the elementary schools.—The county board of education shall provide for the teaching of the following subjects in all elementary schools: Spelling, reading, writing, grammar, language and composition, English, arithmetic, drawing, geography, the history and geography of North Carolina, history of the United States, elements of agriculture, health education, including the nature and effect of alcoholic drinks and narcotics, and fire prevention.

It shall be the duty of the state superintendent of public instruction to prepare a course of study outlining these and other subjects that may be taught in the elementary schools, arranging the subjects by grades and classes, giving directions as to the best methods of teaching them, and including type lessons for the guidance of the teachers. The board of education shall require these subjects in both public and private schools to be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language shall be guilty of a misdemeanor, and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 39; C. S. 5440.)

§ 115-63. Instruction on alcoholism and narcotism.—In addition to health education, which is now required by law to be given in all schools supported in whole or in part by public money, thorough and scientific instruction shall be given in the subject of alcoholism and narcotism.

The State Superintendent of Public Instruction is hereby authorized and directed to prepare, or cause to be prepared, for the use of all teachers who are required by this section to give instruction in the subjects of alcoholism and narcotism, a course of study on health education, which shall embrace suggestions as to methods of instruction, outlines of lesson plans, lists of accurate and scientific source material, suggested adaptations of the work to the needs of the children in the several grades, and shall specify the kind of work to be done in each grade, and the amount of time to be devoted to such instruction. The state board of education shall be authorized, directed and empowered to select, approve, and adopt a simple, scientific textbook, which textbook shall be free from political propaganda, and approved by the state board of health and the faculty of the Medical School of the University of North Carolina, on the effects of alcoholism and narcotism on the human system, and/or a different or revised text on "health" which shall contain chapters giving complete, detailed, and scientific information on the subjects, to be taught as a unit of work every year in the appropriate elementary grade, or grades, of the public schools of North Carolina. Adequate time shall be given to teach the subject efficiently. The work in the subject of alcholism and narcotism shall be a part of the work required for promotion from one grade to another: Provided also, that provision shall be made in the course of study prepared by the state department of public instruction for teachers, aids and devices for the assistance of teachers in teaching the effects of alcoholism and narcotism on the human system.

In all normal schools, teacher training classes, summer schools for teachers, and other institutions giving instruction preparatory to teaching or to teachers actually in service, adequate time and attention shall be given to the best methods in teaching health education, with special reference to the nature of alcoholism and narcotism.

It shall be the duty of all officers and teachers, principals and superintendents in charge of any school or schools, comprehended within the meaning of this section, to comply with its provisions; and any such officer or teacher who shall fail or refuse to comply with the requirements of this section shall be subject to dismissal by the proper authorities. (1929, c. 96, ss. 1-3; 1935, c. 404; 1943, c. 721, s. 9.)

Cross Reference.—As to instruction in the prevention of forest fires, see § 113-60.

Editor's Note.—Prior to the amendment of 1935 the latter part of the second paragraph of this section specified the number of lessons on alcoholism and narcotism. The section now goes into the subject in much more detail.

The 1943 amendment struck out the words "The State Textbook Commission and" formerly appearing at the beginning of the second sentence of the second paragraph.

Cited in Newman v. Watkins, 208 N. C. 675, 182 S. E. 453, dissenting opinion.

§ 115-64. Instruction in Americanism. — There shall be taught in the public schools of North Carolina a course of instruction which shall be known as Americanism.

There shall be included in the term "Americanism" the following general items of instruction:

(a) Respect for law and order.

(b) Character and ideals of the founders of our country.

(c) Duties of good citizenship.

(d) Respect for the national anthem and the flag.

(e) A standard of good government.

(f) Constitution of North Carolina.

(g) Constitution of the United States.

The course of instruction in Americanism shall be taught not less than thirty hours during each and every school year and shall not be optional in the grade or grades in which said course is taught. The state board of education shall, as soon as convenient, adopt some suitable and proper textbook which will conform as near as possible and practicable to the carrying out of the general items of instruction as herein contained, and the state superintendent shall prepare or have prepared such outline courses of study, and shall distribute the same among the teachers of the state, as will give them proper direction in carrying out the provisions of this law.

The state board of education shall, before the beginning of the next school year, adopt such suitable rules and regulations as may be necessary as to the time, manner, grade or grades in which said course of Americanism shall be taught. (1923, c. 49; C. S. 5441, 5442.)

Cross Reference.—As to instruction in the prevention of forest fires, see § 113-60.

Cited in 1 N. C. Law Rev. 308.

§ 115-65. Kindergartens may be established. — Upon a petition by the board of directors or trustees or school committee of any school district, endorsed by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three other public places in the district named, shall order an election to ascertain the will of the people within said district whether there shall be levied in such a district a special annual tax of not more than fifteen cents on the one hundred dollars worth of property and forty-five cents on the poll for the purpose of establishing kindergarten departments in the schools of said district. The election so ordered shall be conducted under the rules and regulations for holding special tax elections in special school districts, as provided in article 23 of this chapter.

The ballots to be used in said election shall have written or printed thereon the words, "For Kindergartens" and "Against Kindergartens."

If a majority of the qualified voters shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. Said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff or tax collector to the treasurer of the said school district to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department. (1923, c. 136, s. 40; C. S. 5443.)

Cited in Posey v. Board of Education, 199 N. C. 306, 154 S. E. 393.

§ 115-66. Board shall provide schools for Indians in certain counties.—It shall be the duty of the county board of education to provide separate schools for Indians as follows:

The persons residing in Robeson and Richmond counties, supposed to be descendants of a friendly tribe once residing in the eastern portion of the state, known as Croatan Indians, and who have heretofore been known as "Croatan Indians," or "Indians of Robeson County," and their descendants, shall be known and designated as the "Cherokee Indians of Robeson County"; and the persons residing in Person county supposed to be descendants of a friendly tribe of Indians and "White's Lost Colony," once residing in the eastern portion of this state, and known as "Cubans," and their descendants, shall be known and designated as the "Indians of Person County."

The Indians mentioned above and their descendants shall have separate schools for their children, school committees of their own race and color, and shall be allowed to select teachers of their own choice, subject to the same rules and regulations as are applicable to all teachers in the general school law, and there shall be excluded from such separate schools all children of the negro race to the fourth generation. The County Superintendent in and for Robeson County shall keep in his office a record of schools for the Cherokee Indians of Robeson County, which said record shall disclose the operation of such schools, separate and apart from the record of the operation of schools for the other races. (1923, c. 136, s. 42; 1931, c. 141; C. S. 5445.)

Local Modification.—Pembroke state college for Indians, Robeson: 1929, c. 195; 1941, c. 323, s. 1.

Cross Reference.—See note to § 115-2.

Art. 7. Children at Orphanages.

§ 115-67. Permitted to attend public schools. — Children living in and cared for and supported by any institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the unit or district in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of the unit or district.

Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1919, c. 301, s. 1; 1927, c. 163, s. 1; C. S. 5446.)

Editor's Note.—By Public Laws 1927, ch. 163, the provision for payment from an "equalizing fund" replaced a provision for payment from the state "public school fund." The last sentence making the section permissive and not mandatory was also added at this time. The section was revised in the General Statutes of North Carolina adopted by the General Assembly of 1943.

Failure of Purpose of Trust.—A trust fund created by will for the purpose of educating through high school a girl inmate of an orphan asylum to be chosen by the board of trustees from time to time does not fall into the residuary clause for failure of the purpose of the trust on the ground that the State educated orphan children through high school without charge under the provisions of this section; since this section makes the payment for the education of the children in orphan asylums permissive

only. Humphrey v. Board of Trustees, 203 N. C. 201, 165 S. E. 547.

§ 115-68. After nine months, tuition fees may be charged.—The board of trustees in special tax districts or city administrative units may charge such tuition fees as may be agreed upon between the authorities of said institution and the board of trustees for the attendance of such orphan children for the remainder of the school term, after the provision for nine months school has been complied with. (1919, c. 301, s. 3; 1943, c. 255, s. 2; C. S. 5448.)

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in the next to the last line.

Art. 8. Instruction of Illiterates—Adult Education.

§ 115-69. Program of adult education provided.—The state board of education is authorized to provide rules and regulations for establishing and conducting schools to teach adults, and the said schools when provided for shall become a part of the public school system of the state, and shall be conducted under the supervision of the state superintendent of public instruction. Appropriations made in the budget appropriations act for the purpose of carrying out the provisions of this section shall be disbursed on vouchers issued by the state superintendent of public instruction. (1937, c. 198, ss. 2, 3.)

Art. 9. Miscellaneous Provisions Regarding School Officials.

§ 115-70. Limitations of the board in selecting a county superintendent.—If any board shall elect a person to serve as superintendent of public instruction in a county or city administrative unit who does not qualify, or cannot qualify according to the provisions of the School Machinery Act, before taking the oath of office, the election is null and void, and it shall be the duty of the board of education to elect only a person that can qualify. (1923, c. 136, s. 44; C. S. 5453.)

Cross Reference.—As to qualifications superintendents of schools must meet, see § 115-353.

§ 115-71. Office and assistance for superintendent.—The county board of education shall provide an office for the county superintendent, at the county seat in the courthouse if possible. It shall provide office supplies for the superintendent, such as stationery, stamps and other necessary supplies in the conduct of his business. The county board of education may employ clerical assistance to aid the county superintendent. (1923, c. 136, s. 45; C. S. 5454.)

§ 115-72. Removal of superintendent for cause.—The county board of education or the board of trustees of a city administrative unit is authorized to remove a superintendent who is guilty of immoral or disreputable conduct, or shall fail or refuse to perform the duties required of him by law.

In case the state superintendent shall have sufficient evidence at any time that any superintendent of public instruction is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall report the matter to the county board of education or the board of trustees of a city administrative unit which shall hear the evidence in the case; and, if, after careful investigation, it shall find the charges true, it shall declare the office vacant at once and proceed to elect his successor. This section shall not deprive any superintendent of the right to try his title to office in the courts of the state. (1923, c. 136, s. 46; C. S. 5455.)

§ 115-73. Prescribing duties of superintendent not in conflict with law and constitution.—All acts of the county board of education or the board of trustees of a city administrative unit not in conflict with state law shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1923, c. 136, s. 47; C. S. 5456.)

§ 115-74. Removal of committeemen for cause.—In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges, and shall remove such committeeman and appoint his successor if sufficient evidence shall be produced to warrant his removal and the best interests of the schools demand it. (1923, c. 136, s. 49; C. S. 5458.)

Where county board of education orders the removal of school committeemen under this section, judgment of superior court holding the act of the board invalid and also dismissing the appeal for want of jurisdiction is inconsistent and erroneous. Board of Education v. Anderson, 200 N. C. 57, 156 S. E. 153.

§ 115-75. Advising with the committee in regard to needs of district.—The county board of education shall advise with the committee of each district before the school budget is prepared, and seek such information as may be helpful in planning the work for the ensuing year, in providing the number and grade of teachers needed, and the amount needed to thoroughly equip the school building or buildings of the district. The county board of education shall keep the committees informed as to the plans and purposes of the board and shall seek in every way possible to secure their coöperation in providing adequate educational opportunities for all the children of the district, for the enforcement of the compulsory school law, for teaching adult illiterates, and for the encouragement of vocational education in the county. (1923, c. 136, s. 50; C. S. 5459.)

§ 115-76. Supervisors or assistant county superintendent.—The county board of education shall have authority to employ an assistant county superintendent or to employ a supervisor or supervisors to aid the county superintendent in supervising the instruction in the elementary and high schools of the county: Provided, that the salary for the same is provided in the budget and approved by the county commissioners. The duties of the supervisor or the assistant county superintendent shall be outlined by the county superintendent of public instruction: Provided further, the supervisor or assistant county superintendent shall not be assigned to regular clerical work in the office of the county superintend-

ent. And no part of the salary of any supervisor or assistant county superintendent shall be paid out of the state public school fund, unless the duties assigned to the same are first approved by the state superintendent of public instruction. (1923, c. 136, s. 51; C. S. 5460.)

§ 115-77. Authority of board over teachers, supervisors and principals.—The county board of education or the board of trustees of a city administrative unit upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals and supervisors, under jurisdiction of the county board of education or the board of trustees of a city administrative unit, the kind of reports they shall make and their duties in the care of school property.

The county board of education or the board of trustees of a city administrative unit shall have power to investigate and pass upon the moral character of any teacher or school official in the public schools of the unit, and to dismiss such teacher or school official, if found of bad moral character; also to investigate and pass upon the moral character of any applicant for employment in any public school in the unit. Such investigation shall be made after written notice of not less than ten days to the person whose character is to be investigated.

If the superintendent reports to the board that the work of any teacher, principal or supervisor is unsatisfactory, or that either is not observing the rules and regulations of the board, the board has full authority at any time during the year, upon notice of ten days, to investigate the charges and, if sustained, to reduce the salary of the teacher, supervisor or principal to the next lower salary in the salary schedule, and finally to discharge the same for failure to perform the duties as prescribed by the board. (1923, c. 136, s. 53; C. S. 5461.)

§ 115-78. Providing for training of teachers. — The county board of education or the board of trustees of a city administrative unit is authorized to provide for the professional growth of the teachers while in service, and to pass rules and regulations requiring teachers to coöperate with the superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1923, c. 136, s. 54; C. S. 5462.)

§ 115-79. Pay of teachers. — The board of education or the board of trustees shall not authorize the payment of the salary of any teacher or school official for a shorter term than one month, unless he or she is providentially hindered from completing the term.

It is the duty of the board of education or the board of trustees to provide monthly for the prompt payment of all salaries due teachers and other school officials, and to meet other necessary operating expense. (1923, c. 136, s. 55; C. S. 5463.)

§ 115-80. Authority to borrow.—If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting the necessary expenses, it shall be the duty of the county board of commissioners to borrow against the amount approved in the budget and to issue short-term notes for the amounts so borrowed in accordance with the provisions of the county finance act and the local government act. The interest on all such notes shall be provided by the commissioners in addition to the amount approved in the budget unless this item is specifically taken care of in the budget. But if the county board of education shall willfully create a debt that shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the county commissioners, the indebtedness shall not be a valid obligation of the county, and the members of the board responsible for making the debt may be held liable for the same. (1923, c. 136, s. 56; 1927, c. 239, s. 18; C. S. 5464.)

Editor's Note.—By amendment, Public Laws 1927, ch. 239, sec. 18, the authority to borrow was changed from the board of education to the board of commissioners.

See Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744, where it was held, under the facts and circumstances, that county commissioners were liable for a debt created under this section. See notes to § 115-19.

§ 115-81. Salary schedule for teachers. — Every county board of education or the board of trustees of a city administrative unit may adopt, as to teachers and school officials not paid out of state funds, a salary schedule similar to the standard salary schedule authorized by the School Machinery Act, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county board of education or the board of trustees of any city administrative unit shall fail to adopt such a schedule, the state salary schedule shall automatically be in force, and the difference in salaries suggested shall be maintained. From other than state funds, no teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the county board of education or of the board of trustees of the city administrative unit a higher salary is allowed for special fitness, special duties or under extraordinary circumstances. Whenever a higher salary is thus allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, the county board of education, upon the recommendation of the committee of a district may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1923, c. 136, s. 57; C. S. 5465.)

Cross Reference.—As to the state standard salary schedule, see § 115-359.

§ 115-82. Salary warrants. — All salary warrants for teachers, principals and other regular employees of county administrative units shall be issued only on the basis of written monthly certifications signed by the chairman and secretary of the district committee and filed with the County Board of Education; or in city administrative units, such certifications shall be signed by the chairman and Secretary of the Board of Trustees. Such certification shall specify the length of

service rendered by each person and the amount due and payable therefor, and shall specify that part of the total amount to be charged to state funds and that part to be charged to county, unit or district funds: Provided, that the County Board of Education or Board of Trustees of a city administrative unit, in case of dispute as to any claim, may in regular or called session finally determine the validity of said claim and order settlement thereof in accordance with their findings. Each warrant drawn in payment of any claim, including salaries or for any other purpose, shall specify the fund to which the warrant is chargeable. If any part of any warrant drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified. In the payment of salary warrants, the County Board of Education or Board of Trustees of a city administrative unit may require the teacher's report at the end of each month to be properly attested by the chairman and secretary of the local committee or of the Board of Trustees before issuing salary warrants: Provided, that the final report of membership and attendance from any district, whether by a teacher, principal, or superintendent, shall be subscribed and sworn to before an officer authorized to administer oaths by such teacher, principal or superintendent making said report, before the last warrant for salary or salaries in said district may be issued: and provided further, that the county superintendent or city superintendent of schools shall be authorized and directed to attest such signature and oath without fee or charge when so requested. (1923, c. 136, ss. 58, 197; 1927, c. 239, ss. 17, 20; 1931, c. 430, s. 17; 1939, c. 358, s. 20; C. S. 5466.)

Cross References.—As to how school funds shall be paid out in general, see § 115-368. As to state standard salary schedule, see § 115-359.

Editor's Note.—The act of 1927 changed this section to conform with the budget act then in effect. The act of 1931 rewrote this section; and again it was completely revised in the General Statutes of North Carolina adopted by the 1943 General Assembly. See note to § 115-1.

Art. 10. Erection, Repair and Equipment of School Buildings.

§ 115-83. Provision for school buildings and equipment. — School buildings, properly lighted, and equipped with suitable desks for children and tables and chairs for teachers, are necessary in the maintenance of a nine months school term.

It shall be the duty of the county boards of education, with respect to county administrative units, and the Boards of Trustees, with respect to city administrative units, to present these needs and the cost thereof each year to the county commissioners. The county commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing the respective units with buildings suitably equipped, and it shall be the duty of the county commissioners to provide the funds for the same. (1923, c. 136, s. 59; 1943, c. 255, s. 2; C. S. 5467.)

Editor's Note. — The 1943 amendment substituted the words "a nine" for the words "an eight" in line four.

Expense a County-Wide Charge.—In accordance with the provisions of this section, it is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a county-wide charge. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454.

Cited in Mears v. Board of Education, 214 N. C. 89, 197 S. E. 752.

§ 115-84. Erection or repair of schoolhouses. — The building of all new schoolhouses and the repairing of all old schoolhouses over which the county board of education has jurisdiction shall be under the control and direction of and by contract with the county board of education, provided, however, that in the building of all new schoolhouses and the repairing of all old schoolhouses which may be located in a city administrative unit, the building of such new schoolhouses and the repairing of such old schoolhouses shall be under the control and direction of and by contract with the board of education or the board of trustees having jurisdiction over said city administrative unit. But the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the state superintendent, nor for more money than is made available for its erection. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the county superintendent of public instruction, or by the superintendent of schools where such school buildings are located in a city administrative unit, before full payment is made therefor: Provided, this section shall not prohibit county boards of education and boards of trustees from having the janitor or any other regular employee to repair the buildings. From any moneys loaned by the state to any one of the several counties for the erection, repair or equipment of school buildings, teacherages and dormitories, the state board of education, under such rules as it may deem advisable, not inconsistent with the provisions of this article, may retain an amount not to exceed fifteen per cent of said loan until such completed buildings, erected or repaired, in whole or in part, from such loan funds, shall have been approved by such agent as the state board of education may designate: Provided, that upon the proper approval of the completed building, the state treasurer, upon requisition of the state superintendent of public instruction, authorized and directed by the state board of education, shall pay to the treasurer of the county the remaining part of said loan, together with interest from the date of the loan at a rate not less than three per cent on monthly balances. (1923, c. 136, s. 60; 1925, c. 221; 1937, c. 353; C. S. 5468.)

Cross Reference.—As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Editor's Note.—By amendment, Public Laws 1925 c. 221, the last part of this section providing for holding and paying money loaned to counties for repair of school buildings, teacherages and dormitories, was added.

The 1937 amendment inserted the proviso to the first sentence of this section. It also amended the third sentence by inserting the clause relating to superintendent of schools.

Power Discretionary.—The building of a school is a matter vested by the statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, see Pickler v. County Board, 149 N. C. 221, 62 S. E. 902, or unless the committee is influenced by improper motives, or there is misconduct on their part. See Smith v. School Trustees, 141 N. C. 160, 53 S. E. 524. Venable v. School Committee, 149 N. C. 120, 62 S. E. 902, 903.

Providing Electric Lights.—Under the general statutory authority of this article the erection of electric transmission

lines to supply school buildings with electric lighting is given to the board of education of a county. Conrad v. Board, 190 N. C. 389, 130 S. E. 53. But contracts for such work are not within the meaning of this section and need not be in writing. Id. Nor need they be approved by the State Superintendent. Id.

Cited in Chapman-Hunt Co. v. Haywood County Board of Education, 198 N. C. 111, 150 S. E. 713; Mears v. Board of Education, 214 N. C. 89, 197 S. E. 752.

§ 115-85. Acquisition of sites. — The county board of education or board of trustees of any city administrative unit may receive by gift or by purchase suitable sites for schoolhouses or other school buildings. But whenever any such board is unable to obtain a suitable site for a school or school building by gift or purchase, the board shall report to the county or city superintendent of public instruction, who shall, upon five days notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than ten acres, and shall assess the value thereof. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk, within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall issue an order on the treasurer of the county school fund or, if a city administrative unit, upon the treasurer of such unit, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order, the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers, including the county board of education or the board of trustees of any city administrative unit, may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the state, before the clerk shall appoint appraisers therefor, notice to such nonresident owner shall be given of such proceedings to condemn, by publication for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days: Provided, where sites have already been acquired and additional adjacent lands are necessary such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed ten acres. (1923, c. 136, s. 61; 1924, c. 121, s. 1; 1929, c. 309, ss. 1, 2; C. S. 5469.)

Cross Reference.—As to exercising the power of eminent domain, see § 40-2.

Editor's Note.—By amendment, Public Laws Ex. Sess. 1924, this section was made applicable to "board of trustees of any special charter district" where formerly it applied only to the county board of education. References to "special charter districts" in this section were changed to "city administrative units" to reflect the school plan as set forth in § 115-352. See note to § 115-1.

The General Assembly amended this section, in March, 1929, by providing that "where sites have already been acquired and additional adjacent lands are necessary, such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed ten acres." Whether the act of 1929 was merely declaratory of the law then existing, or whether it was intended to confer an additional power of condemnation is now wholly immaterial and academic. Board of Education v. Pegram, 197 N. C. 33, 35, 147 S. E. 622.

Construing this section in connection with the former statutes giving the county board of education the power to condemn lands necessary for public school purposes within the limitation of ten acres, it is held, the fact that one of these schools had already acquired a less amount of land did not preclude the county board of education from acquiring by another proceeding sufficient lands to meet the enlarged and necessary requirements of the school for additional lands within the limitation imposed by statute. Board of Education v. Pegram, 197 N. C. 33, 147 S. E. 622.

The meaning of the word "site" as used in the statute is broad enough to embrace such land, not exceeding the statutory limit, as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a playground in conjunction with a school may be as essential as land taken for the schoolhouse itself. 24 R. C. L., 582. See Board v. Forrest, 190 N. C. 753, 756, 130 S. E. 621, which presents an able review of the history of this section.

§ 115-86. Sale of school property. — When in the opinion of the board, any schoolhouse, schoolhouse site or other public school property has become unnecessary for public school purposes, it may sell the same at public auction after advertising the said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust: Provided further, that the sale shall be reported to the office of the clerk of the superior court and remain open for ten (10) days for an increase bid, and if the said bid is increased the property shall be re-advertised in the manner as re-sales under deeds of trust, and if there is no raised or increased bid within ten (10) days, the chairman and secretary of the board shall execute a deed to the purchaser, and the proceeds shall be paid to the treasurer of the county school fund. After the sale of school property, as herein provided for, has been had and in the opinion of the board the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the board, the said board is authorized to reject such bid and to sell the property at private sale: Provided, the price offered is in excess of that offered at such public sale. (1933, c. 494, s. 2; 1937, c. 117.)

Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. Bowles v. Fayetteville Graded Schools, 211 N. C. 36, 188 S. E. 615.

§ 115-87. Deeds to property.—All deeds to the county board of education or the board of trustees of a city administrative unit shall be registered and delivered to the clerk of the superior court for safe-keeping, and the secretary of the said board shall keep an index, by townships and

school districts, of all such deeds in a book for that purpose. (1923, c. 136, s. 63; C. S. 5471.)

§ 115-88. Board cannot erect or repair building unless site is owned by board.—The county board of education or the board of trustees of a city administrative unit shall make no contract for the erection or repair of any school building unless the site on which it is located is owned by the said board, and the deed for the same is properly registered and deposited with the clerk of the court. Provided, it shall be lawful for the county board of education to borrow from the State Literary or Special Building Funds for the benefit of city administrative units and to allocate the proceeds of the county school building bonds between city and county administrative unit schools in proportion to the respective needs of the city unit schools and the county unit schools at the time when such county bonds are authorized: Provided further, that the title to the site in any city administrative units so aided shall be vested in the board of trustees of the unit. (1923, c. 136, s. 64; 1925, c. 180, s. 1; 1933, c. 299; 1939, c. 358, s. 5; C. S. 5472.)

Editor's Note.—By amendment, Public Laws, 1925, the last two sentences were added to this section. This section was revised in the General Statutes of North Carolina adopted by the General Assembly of 1943 so as to reflect the school plan as set out in § 115-352. See note to § 115-1.

Not Applicable to Electric Light Wires. — This section does not apply to the erection of electric light wires. It applies only to sites for school buildings; it does not extend to or include the rights of way. Conrad v. Board, 190 N. C. 389, 395, 130 S. E. 53.

Cited in Hickory v. Catawba County, 206 N. C. 165, 173, 173 S. E. 56.

§ 115-89. Loans for building schoolhouses. — The county board of education may make loans for the erection of schoolhouses to local tax districts or city administrative units, but all such loans shall be made upon written petition of a majority of the committee of the local tax district or board of trustees of the city administrative unit, and said petition shall authorize the county board of education to deduct a sufficient amount from the local taxes or the county fund due said district or unit to meet the payments as they come due. If the loan is made without a written petition from the committee or the board of trustees, the county board of education shall have no lien upon the local taxes for the repayment of the loan. (1923, c. 136, s. 156; C. S. 5554.)

§ 115-90. Duty of board to keep buildings in repair.—It is the duty of the county board of education or the board of trustees of a city administrative unit to keep all school buildings in good repair, and to that end it should appoint a member of the committee or some other responsible person to care for the property during vacation. Such repairs shall be paid for as authorized by the School Machinery Act. All principals and teachers shall be held responsible for the safekeeping of buildings during the school session, and all breakage and damage shall be repaired by those responsible for the same, and if at the end of the session the building or buildings have not been properly cared for by the principal and teachers, the board of education or the board of trustees of a city administrative unit, upon the recommendation of the superintendent, may reserve enough of the salary belonging to the principal and teachers to repair the damage permitted through the carelessness of the principal and teachers: Provided, principal and teachers shall not be held responsible for damages that they could not have prevented by reasonable supervision in the performance of their duties. (1923, c. 136, s. 65; C. S. 5473.)

§ 115-91. Duty of board to provide equipment for school buildings.—It is the duty of the county board of education or the board of trustees of a city administrative unit to provide suitable supplies for school buildings under its jurisdiction, such as window shades, fuel, chalk, erasers, blackboards, and other necessary supplies, and to provide standard high schools with reference books, library, maps and equipment for teaching science, and the teachers and principal shall be held responsible for the proper care of the same during the school term. (1923, c. 136, s. 66; C. S. 5474.)

Cross Reference.—As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Cited in Board of Education v. Walter, 198 N. C. 325, 328, 151 S. E. 718.

§ 115-92. Sanitary school privies. — The county board of education shall provide upon recommendation of the state board of health, two sanitary privies at each public school not having adequate water-carried sewerage facilities, one for boys and one for girls. Sanitary privies shall be considered an essential and necessary part of the equipment of each public school, and may be paid for in the same manner as desks and other essential equipment of the school are paid for, and a failure on the part of the county board of education and county superintendent to make provision for sanitary privies, or a failure on the part of the county commissioners to provide the funds, shall be considered a misdemeanor, and either the county board, the county superintendent, or the county commissioners may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 68; C. S. 5475.)

Specific or special legislative authority is given the county by this section to issue without a vote bonds for sanitary improvements for its schoolhouses necessary for it to maintain, as an administrative unit of the State, the constitutional school term in the county. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608.

§ 115-93. Type of privies to be installed. — The less expensive pit-type as recommended by the state board of health may be installed in rural districts in connection with the smaller school buildings. But the kind of privy in all buildings shall be sufficient to protect the health and sanitation of the children and the community. (1923, c. 136, s. 69; C. S. 5476.)

§ 115-94. Privies to be kept sanitary. — The county board of education shall require of the district committee that the privies shall be kept in a sanitary condition. They shall be governed in this particular by rules and regulations of the state board of health. And the county board of education shall provide a reasonable expense fund wherever necessary to keep the privies in a sanitary condition. Failure of the committeemen to keep privies at public schoolhouses in proper sanitary condition or a failure to notify the county board of education of their unsanitary condition shall be considered a misdemeanor and shall sub-

ject them severally and personally to fine and imprisonment, or both, in the discretion of the court.

It shall be the duty of the teachers and principals to report the unsanitary condition of the privies to the committee of the district, or the county superintendent. (1923, c. 136, ss. 70, 141; C. S. 5477.)

§ 115-95. Use of school property. — It shall be the duty of the county boards of education, as to county administrative units, and the Boards of Trustees, as to city administrative units, to encourage the use of the school buildings for civic or community meetings of all kinds that may be beneficial to the members of the community. The state board of education, and the county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other than school purposes. (1923, c. 136, s. 71; 1939, c. 358, s. 9; 1943, c. 721, s. 8; C. S. 5478.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-96. Providing good water supply. — It is the duty of the school committeemen to see that the schools have good water supply, and wherever a school is without a good water supply it is the duty of the committee to report the condition to the county superintendent before and even after the opening of school, and it shall be the duty of the county superintendent to present the need to the county board of education, and it shall be the duty of the county board of education to make such provision as will give the teachers and children a good supply of wholesome water. (1923, c. 136, s. 142; C. S. 5544.)

Art. 11. Creating and Consolidating School Districts.

§ 115-97. School districts.—The state board of education, with the advice of the county board of education shall maintain in each county a convenient number of school districts.

There may be one district and one school committee for both races, or the races may have separate districts and separate school committees. The state board of education, with the advice of the county board of education shall consult the convenience and necessities of each race in fixing the boundary lines of school districts for each race, and it shall be the duty of the county board of education to record, in a book kept for the purpose, the location of each school district and the boundary lines of each. (1923, c. 136, s. 73; 1943, c. 721, s. 8; C. S. 5480.)

Cross Reference.—As to limitation on power of legislature to change lines of school districts, see Art. II, sec. 29 of the Constitution.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

This Article Is Constitutional.—Sparkman v. Board, 187 N. C. 241, 121 S. E. 531, cited and approved in Blue v. Board, 187 N. C. 431, 122 S. E. 19.

When Court Will Intervene.—The courts will not interfere with the control and supervision of the county board of education in the exercise of its statutory discretion given in the formation of school district and their consolidation, or intervene in behalf of any one who supposes himself to be aggrieved by their action therein, except upon a clear showing that it was acting contrary to law, and then they will only restrain its action to the extent necessary to keep it within the law and the rightful exercise of its powers. Davenport v. Board, 183 N. C. 570, 112 S. E. 246.

§ 115-98. Districts formed of portions of contiguous counties.—School districts may be formed out of portions of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the state board of education. In case of the formation of such district, the pro rata part of the public school money due for teaching the children residing in one county shall be apportioned by the county board of education of that county, and paid to the treasurer of the other county in which the schoolhouse is located, to be placed to the credit of the school district so formed.

In case of a disagreement between the two county boards as to the pro rata part due the county in which the school is located, the evidence shall be laid before the state board of education, which shall determine from the evidence submitted and from the approved budget for that school, on file in its office, the amount due, and the pro rata part of each county shall be certified to the county board of education of each county, and the county board of education of the county in which the joint school is located may recover by due process of law from the county board of education in the other county the amount due the joint school for the school term from that county. (1923, c. 136, s. 74; 1943, c. 721, s. 8; C. S. 5482.)

Cross Reference.—As to the general control of school districting, see § 115-352.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-99. Consolidation of schools or school districts.—The county board of education is hereby authorized and empowered to consolidate schools located in the same district, and, with the approval of the state board of education, to consolidate school districts, over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school in the consolidated district. (1923, c. 136, s. 75; 1943, c. 721, s. 8; C. S. 5483.)

Cross References.—See note to § 115-1. As to the general control of locating schools and school districts, see § 115-352. See also, § 115-192.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

Consolidation of Tax and Nontax Districts.—It is not necessary to the valid consolidation of nonspecial school tax districts with special school tax districts that it be approved by the voters of the nonspecial school tax districts, when the questions of taxation and bond issues are not involved, and especially so when the consolidation has been made according to the provisions of a Public-Local Law applicable to the county wherein the consolidation has been made. Board v. Bray Bros. Co., 184 N. C. 484, 115 S. E. 47.

Special school-tax districts, organized and exercising governmental functions in the administration of the school laws, are quasi-public corporations subject to the constitutional provisions in restraint of contracting debts for other than necessary purposes, except by the vote of the people of a given district, Const. Art. VII, § 7; and semble, that where an existent tax and nontax district are thereunder consolidated, it would require the submission of the question to those living within the district thus formed, but outside of the district that has theretofore voted the tax as provided in § 115-192 for enlargement of local tax districts. Paschal v. Johnson, 183 N. C. 129, 110 S. E. 841; Barnes v. Leonard, 184 N. C. 325, 114 S. E. 398.

The authority given the county board of education to redistrict the entire county or part thereof, and to consolidate

school districts, etc., was amended by Public Laws of 1921, ch. 179, providing, among other things, for such consolidation of existing districts under a uniform rate of taxation not exceeding the lowest in any one district, meets the requirements of our Constitution, Art. VII, § 7, but to the extent the amendatory statute permits consolidation of local school tax districts with adjacent territory or local schools that have never voted any tax, the provisions of § 115-192, must apply so as to permit those living in such proposed new territory to vote separately upon the question of taxing themselves for the purpose. Perry v. Commissioners, 183 N. C. 387, 112 S. E. 6.

Issuance of Bonds.—Where there has been a valid consolidation of local-tax school districts, having an equal tax rate for the purpose, by proper proceedings under the statute the new district may then approve the question of an additional special tax, and where this has been done under the authority of a valid statute, and an issue of bonds properly approved by the voters, such bonds are constitutional and valid. Paschal v. Johnson, 183 N. C. 129, 110 S. E. 841.

§ 115-100. Transferring families from non-local tax to local tax or city administrative units.—The county board of education, with the approval of the state board of education, may transfer from non-local tax territory to local tax districts or city administrative units, an individual family or individual families who reside on real property contiguous to said local tax districts or city administrative units, upon written petition of the taxpayers of said family or families, and there shall be levied upon the property and poll of each individual so transferred the same tax as is levied upon other property and polls of said district or unit: Provided, however, that any transfer to a city administrative unit shall be subject to the approval of the board of trustees. (1923, c. 136, s. 78; 1943, c. 721, s. 8; C. S. 5486.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-101. School trucks and automobiles exempt from taxation; registration. — All trucks or automobiles owned or controlled by the county board of education and used for transporting pupils to school or used by school nurses or home and farm demonstration agents, or county superintendents and supervisors, in the prosecution of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Department of Motor Vehicles: Provided, that the Department of Motor Vehicles, upon proper proof being filed with it that any motor vehicle for which license is herein required is owned by the state or any department thereof or by any county, township, city or town, or by any board of education, may collect not exceeding one dollar for the registration and numbering of such motor vehicle. (1923, c. 136, s. 82; C. S. 5490.)

SUBCHAPTER IV. COUNTY SUPERINTENDENTS' POWERS, DUTIES AND RESPONSIBILITIES.

Art. 12. General Duties.

§ 115-102. Not to teach; to reside in county. — Every county superintendent shall reside in the county of which he is superintendent. It shall not be lawful for him to teach a school while the public schools of his county are in session, nor shall he be regularly employed in any other capacity that may limit or interfere with his duties as superintendent except as authorized by § 115-353. (1923, c. 136, s. 86; C. S. 5494.)

Cross Reference.—As to salary, election and qualification of county superintendent, see § 115-353.

§ 115-103. Oath of office.—The county superintendent of public instruction, before entering upon the duties of office, shall take oath for the faithful performance thereof. (1923, c. 136, s. 87; C. S. 5495.)

§ 115-104. Vacancies.—In case of vacancy by death, resignation, or otherwise, in the office of county superintendent, such vacancy shall be filled by the county board of education. (1923, c. 136, s. 88; C. S. 5496.)

§ 115-105. Secretary to county board. — The county superintendent shall be ex officio the secretary of the county board of education. He shall record all proceedings of the board, issue all notices and orders that may be made by the board pertaining to the public schools, schoolhouses, sites, or districts (which notices or orders it shall be the duty of the secretary to serve by mail or by personal delivery, without cost). He shall also record all school statistics. The records of the board and the county superintendent shall be kept in the office provided for that purpose by the board. (1923, c. 136, s. 89; C. S. 5497.)

§ 115-106. Report on condition of school buildings.—It shall be the duty of the county superintendent to inspect all school buildings or have them thoroughly inspected before the opening of school, and report their condition to the committee and to the county board of education, with such recommendations as will make them comfortable and sanitary. (1923, c. 136, s. 93; C. S. 5500.)

§ 115-107. Attending meetings of state and district associations of superintendents. — Unless providentially hindered, the county superintendent shall attend continuously during its session the annual meeting of the state association of county superintendents and the annual meeting of the district association of county superintendents, and the county board of education of his county shall pay out of the county school fund his traveling expenses including board while in attendance upon such meeting. (1923, c. 136, s. 94; C. S. 5501.)

§ 115-108. Reports to state superintendent. — The county superintendent shall make such reports to the state superintendent as are required by law. The state superintendent of public instruction shall have authority to call on the county superintendent for school statistics and for reports on any phase of the school work or school conditions of the county, and it shall be the duty of the county superintendent to supply the information promptly and accurately. (1923, c. 136, s. 95; C. S. 5502.)

Art. 13. Duty of County Superintendent Toward Committeemen, Teachers and Principals.

§ 115-109. Notifying committeemen of their duties.—The county superintendent shall notify committees of the rules and regulations of the county board of education and their duties in the school district. He shall notify the committees, before the opening of the school, of the appropriation for teachers' salaries, incidental and

building funds, the amount of any local tax supplement funds due each district, the salary schedule in force in the county, the law governing the payment of all district funds, the duties of the committeemen in the care and use of school buildings, and all other duties that may be helpful in conducting the school in each district. (1923, c. 136, s. 97; C. S. 5503.)

§ 115-110. Distributing blanks and books.—It shall be the duty of the county superintendent to distribute to the various school committees and to teachers of his county all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the state superintendent of public instruction, who shall give instruction for proper use of same. (1923, c. 136, s. 98; C. S. 5504.)

§ 115-111. Keeping record of all teachers.—The county superintendent shall keep a record of all teachers employed in the county, the kind of certificate held by each teacher, the length of service, success as a teacher, and the salary allowed. (1923, c. 136, s. 100; C. S. 5506.)

§ 115-112. Approving selection of all teachers.—No election of a principal, supervisor, teacher, assistant, or supply teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education. No teacher shall be employed by a committee or approved by a county superintendent who is under eighteen years of age. And no superintendent shall approve the selection of any teacher or principal for a given school year who has willfully broken his or her written contract with some other superintendent for that year: Provided, a teacher shall have the right to resign her position after giving thirty days' notice: Provided further, the superintendent shall not approve the selection of a teacher holding a second or third grade certificate unless it is impracticable to secure a resident teacher who holds a higher certificate. (1923, c. 136, s. 101; 1939, c. 358, s. 7; C. S. 5507.)

Cross References.—As to the election of teachers, see § 115-354. As to notice of resignation, see also, § 115-359. As to notice given teacher whose application is rejected, see § 115-359.

§ 115-113. Administering oaths to teachers. — The county superintendent shall have authority to administer oaths to teachers and all subordinate school officials when an oath is required of the same. (1923, c. 136, s. 103; C. S. 5509.)

§ 115-114. Advising with teachers, principals and supervisors.—The county superintendent shall advise with teachers, principals, and supervisors as to the best methods of instruction, school organization and school government, and to that end he shall keep himself informed as to the progress of education, both in his own county and in other counties, cities, and states. And teachers, principals, and supervisors shall coöperate with him in putting into use the best methods of instruction, school organization and school government. (1923, c. 136, s. 104; C. S. 5510.)

§ 115-115. Visiting schools.—The county superintendent shall be required to visit each public school of his county at least twice while the schools are in session. He shall inspect school buildings and grounds in order to advise committeemen and the county board of education as to the physical needs of the school, and he shall inform himself of the condition and needs of the several districts of his county. (1923, c. 136, s. 105; C. S. 5511.)

§ 115-116. Holding teachers' meetings. — The county superintendent shall hold each year such teachers' meetings as in his judgment will improve the efficiency of the instruction in school. He may, with the coöperation of the supervisors or principals, outline reading courses for teachers and organize the teachers into special study groups, and, if necessary, not exceeding three school days may be set apart for this purpose.

If a superintendent shall fail to advise with his teachers and to provide for the professional growth of his teachers while in service, the state superintendent shall notify the county board of education, and, after due notice, if he shall fail to perform his duties in this respect, either the county board of education may remove him from office or the state board of education may revoke his certificate. (1923, c. 136, s. 106; C. S. 5512.)

§ 115-117. May suspend teachers. — The county superintendent shall have authority to suspend any teacher who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall willfully refuse to coöperate in teachers' meetings: Provided, any teacher who may be suspended by the superintendent may have the right to appeal either to the county board of education or to the courts. (1923, c. 136, s. 107; C. S. 5513.)

§ 115-118. Illegal to keep teacher in service without a certificate.—It shall be unlawful for any board of trustees or school committee that receives any public school money from the county, state, or district, to keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with law.

The county or city school superintendent or other officials are forbidden to approve any voucher for salary of any person kept in service in violation of the provisions of this section, and the treasurer of the county, or city schools is hereby forbidden to pay out of school funds the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitutes or emergency teachers under such rules as the county board of education may prescribe. (1923, c. 136, s. 110; C. S. 5515.)

§ 115-119. Contracts with teachers.—No contract entered into between a school committee or board of trustees and a teacher shall be valid until the contract is approved and signed by the superintendent. The contract shall show the salary allowed and such rules and regulations governing teachers in school as the county board of education or board of trustees may direct. No voucher for the salary of a teacher shall be signed by the superintendent unless a copy of the contract has been filed with him. (1923, c. 136, s. 111; C. S. 5516.)

Cross Reference.—As to the state standard salary schedule, see § 115-359.

When Contract Binding.—When the board of trustees of

a school district recommends public school teachers for the ensuing term of schools to the county superintendent of education, his contracts with teachers so recommended, made in accordance with the provisions of the statute relating thereto, become a binding obligation upon the county commissioners when approved by them, and are in conformity with the budget of the county board of education, or when they are later approved by the county board of commissioners under the provisions of the statute. Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744.

When there is one month for which the teachers of a school district have not been paid in accordance with their contracts of employment, and from the sum total of the approved budget of the board of education there remains a sufficiency to pay them, the board of county commissioners is liable for its payment, the statute not requiring the approval of the county commissioners for each separate item of the school budget. Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744.

§ 115-120. How teachers shall be paid. — When a teacher is properly elected and the contract has been properly signed and deposited as required by law, vouchers shall be written each school month by the superintendent, signed in accordance with law, and delivered to teachers, principals, and other employees. It shall be the duty of the board of education or the board of trustees to provide the funds for the prompt payment of teachers' salaries.

In all union schools the principal of the school may present monthly pay rolls in duplicate of all teachers, signed by two members of the committee. The superintendent may use this pay roll as his authority for issuing vouchers for the salary of each teacher: Provided, the county superintendent shall keep in his office a duplicate of the pay roll approved by him. (1923, c. 136, s. 112; C. S. 5517.)

Approval of Vouchers.—Mandamus is the proper action to compel a superintendent to approve a teacher's voucher. The claim is not a money demand. If there are any reasons why the vouchers should not be signed they are matters to be heard by the court, but the signing by the superintendent is a mere ministerial duty. Ducker v. Venable, 126 N. C. 447, 35 S. E. 818.

§ 115-121. When superintendent may withhold pay of teachers.—The chairman and secretary of the county board of education, or of the board of trustees of a city administrative unit may refuse to sign the salary voucher for the pay of any teacher, supervisor or principal who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law the vouchers shall be signed and the teachers paid. (1923, c. 136, s. 113; C. S. 5518.)

§ 115-122. Schools required to report. — All teachers and principals shall be required to make to the superintendent of the administrative unit in which employed such reports as the governing board of the unit may direct: Provided that when such reports are for the state superintendent of public instruction a copy of each shall be made for the county or city superintendent, as the case may be. All superintendents of county and city administrative units shall make such reports to the State superintendent of public instruction as are required by him. (1923, c. 136, s. 114; C. S. 5519.)

§ 115-123. Reporting defective children. — It shall be the duty of the superintendent to report through proper legal channels the names and addresses of parents, guardians or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each, and upon the failure of the county superintendent to make such reports he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 117; C. S. 5520.)

Art. 14. Duty of County Superintendent in Regard to School Funds.

§ 115-124. Duty in preparing school budgets.— The county superintendent shall keep the records of his office in such detail and in such an orderly way that the information for the budgets required by law may be prepared promptly, and he shall see that the budgets are prepared promptly and accurately, and he shall keep the records in his office so that any county official or citizen of the county may, upon request, see what the school in each district is costing, and what the total cost is to the county. It shall be his duty to sign all budgets and to take oath that the information contained therein is correct. (1923, c. 136, s. 118; C. S. 5521.)

Cross Reference.—As to local budgets generally, see § 115-363.

§ 115-125. Duty to keep complete record of finances. — The county superintendent shall keep in his office a complete record of the school finances of the county, what is appropriated to each district, and the division of the funds between the county and the city administrative units, the amount of loans from state and dates of payment, the amount of bond issues in each district, the rate of interest, date of payment, and he shall so keep his records that the school accounts may be audited with the least expense to insure a complete audit in accordance with law, and if he shall fail to keep the records of the acts of the county board of education so that they may be audited in accordance with law, the county board of education may remove him from office. (1923, c. 136, s. 119; C. S. 5522.)

§ 115-126. Record of local taxes. — The county superintendent shall keep in his office a record of all taxing districts in his county, the boundaries of each, the number of taxable polls, and the valuation of the taxable property and the special tax rate voted and levied for schools. On or before September first of each year he shall supply the county treasurer with a complete list of all such districts, and the estimated amount of tax to be collected in each district.

The treasurer shall keep a separate account of each such district, and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. And no funds derived from local or special taxes shall be paid out by the treasurer except as provided in § 115-368, and if the treasurer shall fail to perform his duties as outlined in this section, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 120; C. S. 5523.)

§ 115-127. Record of fines, forfeitures, and penalties.—It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this

end all county officials that in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. (1923, c. 136, s. 121; C. S. 5524.)

§ 115-128. Disbursement of funds. — It is the duty of the county superintendent to approve and sign all vouchers for the disbursement of all district funds except the funds belonging to city administrative units. And the treasurer shall honor no voucher that is not first approved and signed by the county superintendent or the secretary of the board of education. And no order shall be signed by the county superintendent or the secretary of the board for more money than is apportioned to and raised by local or special taxes in that district for the fiscal year. Nor shall he endorse the order of any teacher who does not produce a certificate as required by law, nor for more money than the salary schedule in force in the county would entitle the teacher to receive.

It shall be the duty of the county superintendent or the secretary of the board to sign all vouchers issued by order of the county board of education and signed by the chairman of the board, and no voucher shall be paid by the treasurer that is not properly signed. (1923, c. 136, s. 122; C. S. 5525.)

Cross Reference.—As to how school funds shall be paid out, see § 115-368.

When Treasurer's Duty to Honor.—The treasurer of the school fund can not pay out any of the money coming into his hands as such except upon the order of the secretary of the county board of education and approved by the county superintendent. See County Board v. County of Wake, 167 N. C. 114, 116, 83 S. E. 257.

§ 115-129. City superintendent, powers, duties and responsibilities. — All the powers, duties and responsibilities imposed by this subchapter upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

SUBCHAPTER V. SCHOOL COMMITTEES —THEIR DUTIES AND POWERS.

Art. 15. In Non-Local Tax Districts.

§ 115-130. Eligibility.—Each school committeeman shall be a person of intelligence, of good moral character, and of good business qualifications, and known to be in favor of public education.

In all Indian schools authorized by law the committeemen may be selected from Indians residing in the district. (1923, c. 136, s. 125; C. S. 5528.)

Cross Reference.—As to the election of school committeemen, their number, term of office, and certain duties, see § 115-354.

§ 115-131. Oath of office.—Each school committeeman before entering on the duties of office shall take oath for the faithful performance thereof, and this oath may be taken before the county superintendent. (1923, c. 136, s. 126; C. S. 5529.)

§ 115-132. Committeemen cannot teach. — No person while serving as a member of any district committee shall be eligible to be elected as a teacher of any public school, or as a member of the county board of education, and should such person be elected to teach in any public school or private school receiving public funds or as a member of the county board of education before resigning as a member of the district committee, said election is hereby declared null and void. (1923, c. 136, s. 128; C. S. 5531.)

§ 115-133. Organization of committee. — The school committee, at their first meeting after the membership has been completed by the county board of education, shall elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county superintendent and recorded by him. (1923, c. 136, s. 129; C. S. 5532.)

§ 115-134. How to employ teachers. — The school committee shall meet at a convenient time and place for the purpose of electing teachers and no teacher shall be employed by any committee except at regularly called meetings of such committee. No election of any teacher or assistant teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education, and no contract for teachers' salaries shall be made during any year to extend beyond the term of a majority of the committee, nor for more money than accrues to the credit of the district for the fiscal year during which the contract is made. (1923, c. 136, s. 130; 1939, c. 358, s. 7; C. S. 5533.)

Cross Reference.—As to election of teachers by school committeemen, see also, § 115-354.

Personal Liability of Committeeman.—In Robinson v. Howard, 84 N. C. 152, it was held that a school committeeman was not liable personally on a contract by which he employed a teacher, and that the remedy was by mandamus to compel the payment of the money by the proper officer in the way provided by law. If, though, the act is wrongful and malicious, an action will lie against the officer in his personal capacity to recover damages for the wrong committed by him. Spruill v. Davenport, 178 N. C. 364, 365, 100 S. E. 527.

Evidence.—Under the provisions of this section, refusal of the county superintendent to approve the election of a teacher on the ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. Cody v. Barrett, 200 N. C. 43, 156 S. E. 146.

Cited in Hampton v. Board of Education, 195 N. C. 213, 215, 141 S. E. 744.

§ 115-135. Power to contract with private schools.—In any school district where there may be a private school regularly conducted for at least six months in the year, unless it is a sectarian or denominational school, the school committee with the approval of the county superintendent may contract with the teacher of such private school to give instruction to all pupils of the district between the ages of six and twenty-one years in the branches of learning taught in the public schools, as prescribed by law, without charge

to pupils and free of tuition. The amount paid such private school for each pupil in the public school branches, based on the average daily attendance, shall not exceed the regular tuition rates in such school for branches of study. (1923, c. 136, s. 135; C. S. 5537.)

§ 115-136. Powers as to school property. — The school committee shall be entrusted with the care and custody of all schoolhouses, schoolhouse sites, grounds, books, apparatus, or other school property in the district, with full power to control same, as they may deem best for the interest of the public schools and the cause of education, not in conflict with the rules and regulations governing school property adopted by the county board of education: Provided, if the committee is unable or shall fail to take due care of the schoolhouse and to protect all property belonging to it, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1923, c. 136, s. 136; C. S. 5538.)

Cited in Wiggins v. Board of Education, 198 N. C. 301, 302, 151 S. E. 730.

§ 115-137. Reports to board.—The school committee shall make such reports to the county board of education as the board may deem necessary. (1923, c. 136, s. 138; C. S. 5540.)

§ 115-138. Superintendent and committee to keep records of receipts, expenditures and contracts.—The county superintendent shall keep by districts an itemized statement of all moneys apportioned to such district, the amount received and expended by each committee for each school, and a copy of all contracts made by them with teachers. It is the duty also of the committee to keep up with the funds of the district. It should know what the budget for the district contains, in order to know how much money is available and how it is spent. It is their duty to know the salary schedule and the limitations placed on committeemen in making contracts with teachers. It is illegal for committeemen to employ teachers at a salary higher than that contained in the authorized salary schedule; therefore, when the school budget is submitted it is the duty of each committeeman to examine it carefully to see how much money is allowed for teachers' salaries, and how many and what grade of teachers may be employed with the money allowed in the budget. (1923, c. 136, s. 139; C. S. 5541.)

Cross References.—As to local budgets, see § 115-363. As to state standard salary schedule, see § 115-359.

§ 115-139. Obeying orders of sanitary committee or board of health.—It shall be the duty of teachers, principals, superintendent, committee, and all other governing boards having authority over the maintenance, support, and conduct of a public school to obey the rules and regulations of the sanitary committee or board of health for the protection of health in the district. (1923, c. 136, s. 143; C. S. 5545.)

SUBCHAPTER VI. TEACHERS AND PRINCIPALS.

Art. 16. Their Powers, Duties and Responsibilities.

§ 115-140. Health certificate required for teachers. — Any person serving as county superintendent, city superintendent, teacher, janitor, or any employee in the public schools of the state shall file in the office of superintendent each year, before assuming his or her duties, a certificate from the county physician, or other reputable physician of the county, certifying that the said person has not an open or active infectious state of tuberculosis, or any other contagious disease.

The county physician shall make the aforesaid certificate on a form supplied by the state superintendent of public instruction, and without charge to the person applying for the certification. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1923, c. 136, s. 159; C. S. 5556.)

§ 115-141. How to apply for a position. — It is the duty of teachers, in making application for a position to teach, first to file the application with the superintendent, stating the kind and the number of the certificate held, when the certificate expires, experience in teaching, the position last held, and a statement that the applicant has no contagious disease. The application should also state that the applicant, if elected, will not break the contract, without the approval of the superintendent who approved the contract, without giving at least thirty days notice, and that he or she will observe the rules and regulations adopted by the board of trustees or the county board of education under whose jurisdiction he or she is employed to teach. (1923, c. 136, s. 160; C. S. 5557.)

§ 115-142. When teacher may annul contract.— The teacher may, after entering into a written contract, annul the contract by giving the superintendent a written notice of at least thirty days, and the superintendent shall pay for the full time the teacher has taught: Provided, the teacher has taught as much as twenty days. But if the teacher breaks the contract without giving thirty days notice, it shall be the duty of the superintendent to report the name of the teacher to the state superintendent, and the certificate held may either be revoked or reduced to the next lower grade. And no other superintendent shall employ or recommend for employment in any year a teacher who has broken his or her contract for that year; and no teacher who has willfully broken his or her written contract can again legally be elected for that year. This section shall also apply alike to principals and supervisors. (1923, c. 136, ss. 161, 162; C. S. 5558.)

Cross Reference.—As to penalty for failing to give proper notice of resignation, see also, § 115-359.

§ 115-143. How teachers may be dismissed. — The school committee of a district or board of trustees of a city administrative unit, with the approval of the superintendent, may dismiss a teacher for immoral or disreputable conduct in the community or for failure to comply with the provisions of the contract. The superintendent, with the approval of the committee or the board of trustees, has authority, and it is his duty, to dismiss a teacher who may prove himself or herself incompetent or may willfully refuse to discharge the duties of a public school teacher, or who may be persistently neglectful of such duties.

But no teacher shall be dismissed until charges have been filed in writing in the office of the superintendent. The superintendent shall give the teacher at least five days notice, in which time he or she shall have the opportunity to appear before the committee or board of trustees of the district or unit in which the teacher is teaching. And after a full and fair hearing, the action of the committee or board of trustees shall be final: Provided, the teacher shall be given the right to appeal to the county board of education or to the courts.

Every teacher dismissed for cause shall be reported by the superintendent to the state superintendent, who shall have authority to revoke the certificate and debar the teacher from teaching in any other county. (1923, c. 136, ss. 131, 163; C. S. 5534, 5560.)

Liability of Committee.—It is the duty of the committee of a school district, under the statute, to dismiss a teacher of the public schools therein who has not been legally appointed, according to the statute, and no damages are recoverable against the individual members when in the exercise of this rightful power they act accordingly, whether their motives were bad or otherwise. Spruill v. Davenport, 178 N. C. 364, 100 S. E. 527.

§ 115-144. Duties of teachers. — It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of the children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercise for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in public school music; to ascertain the cause for non-attendance of pupils, and report all violators of the compulsory school law to the attendance officer in accordance with the rule governing attendance and reports; and to enter actively into the plans of the superintendent for the professional growth of the teachers. (1923, c. 136, s. 165; C. S. 5562.)

§ 115-145. Power to suspend or dismiss pupils. —A teacher in a school having no principal, or the principal of a school, shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school. (1923, c. 136, s. 166; C. S. 5563.)

§ 115-146. Duty to make reports to superintendent.—Every teacher or principal of a school under the jurisdiction of the county board receiving aid from the public school fund shall be required to make such reports as are required by the county board of education, and the county superintendent shall not approve the voucher for the pay of teachers at the end of each month until the monthly reports required are made, and at the end of the year until the final reports are made: Provided, the county superintendent may require teachers to make reports to principals, and principals to make reports to the superintendent. (1923, c. 136, s. 167; C. S. 5564.)

§ 115-147. Care of the school building.—It is the duty of the teachers and principals in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the school day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of the term a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible under the provisions of this section. If any child in school shall carelessly or willfully damage school property, the teacher shall report the damage to the parent, and if he refuses to repair the same, the teacher shall report the offense to the superintendent of public welfare. (1923, c. 136, s. 168; C. S. 5565.)

§ 115-148. Principal of union school.—The principal of a union school shall be the executive officer of the school, and all teachers in both the high school and in the elementary school departments shall be responsible to the principal. He shall have authority, subject to the approval of the county superintendent, to grade and classify the pupils, and exercise discipline over the pupils of the school. He shall make all reports to the county superintendent, and give suggestions to teachers for the improvement of instruction in school. And it shall be the duty of each teacher in a union school to coöperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons. (1923, c. 136, s. 171; C. S. 5568.)

Cross Reference.—As to the allotment of principals, see § 115-360.

Art. 17. Certification of Teachers.

§ 115-149. Requirement as to holding certificates. — All the teachers and principals employed in the public schools of the state or in schools receiving public funds for the maintenance of a nine-months school term shall be required to hold certificates in accordance with the law, and no contract for the employment of teacher or principal is valid until the certificate is secured. (1923, c. 136, s. 158; 1943, c. 255, s. 2; C. S. 5569.)

Editor's Note. — The 1943 amendment substituted the words "a nine" for the words "an eight" in lines three and four.

§ 115-150. Examinations, accrediting, and certificates.—The state board of education shall have entire control of examining, accrediting without examination, and certificating all applicants for the position of teacher, principal, supervisor, superintendent, and assistant superintendent in all public elementary and secondary schools of North Carolina, urban and rural. The board shall pre-

scribe rules and regulations for examining, accrediting without examination, and certificating all such applicants for the renewal and extension of certificates and for the issuance of life certificates. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5570.)

§ 115-151. Certificate prerequisite to employment.—No person shall be employed or serve in the public schools as teacher, principal, supervisor, superintendent, or assistant superintendent who shall not be certificated for such position by the state board of education in accordance with the law. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5571.)

Cited in Hampton v. Board of Education, 195 N. C. 213, 215, 141 S. E. 744.

§ 115-152. Teacher must be eighteen.—No certificate to teach shall be issued to any person under eighteen years of age. (Rev., s. 4163; C. S. 5572.)

Cited in Hampton v. Board of Education, 195 N. C. 213, 215, 141 S. E. 744.

§ 115-153. Approval of certificates; refusal of approval; appeal and review.—No certificate issued by the board shall be valid until approved and signed by the superintendent of the county administrative unit, or the superintendent of the city administrative unit, in the schools of which the holder of said certificate applies to teach. Any certificate when so approved by said county or city superintendent shall be of state-wide validity, and in case such county or city superintendent shall refuse to approve and sign any such certificate, he shall notify the state board of education and state in writing the reasons for such refusal. The said board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5574.)

§ 115-154. Employment of persons without certificate unlawful; appropriations withheld; salaries not paid.—It shall be unlawful for any board of trustees or school committee or any public school that receives any public school money from county or state to employ or keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with the provisions of the law. Upon notification to the state board of education or to the county board of education that any school committee or board of trustees is employing or keeping in service a teacher, supervisor, principal, superintendent, or assistant superintendent in violation of the provisions of this section, the state board of education shall withhold from such county or city administrative unit any and all appropriations from the state for such school, and said county board of education shall withhold from said school any and all appropriations from the county school fund until compliance with the law.

The county or city superintendent or other official is forbidden to approve any voucher for salary for any person employed in violation of the provisions of this section, and the treasurer of the county or city schools is hereby forbidden to pay out of the school fund the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitute or emergency teachers under such rules as the state board of education may prescribe. (1917, c. 146, s. 6; 1921, c. 146, s. 16; C. S. 5582.)

§ 115-155. Classes of first-grade certificates. — There shall be the following classes of first-grade certificates: (1) Superintendents' and assistant superintendents'; (2) High school principals'; (3) High school teachers'; (4) Elementary school teachers'; (5) Elementary supervisors'; and (6) Special. The state board of education may subdivide and shall define in detail the different classes of first-grade certificates, determine the time of their duration and validity, prescribe the standards of scholarship for same, and the rules and regulations for them and for their issuance, and their renewal or extension. (1917, c. 146, s. 9; 1921, c. 146, s. 16; C. S. 5583.)

§ 115-156. Colleges to aid as to certificates. — Each and every college or university of the state is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates without restrictions, except as set forth in the rules and regulations of the state board of education, applying alike to all departments, work, and instructors of each and every college or university in this state. (1933, c. 497.)

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS.

Art. 18. County Board of Education: Budget.

§ 115-157. Contents of the school budget.—The school budget prepared by the county board of education shall provide three separate school funds (a) a current expense fund, (b) a capital outlay fund, and (c) a debt service fund.

(a) The current expense fund shall include (1) Expenses of general control—per diem of board of education, salaries of superintendents, attendance officer, and clerical assistants, travel and communication, office supplies and expense, and other necessary expenses of general control; (2) instructional service—salaries of teachers, principals, and supervisors, and any other necessary items of instruction; (3) operation of school plant —wages of janitors and other employees, fuel, water, light and power, janitors' supplies, expenses for care of grounds, and other necessary expenses of operation; (4) maintenance of plant—upkeep of grounds, repair of buildings, repair and replacement of heating, lighting and plumbing equipment, instructional apparatus, furniture, and other equipment, and other necessary expenses of maintenance; (5) fixed charges — rent, insurance and other necessary fixed charges; (6) auxiliary agencies—replacement of and repair of library books, transportation of pupils, and other necessary auxiliary activities.

(b) The capital outlay fund shall provide for the purchase of sites, the erection of school buildings, including dormitories and teachers' homes, improvement of new school grounds, alteration and addition to buildings, installation of heating, lighting and plumbing, purchase of furniture, including instructional apparatus for new buildings, office equipment, acquisition of trucks and other

vehicles for the transportation of pupils and for the better operation and administration of schools, and other necessary capital outlay.

(c) The debt service fund shall provide for the payment of all loans due the State, the interest and principal on bonds, payments to the sinking fund, payment of district indebtedness for schools assumed by the county, apportionment to districts voting bonds or to districts borrowing from the county board of education and all other indebtedness which is payable during the fiscal year for which the budget is prepared. (1923, c. 136, s. 175; 1925, c. 180, s. 5; 1927, c. 239, s. 1; 1933, c. 299; C. S. 5596.)

Cross Reference.—As to local budgets, see also, § 115-363.

Editor's Note.—By Public Laws 1927, ch. 239, sec. 1, this section was amended and reenacted as it now appears.

Premiums for insurance of its public school buildings is a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733.

Cited in Wilkinson v. Board of Education, 199 N. C. 669, 155 S. E. 562; Wiggins v. Board of Education, 198 N. C. 301, 302, 151 S. E. 730; Board of Education v. Walter, 198 N. C. 325, 329, 151 S. E. 718; Hickory v. Catawba County, 206 N. C. 165, 172, 173 S. E. 56; East Spencer v. Rowan County, 212 N. C. 425, 193 S. E. 837.

§ 115-158. Debt service fund. — The county board of education shall set forth in the budget the amount of the interest and installments on all loans due the state, and of all interest and installments on bonds and other evidences of indebtedness that may fall due. This shall be a separate item in the budget, and the commissioners shall levy annually a tax sufficient, clear of all fees, commissions, rebates, delinquents and the cost of collection, to repay the same; and if the taxes are not collected when the repayments fall due, the commissioners shall borrow the money and place the amount to the credit of the county board of education.

The county board of education, with the approval of the board of commissioners may include in the debt service fund in the budget the indebtedness of all districts, including city administrative units, and districts formerly known as special charter districts, lawfully incurred in erecting and equipping school buildings necessary for the school term, and when such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, then the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of this fund among the schools of the county as provided in this section. (1923, c. 136, s. 179; 1925, c. 180, s. 6; 1933, c. 299; C. S. 5599, 5600.)

Cross Reference.—As to local budgets in general, see § 115-363.

Editor's Note.—By amendment Public Laws 1927, ch. 239, sec. 5, this section was changed in application from "Fund for repayment of bonds, notes and loans" to "The debt service fund."

Art. 19. Powers, Duties and Responsibilities of the Board of County Commissioners in Providing Certain Funds.

§ 115-159. Commissioners to levy tax.—The commissioners are required to levy annually a tax sufficient to repay interest and installments on all loans from the state, and interest and installments on bonds and notes falling due according to the debt service fund as set forth in the approved school budget. And this shall be a separate tax, and, after all interest and installments are paid each year, any balance that may remain shall be accounted for by the treasurer, and it shall be applied the following year to the repayment of interest and installment on loans. But if the amount secured from this tax is not sufficient for these needs it shall be the duty of the commissioners to borrow any amount needed to meet these payments. (1923, c. 136, s. 185; 1927, c. 239, s. 11; C. S. 5606.)

Editor's Note.—All of that part of the first sentence following the word "due" was added by Public Laws 1927, ch. 239, sec. 11.

Cited in Hampton v. Board of Education, 195 N. C. 213, 217, 141 S. E. 744.

§ 115-160. Procedure in cases of disagreement or refusal of county commissioners to levy school taxes.—In the event of a disagreement between the county board of education and the board of county commissioners as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, the county board of education and the board of county commissioners shall sit in joint session, and each board shall have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board. In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between said two boards, and shall render his decision thereon within ten days. But either the county board of education or the board of county commissioners shall have the right to appeal to the superior court within thirty days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive, and shall give judgment requiring the county commissioners to levy the tax which will provide the amount of the current expense fund, the capital outlay fund and the debt service fund, which he finds necessary to maintain the schools in every school district in the county. Any board of county commissioners failing to obey such order and to levy the tax ordered by the court shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of court. In case of an appeal to the superior court, all papers and records relating to the case shall be considered a part of the record for consideration by the court. (1923, c. 136, s. 187; 1925, c. 180, s. 4; 1927, c. 239, ss. 12, 13; 1933, c. 299; C. S. 5608.)

Editor's Note.—By amendment Public Laws 1925, ch. 180, sec. 4, there was included in this section "the operation and equipment fund." This was repealed by Public Laws 1927, ch. 239, sec. 13. By amendment Public Laws 1927, ch. 239, sec. 12, the words "the current expense fund, the capital outlay fund, and the debt service fund," as used replaced the words, "salary fund or the fund necessary to pay interest and installments on bonds, notes and loans."

In General.—This section confers upon the courts duties of a judicial nature, not requiring a trial by jury to determine the disputed matter upon an issue of fact, and the provisions of this section are not void as being repugnant to Art. I, sec. 19, of the State Constitution. Board v. Board, 174 N. C. 469, 93 S. E. 1001, cited and applied. Board v. Board, 182 N. C. 571, 109 S. E. 630; In re Board of Education, 187 N. C. 710, 712, 122 S. E. 766.

Meeting Must Be Held.—Where the commissioners have refused to levy a tax to provide an additional salary for

the county superintendent and the meeting called for in this section has not been held nor the clerk called upon to arbitrate the matter it is erroneous to grant a writ of mandamus to the superintendent to compel the commissioners to levy the tax. Rollins v. Rogers, 204 N. C. 308, 168 S. E. 206.

Cited in Board of Education v. Board of Commissioners, 198 N. C. 430, 152 S. E. 156; Board of Education v. Walter, 198 N. C. 325, 329, 151 S. E. 718; Wilkinson v. Board of Education, 199 N. C. 669, 155 S. E. 562.

§ 115-161. Commissioners may demand a jury trial.—The county commissioners shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding term of the superior court, and shall have precedence over all other business of the court: Provided, that if the judge holding the court shall certify to the governor, either before or during such term, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said term, the governor shall immediately call a special term of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such term. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the county commissioners shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the supreme court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the commissioners to levy for the ensuing year a rate sufficient to pay the debt service fund, to produce, together with what may be received from the state public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1923, c. 136, s. 188; 1927, c. 239, s. 14; C. S. 5609.)

Editor's Note.—By amendment Public Laws 1927, ch. 239, sec. 14, the words "current expense fund, and the capital outlay fund," as used in the first sentence replaced the words "teachers' salary fund and the operating and equipment fund"; the words "the debt service fund" as used in the proviso at the end of the section replaced the words "interest and installment on notes, loans and bonds"; the words "current expense funds" used in the same proviso replaced the words "teachers' salary fund."

Applied In re Board of Education, 187 N. C. 710, 122 S. E. 760.

Cited in Board of Education v. Board of Commissioners, 198 N. C. 430, 152 S. E. 156.

§ 115-162. Commissioners to estimate what per cent school fund is of total county fund.—It is the duty of the county commissioners to furnish the county board of education, as soon as the tax books for the year are completed, a statement showing what per cent the school fund is of the total county fund, and at least this same per cent of the amount of taxes as they are collected and deposited in the treasury shall be placed to the credit of the county board of education. (1923, c. 136, s. 191; C. S. 5612.)

§ 115-163. Commissioners require sheriff to settle. — Every sheriff or tax collector shall deposit the county and other local taxes collected by him with the county treasurer as often as he shall collect or have in his possession at any one time a sum equal to five hundred dollars ($500.00).

On or before the close of the fiscal year the sheriff in settling with the board of county commissioners shall exhibit the total amount of the school fund from all sources received, the net amount paid over to the county treasurer, and the net amount due each of the following funds: (1) The current expense fund, (2) the capital outlay fund, and (3) the debt service fund. The sheriff shall also exhibit the amount of uncollected taxes due because of insolvent polls, releases, errors, and rebates allowed by the board of county commissioners, and other causes for failure to collect the entire amount of the taxes due, and the sheriff shall furnish to the county board of education at the time of his settlement with the county commissioners, as provided in this section, a complete itemized copy of his statement. (1923, c. 136, s. 192; 1927, c. 239, s. 15; C. S. 5613.)

Cross Reference.—As to the duty of the county treasurer to remit school funds monthly to proper administrative units, see § 115-363.

Editor's Note.—The change of the name of the funds was the only change by Public Laws 1927, ch. 239, sec. 15.

§ 115-164. Duty of sheriff or tax collector.—It shall be the duty of the sheriff or the tax collector in collecting the taxes of local tax districts to keep the funds of each district separate from all other funds, and when public school funds are deposited with the treasurer, the sheriff or tax collector shall specify which funds belong to local tax districts and to what district the local tax funds belong. (1923, c. 136, s. 148; C. S. 5550.)

Art. 20. The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-165. Treasurer shall disburse funds.—The county treasurer of each county shall be the treasurer of the school funds in his county. He shall receive and disburse all public school funds and shall keep the same separate and distinct from all other funds. In all counties in which the office of county treasurer has been abolished all banks or other corporations handling public school funds shall be required to keep the same accounts, perform the same duties as required of the county treasurer, and to give the same bond and make the same reports as are required of the treasurer of the county board of education. (1923, c. 136, s. 193; C. S. 5614.)

§ 115-166. Operation of county school budget.—(a) Duty of County Board of Education.—On or before the first Monday in each month the county board of education shall file with the county board of commissioners a written statement showing the condition of the annual school budget at the close of the preceding month. This statement shall also include a careful estimate of the necessary expenditures which will be made during the current month from the local school budget. In like manner each city administrative unit shall prepare and file with the county board of commissioners a similar statement, which shall be the guide in determining for the city administrative unit the amount which shall be included in the

monthly statement of cash needs: Provided, that no payment to city administrative unit shall be made until a copy of the audit for the previous year for the city administrative unit has been filed as provided by law.

(b) Duty of the County Board of Commissioners.—It shall be the duty of the board of county commissioners to provide when and as needed the funds necessary to meet the monthly expenditures as set forth in the statements prepared by the county board of education and the governing body of the city administrative unit in accordance with the budget. (1923, c. 136, s. 194; 1925, c. 138, s. 2; 1927, c. 239, s. 16; C. S. 5615.)

Editor's Note.—This section was re-enacted by Public Laws 1927, ch. 239, sec. 16, and revised in the General Statutes adopted by the General Assembly of 1943.

§ 115-167. Action against the treasurer to recover funds.—After final settlement with the sheriff, if it shall appear that any part of the public school fund received by the county treasurer has not been properly placed to the credit of the respective board, either the county board of education or the city administrative unit board of trustees, as the case may be, shall bring action on the treasurer's bond to recover any part of the fund still belonging to the respective board. If the county treasurer fails to perform his duties as herein and above prescribed, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 195; C. S. 5616.)

§ 115-168. County board of education to have accounts of the board of education and the county treasurer of the public school fund audited.— On or before the first day of August of each year the county board of education shall cause to be audited the books of the treasurer of the county school fund and the accounts of the county board of education, and shall provide for the cost of the same, where a county auditor is not provided by special statute, out of the current expense fund. The auditor's report shall show:

(a) For the School Term.—(1) Sources of revenues and purposes for which expenditures were made; (2) comparison of approved school budget with the actual transactions; (3) statement of salary paid each teacher, principal, supervisor, or superintendent, and all other employees employed in the county system, showing what part was paid out of the State and county school fund, and what part was paid out of the local tax funds; (4) the auditor shall compare the expenditures with the budget approved by the State Superintendent of Public Instruction, and report whether all salaries and other expenses have been paid in accordance with law; (5) the auditor shall check the average daily attendance by districts as shown in the budget against the monthly reports from the district listing the high school and elementary school average daily attendance separately, and including a statement covering the average daily attendance maintained during the scholastic year which the financial transactions cover and also the average daily attendance maintained during the year next preceding the year covered by the financial transactions contained in the audit; (6) statement of oustanding indebteness, including county school bonds, amounts due the State Board of Education, and all unpaid accounts; (7) appraisal of all school property; and (8) all other items which will aid in making a complete audit.

(b) For Local Tax Districts.—In similar details, the audit of the county board of education shall include accounts of local tax districts and special county taxes.

(c) For City Administrative Unit.—In like manner and in similar details, unless otherwise provided in special act, the board of trustees of each city administrative unit shall cause to be audited the accounts of the treasurer and board of trustees of the city administrative unit.

At least a consolidated statement of the report of the auditor shall be published in some newspaper circulating in the county, or in bulletin form, and one copy of the complete report shall be sent to the State Superintendent of Public Instruction, and one copy shall be given to the chairman of the board of county commissioners, and one copy to the chairman of the county board of education.

If the board of education or board of trustees shall fail to have all accounts audited as provided herein, the State Superintendent shall notify the State Auditor and said State Auditor shall send an auditor to said county and have the accounts audited in accordance with the provisions of this section, and all expenses for the same shall be paid by the county board of education or the board of trustees, as the case may be. (1923, c. 136, s. 198; 1927, c. 239, s. 19; C. S. 5618.)

Cross Reference.—See also, § 115-369.

§ 115-169. Action on the treasurer's bond.—The board of county commissioners shall bring action in the name of the state for any breach of the bond of the treasurer or for any failure to account properly for the funds received by him, except in cases where action is otherwise provided for. If the commissioners shall fail to bring such action, it may be brought in the name of the state upon the relation of any taxpayer. (1923, c. 136, s. 200; C. S. 5620.)

§ 115-170. Annual report to state superintendent.—The treasurer of any county or city administrative unit school fund shall report to the state superintendent of public instruction, on the first Monday of August of each year, the entire amount of money received and disbursed by him during the preceding school year, designating by items the amount received, respectively, from property tax, poll tax, fines, forfeitures and penalties, auctioneers, estrays, from the state treasurer and from the other sources. He shall also designate by item the sum paid to teachers of each race, respectively, the sums paid for schoolhouses, school sites in the several districts, and for all other purposes, specifically and in detail, by item. (1923, c. 136, s. 201; C. S. 5621.)

§ 115-171. Report to board.—On the same date that he reports to the state superintendent, he shall file a duplicate of such report in the office of the county board of education or board of trustees of the city administrative unit. He shall make such other reports as the board may require from time to time. (1923, c. 136, s. 202; C. S. 5622.)

§ 115-172. Exhibit books, vouchers, and money to board.—The treasurer of the school fund shall, when required by the county board of education or board of trustees of the city administrative unit,

produce his books and vouchers for examination, and shall also exhibit all moneys due the public school fund at such settlement required by this article. (1923, c. 136, s. 203; C. S. 5623.)

§ 115-173. Duties on expiration of term.—Each treasurer of the school fund, in going out of office, shall deposit in the office of the board of education or board of trustees of the city administrative unit his books in which are kept his school accounts, and all records and blanks pertaining to his office. If his term expires on the thirtieth day of November during any fiscal school year, or if for any reason he shall hold office beyond the thirtieth day of November and not for the whole of the current fiscal school year, he shall at the time he goes out of office file with the board and with his successor a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the state superintendent of public instruction the receipts and disbursements for the current fiscal year. (1923, c. 136, s. 204; C. S. 5624.)

§ 115-174. Penalty for failure to report.—If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00) or imprisoned not less than thirty days nor more than six months, in the discretion of the court. (1923, c. 136, s. 205; C. S. 5625.)

§ 115-175. Treasurer of city administrative unit bonded.—The treasurer of every city administrative unit shall be required by the board of trustees of said unit to execute a justified bond, with security, in an amount to be fixed by the board of trustees, not less than one-half the total amount of money received by him or his predecessor during the previous year, conditioned for the faithful performance of his duties as treasurer of the funds of the unit, and for the payment over to his successor in office of any balance of school moneys that may be in his hands unexpended. This bond shall be a separate bond, not including liabilities for other funds, and shall be approved by the board of trustees of said unit; and that board may from time to time, if necessary, require him to strengthen his bond. (1923, c. 136, s. 206; C. S. 5626.)

§ 115-176. Speculating in teachers' salary vouchers.—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or state officer shall engage in the purchasing of any teacher's salary voucher at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and shall be fined or imprisoned, and shall be liable to removal from office at the discretion of the court. (1923, c. 136, s. 208; C. S. 5627.)

Art. 21. Fines, Forfeitures and Penalties

§ 115-177. Constitutional provisions.—All moneys, stocks, bonds and other property belonging to a county school fund, also the net proceeds from the sale of estrays, also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the state, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties in this state. (Sec. 5, Art. IX, Constitution.) (1923, c. 136, s. 209; C. S. 5628.)

Cross Reference.—As to duty of county superintendent to see that funds are properly accounted for, see § 115-382.

Cited in State v. Welborn, 205 N. C. 601, 602, 172 S. E. 174.

§ 115-178. Statement of fines kept by clerk.—It is the duty of the clerks of the several courts and of the several justices of the peace to enter in a book, to be supplied by the county, an itemized detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (1923, c. 136, s. 210; C. S. 5629.)

§ 115-179. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (1923, c. 136, s. 211; C. S. 5630.)

§ 115-180. Failure to file report of fines.—If any officer who is by law required to file any report or statement of fines or penalties with the county board of education shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor. (1923, c. 136, s. 212; C. S. 5631.)

§ 115-181. Fines and penalties to be paid to school fund.—Whenever any officer, including justices of the peace, receives or collects a fine, penalty, or forfeiture in behalf of the state he shall, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the county board of education for the benefit of the fund for maintaining the free public schools in such county. Whenever any fine or penalty is imposed by any officer the said fine or penalty shall be at once docketed, and shall not be remitted except for good and sufficient reasons, which shall be stated on the docket. (1923, c. 136, s. 213; C. S. 5632.)

§ 115-182. Misappropriation of fines a misdemeanor.—Any officer, including justices of the peace, violating § 115-181, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, at the discretion of the court. (1923, c. 136, s. 214; C. S. 5633.)

§ 115-183. Unclaimed fees of jurors and witnesses paid to school fund.—All moneys due jurors and witnesses which remain in the hands of any

clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same, shall be turned over to the county treasurer for the use of the school fund of the county, and it is the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports. (1923, c. 136, s. 215; C. S. 5634.)

§ 115-184. Use by public until claimed.—The money aforesaid, while held by the clerks, shall be paid, on application, to the person entitled thereto; and after it ceases to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner. (1923, c. 136, s. 216; C. S. 5635.)

SUBCHAPTER VIII. LOCAL TAX ELECTIONS FOR SCHOOLS.

Art. 22. School Districts Authorized to Vote Local Taxes.

§ 115-185. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-186. How elections may be called.—The citizens of any duly created school district are hereby authorized to petition for a local tax election for schools, as follows: A written petition signed by twenty-five qualified voters who have resided at least twelve months within the district, or if fewer than seventy-five of such qualified voters, reside in the territory, then by one-third of such qualified voters, shall be presented to the county board of education asking for an election in the district to ascertain whether there shall be levied in said district a local annual tax not to exceed fifty cents (50c) on the one hundred dollar ($100.00) valuation of all property, real and personal, to supplement the funds for the nine months public school term for that district: Provided, that the petition for an election to be held in any city administrative unit shall be presented to the board of trustees of said district. (1923, c. 136, s. 219; 1943, c. 255, s. 2; C. S. 5639.)

Cross References.—See note to § 115-1. As to local supplements generally, see § 115-361. See also, § 115-202. As to constitutional provision requiring election, see Art. VII, § 7.

Editor's Note.—The 1943 amendment substituted the word "nine" for the word "eight" in line sixteen.

In General.—For an able discussion of this subject by Mr. Justice Hoke in which the various statutes pertaining to the subject are considered, see Sparkman v. Board, 187 N. C. 241, 121 S. E. 531.

Approval of Voters of Each District Unnecessary.—Sparkman v. Board, 187 N. C. 241, 121 S. E. 531.

Who May Sign Petition.—The prior law in regard to authorizing local taxes was that the petition be signed by freeholders. In Gill v. Board, 160 N. C. 176, 76 S. E. 203 it was held that women were not freeholders. The Public Laws 1915, c. 22, section 1746 changed this rule and made it possible for women to sign petitions as required in forming tax districts. See Chitty v. Parker, 172 N. C. 126, 90 S. E. 17.

Cited in Platt v. Board, 187 N. C. 125, 133, 121 S. E. 190; Forester v. North Wilkesboro, 206 N. C. 347, 350, 174 S. E. 112.

§ 115-187. The board to consider petition.—The county board of education or the board of trustees, as the case may be, shall receive the petition and give it due consideration. If the board shall approve the petition for an election, it shall be endorsed by the chairman and secretary of the board and a record of the endorsement shall be made in the minutes of the board. The petition shall then be presented to the board of county commissioners or the governing body authorized to order the election, and it shall be the duty of the board of county commissioners or said governing body to call an election and fix the date for the same: Provided, the county board of education or board of trustees, as the case may be, may, for any good and sufficient reason, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held. In the case of a city administrative unit coterminous with or situated entirely within an incorporated city or town, said petition shall be presented to the governing body of said city or town, and the election shall be ordered by said governing body. (1923, c. 136, s. 220; 1925, c. 143, s. 1; C. S. 5640.)

Editor's Note.—By amendment Public Laws 1925 the last sentence to this section was added.

The duty of the board of education under this section in connection with section 115-191 is discretionary and can not be enforced by mandamus. Board v. Board, 189 N. C. 650, 127 S. E. 692.

Same—Duty of Commissioners Ministerial.—But this section does not rest in the county commissioners discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. Board v. Board, 189 N. C. 650, 127 S. E. 692.

§ 115-188. Rules governing election for local taxes.—In all elections held under this law the board of county commissioners, or the body authorized to order said election, shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and shall record such determination on their records. The notice of the election shall be given by publication at least three times in some newspaper published or circulated in the territory. It shall set forth the boundary lines of the district, the maximum rate of tax to be levied, which shall not exceed fifty cents (50c) on the one hundred dollar ($100.00) valuation of property, real and personal, and the purpose of the tax. The first publication shall be at least thirty days before the election. A new registration of the qualified voters of the territory shall be ordered, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in said district at least twenty days before the close of the registration books. This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article such election shall be held in accordance with the law governing gen-

eral elections. The ballots to be used in said election shall have written or printed thereon the words "For local tax," and "Against local tax." All other details of said election shall be fixed by the board or other governing body ordering the election, and the expenses of holding and conducting the election in all districts other than in city administrative units shall be provided by the county board of education out of the current expense fund of the county. But the expenses of conducting the election in all city administrative units shall be paid by the board of trustees of said unit out of the local tax funds of the unit. (1923, c. 136, s. 221; C. S. 5641.)

Cross Reference.—As to time registration books must be kept open see section 163-31.

Notice in Newspaper.—It is not necessary that the newspaper, in which the notice of election is given be published in the district, it is sufficient if the paper is circulated in the district where the election is to be held. See Miller v. Duke School Dist., 184 N. C. 197, 113 S. E. 786.

And failure to give the notice has been held immaterial where such failure did not affect the result of the election. See Younts v. Com., 151 N. C. 582, 66 S. E. 575; Gregg v. Board, 162 N. C. 479, 78 S. E. 301.

What Constitutes a Majority Vote.—The requirement that the measure shall be carried by a "majority of the qualified voters," by correct interpretation, signifies a majority of the qualified voters of the district appearing upon the registration book, and not a majority of those voting in the election. Williams v. County Com., 176 N. C. 554, 97 S. E. 478.

Cited in Young v. Commissioners, 194 N. C. 771, 774, 140 S. E. 740.

§ 115-189. Levy and collection of taxes.—In case a majority of the qualified voters in the district or unit referred to above shall vote at the election in favor of the tax, it shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes, and the maximum rate so voted shall be levied, unless the county board of education or board of trustees shall request a levy at a lower rate, in which event the rate requested, shall be levied and collected; and the superintendent of schools and the officer in charge of tax records shall keep records in their respective offices showing the valuation of the property, real and personal, in the district or unit, the rate of tax authorized annually to be levied, and the amount annually derived from the local tax, and it shall be illegal for any part of the local tax fund to be used for any purpose other than to supplement the funds for a nine months school term in the district or unit. (1923, c. 136, s. 222; 1943, c. 255, s. 2; C. S. 5642.)

Editor's Note.—The 1943 amendment substituted the words "a nine" for the words "an eight" in the next to last line.

§ 115-190. Increasing levy in districts having less than fifty cent rate.—Authority is hereby given any local tax district or special bond tax unit having voted a maximum rate less than fifty cents (50c) to increase the levy to a maximum of fifty cents (50c) on the one hundred dollars ($100.00) valuation of property, real and personal. Such increase shall be made after an election has been held as provided for in this article. (1923, c. 136, s. 223; 1925, c. 143, s. 2; C. S. 5643.)

§ 115-191. Frequency of election.—In the event that a majority of the qualified voters of a district or unit do not at the election cast their votes for the local tax, another election or elections under the provisions of this article may be held after the lapse of six months in the same district or unit. (1923, c. 136, s. 225; C. S. 5645.)

§ 115-192. Enlargement of local tax districts.—Upon a written petition of a majority of the governing board of any district, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this article: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of the qualified voters in such new territory shall vote in favor of such tax, the new territory shall become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of the qualified voters at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1923, c. 136, s. 226; 1925, c. 151; 1927, c. 88; C. S. 5646.)

Cross References.—As to consolidation of school districts, see §§ 115-99, 115-352. As to what constitutes a majority vote, see note to § 115-188. See also, § 115-361 which makes a similar provision for the enlargement of districts.

Editor's Note.—The cases which follow in this note are in the majority of instances constructions of section 5530 of the Consolidated Statutes of 1919 (renumbered § 5646 in Vol. 3 of the Consolidated Statutes published in 1924). The School Machinery Act, codified as G. S. §§ 115-347 to 115-382, changed in many particulars the school system of North Carolina and this should be borne in mind when reading these cases.

In General.—Laws of 1921, ch. 179, providing for the consolidation and adjustment of rates of taxation and authorizing the voters of a district so consolidated to vote special tax rates for the schools in the entire district, etc., should be construed to harmonize with C. S., 5530, (this section) and the provisions of the former statute do not affect or impair the requirement of the latter one, that for an extension of the boundaries of an existing local school tax district or districts, the approval of the tax proposed must first be given by the voters in the proposed new and contiguous territory. Hicks v. Board, 183 N. C. 394, 112 S. E. 1.

Construed with Art. 23.—C. S. 5526, (incorporated in Art. 23, providing for the creation of new local school tax districts, and section 5530 (this section) requiring the question of an enlargement of an existing special school tax district to be submitted separately to the voters of the proposed new territory are to be construed in pari materia, and the provisions of each are held reconcilable with those of the other. Hicks v. Board, 183 N. C. 394, 112 S. E. 1.

C. S. 5526 (incorporated in Art. 23,) applies primarily to the consolidation of nonspecial-school-tax territory; and in order to consolidate existent school-tax districts having rates, by extending the limits of some of them to include others, section 5530 (this section) requires that a majority of the committee or trustees of either of these districts sought to be enlarged file a written request with the county board of education to thus enlarge its boundaries, and an election must be held before consolidation, and the other material requirements of the statute complied with; and where this course has not been followed, the tax attempted to be levied in the consolidated district, and bonds ordered to be issued in pursuance thereof, are invalid. Jones v. Board, 187 N. C. 557, 122 S. E. 290. Attention is directed to the fact that the majority now required is not of the "committee or trustees" but of the "governing board." In other respects this decision seems to be still applicable.—Ed. Note.

C. S. 5526 (incorporated in Art. 23,) providing for the creation of a special school tax district by the county board of education without regard to township lines, upon an

election to be held within the proposed district, after notice, etc., refers to territory having no special school tax and has no application to the enlargement of such district under the provisions of this section, wherein one or more school tax districts having already been established and there is other contiguous territory sought to be included which has not voted any special school tax. Hicks v. Board, 183 N. C. 394, 112 S. E. 1.

Where special school tax districts have been consolidated with non-school tax territory, it is, in effect, an enlargement of the special tax territory, and coming within the provisions of C. S., 5530 (this section) it is required for the validity of a special tax to be levied for school purposes in the enlarged territory that it be approved by the voters outside of the special tax districts included in the consolidated territory, at an election to be held according to law. Barnes v. Board, 184 N. C. 325, 114 S. E. 398.

Where special school tax districts and nonspecial school tax districts have been consolidated, and the district as a whole has voted, but separately as to each district, approving the question of special taxation for school purposes, and the election as to each, inclusive of the nontax territory, is upheld, counting the votes separately therein, the result of the election will be declared valid. Board v. Bray Bros. Co., 184 N. C. 484, 115 S. E. 47.

Collateral Attack on Special Tax. — Where nonspecial school tax territory is included in a consolidated school tax district with a school tax district that has theretofore voted and continued to levy a special tax, the question of the validity of the tax so levied by the existing district cannot be attacked collaterally in a suit to enjoin the levy of a special tax on the entire consolidated district, later attempted to be formed. Barnes v. Board, 184 N. C. 325, 114 S. E. 398.

Same—Separate Vote in Nontax Territory.—Where one or more special tax districts have been established under the provisions of our statutes applicable, such districts may not extend their territory to include other districts and adjacent territory that have not voted a special tax, without the question having first been submitted to and approved separately by the voters of the outlying territory, and giving them the right to independently determine for themselves whether they shall be specially taxed, in the amount proposed. Hicks v. Board, 183 N. C. 394, 112 S. E. 1. See Plott v. Board, 187 N. C. 125, 132, 121 S. E. 190.

The uniting of an existing special school tax district with other districts not having such tax is in effect the enlarging of the boundaries of the tax district to take in outlying nontax territory under the provisions of C. S., 5530 (this section), and it is only required for the establishment of the enlarged district and the levying of a special tax therein that the district to be enlarged and the outlying territory should each cast a majority vote in favor of the propositions submitted to them, and it is unnecessary that each of the nontax districts included in the enlarged territory should have separately cast a majority vote in favor of the special tax proposed, nor is it material that one of them was separated from the others by the original special tax district so enlarged. Vann v. Board, 185 N. C. 168, 116 S. E. 421.

The authority given the county board of education to redistrict the entire county or part thereof, and to consolidate school districts under a uniform rate of taxation not exceeding the lowest in any one district, meets the requirements of our Constitution, Art. VII, sec. 7, but to the extent it permits consolidation of local school tax districts with adjacent territory or local schools that have never voted any tax, the provisions of C. S., 5530 (this section) must apply so as to permit those living in such proposed new territory to vote separately upon the question of taxing themselves for the purpose. Perry v. Commissioners, 183 N. C. 387, 112 S. E. 6.

The combination or consolidation of local school tax districts with territory that has not voted a special tax for the purposes of schools must fall within the provisions of C. S., 5530, (this section) whereby the proposed new territory is required to vote separately upon the question of taxation, in conformity with our Constitution, Art. VII, § 7, Perry v. Commissioners, 183 N. C. 387, 112 S. E. 6.

A district may be enlarged and a taxing district established therein on petition of the governing board of the principal district, and on taking the vote of the outside territory to be added, as indicated in this section. Blue v. Board, 187 N. C. 431, 434, 122 S. E. 19.

Enlargement without Required Vote.—When a school district authorizes a local tax and later enlarges the district without the election required being held in the new territory, and a tax is levied for four years without objections from the taxpayers, although the annexation was unconstitutional the taxpayers will be estopped to deny the validity of the annexation. Carr v. Little, 188 N. C. 100, 123 S. E. 625.

§ 115-193. Abolition of district upon election.—Upon petition of one-half of the qualified voters residing in any local tax district established under this article, the same shall be indorsed and approved by the county board of education, and the board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this act for holding other elections. It shall be the duty of the board of education to indorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to indorse the same when so presented. If at the election a majority of the qualified voters in the district shall vote "Against Local Tax," the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five per cent (25%) of the number of registered voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient: Provided, further, that in said counties, this section shall not apply to that part of such tax, if any, in said district as may be necessary to pay the interest on or amortization of any bonded or other indebtedness, incurred in consequence of the voting of said special tax district but to that extent, and to that extent only, shall said special tax district be maintained. (1923, c. 136, s. 227; 1931, c. 372; C. S. 5647.)

Editor's Note.—It was the rule prior to this section that the approval of the board of education was necessary before a vote to abolish the district could be had, and the exercise of the power to approve was discretionary, there being no way to force the approval. Key v. Board, 170 N. C. 123, 86 S. E. 1002. By the express terms of the section now approval is mandatory.

The Act of 1931 added the provisos to this section.

In General.—Under the provisions of § 115-192 a local tax school district may be abolished by the act of creating a new one of which it is a component part, while this section is restricted simply and singly to the abolition of an existing district, and so construed, it was held that these sections are in harmony with each other. Hicks v. Board, 183 N. C. 394, 112 S. E. 1.

Abolition Unnecessary to Valid Consolidation.—Where, in accordance with the provisions of chapter 136, Laws of 1923, an existent special charter tax district has been enlarged to take in added and adjoining territory, it is not required that such district should have first been abolished to make the consolidation valid according to sections 115-193, 115-194, the requirements of these sections being intended to provide for the abolition of local-tax districts when that was the single question presented. Blue v. Board, 187 N. C. 431, 122 S. E. 19.

Effect of Abolition on Taxes Already Levied.—Where a school district has been established under the provisions of the Revisal, sec. 4115, and in the exercise of the powers therein conferred have annually levied a tax for school purposes, and, accordingly, a tax was levied for the current year, but subsequently and in pursuance of chapter 135, Laws 1911, an election was ordered on the question of revoking the special tax, which was held and carried in favor of the repeal: Held, the repeal of the former tax was pro-

spective in its operation, and especially when the authorities had theretofore contracted with teachers and for other necessary expenses to carry on the school work authorized by the former act. Mann v. Allen, 171 N. C. 219, 88 S. E. 235.

Cited in Young v. Commissioners, 194 N. C. 771, 774, 140 S. E. 740.

§ 115-194. Local tax district in debt may not be abolished.—The provisions of this article as to abolishing local tax districts shall not apply when such local tax district is in debt in any sum whatever. (1923, c. 136, s. 228; C. S. 5648.)

§ 115-195. Election for abolition not oftener than once a year.—No election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition revoking such tax shall be approved by the county board of education oftener than once a year: Provided, this section shall not apply to any indirect abolition or reduction of taxes as may be elsewhere provided. (1923, c. 136, s. 229; C. S. 5649.)

In General.—This section requiring that "no election for revoking a special [now local] tax in any special [now local] tax district shall be ordered and held," within less than two [now one] years from the date at which the tax was voted and the district established, "nor at any time within less than two [now one] years after the date of the last election on the question [of revoking the tax] in the district," invalidates any election on the question of taxation held within two years [now one] after the last election, the second proposition being independent from the first as to "revoking" a special tax in the district, otherwise the second provision would be identical with the first, and meaningless. Weesner v. Davidson County, 182 N. C. 604, 109 S. E. 863. The insertions in brackets by the editor indicate the changes in this section effected by the Laws of 1923.—Ed. Note.

Computing the Time.—Computing the two [now one] years period in which an election may be had with regard to taxation in a special [now local] school district under the provisions of this section, the time should be computed from the last valid election on the subject. Weesner v. Davidson County, 182 N. C. 604, 109 S. E. 863. Cited and approved in Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24.

§ 115-196. Enlarging boundaries of district within incorporated city or town.—The boundaries of a district situated entirely within the corporate limits of a city or town, but not coterminous with such city or town, may be enlarged so as to make the district coterminous with such city or town either in the manner prescribed by this section or in the manner prescribed by § 115-192. Provided, however, that no district shall be enlarged under this section if the new territory necessary to be added to such district, in order to make it coterminous with such city or town, has any bonded debt incurred for school purposes, other than debt payable by taxation of all taxable property in such district and such new territory. In cases where the local annual tax voted to supplement the funds of the nine months public school term is of the same rate in such district and in the new territory necessary to be added to such district in order to make the district coterminous with such city or town, the county board of education shall have power to enlarge the boundaries of the district as aforesaid. In cases where such tax rates are not the same, the boundaries of the district shall become so enlarged upon the adoption of a proposition for such enlargement by a majority of the qualified voters of such new territory. The governing body of such city or town may at any time, upon petition of the board of education or other governing body of such district, or upon its own initiative if the governing body of the city or town is also the governing body of the district, submit the question of enlarging the district as aforesaid to the qualified voters of such new territory proposed to be added to such district at any general or municipal election or at a special election called for said purpose. Such an election may be ordered and held and a new registration for said election provided under the rules governing elections for local taxes as provided under the article, except that the election and registration shall be ordered by and held under the supervision of and the result of the election determined by the governing body of such city or town. The ballots to be used in said election shall have printed or written thereon the words: "For the enlargement of.... school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended," and "Against the enlargement of ..... school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended." If a majority of the qualified voters of such new territory proposed to be added to such district shall vote in favor of such enlargement, said district shall thereupon become coterminous with said city or town, and there shall be levied annually in such new territory all taxes previously voted in said district for the purpose of supplementing the funds for the nine months public school term for said district and for the purpose of paying the principal or interest of any bonds or other indebtedness previously issued or incurred by said district; and a vote in favor of such enlargement shall be deemed and held to be a vote in favor of the levying of such taxes. The validity of the said election and of the registration for said election and of the correctness of the determination of the result of said election shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the result of said election. At the same time that said election is held, it shall be lawful to hold an election in the entire territory of said city or town on the question of issuing bonds of said city or town or of said school district as so enlarged, for school purposes, and levying sufficient tax for the payment of said bonds, or on the question of levying a local annual tax on all taxable property in said city or town or in said school district as so enlarged, to supplement the funds for the nine months public school term for said district, in addition to taxes for the payment of bonds, in the same manner that would be lawful if said district had been so enlarged prior to the submission of said questions. One registration may be provided for all of said simultaneous elections. (1923, c. 136, s. 230; 1925, c. 143, s. 3; 1943, c. 255, s. 2; C. S. 5650.)

Editor's Note. — By Public Laws 1925 this section was amended and re-enacted. Prior to this time the section provided that school districts situated within and coterminous with the boundary line of a town or city which after the district was created was not coterminous with such city or

town because of change of boundaries, might be made coterminous, and the board of education had power to consolidate the newly incorporated territory with the school district provided the tax rate was the same.

The 1943 amendment changed the term from eight to nine months.

§ 115-197. Local tax districts from portions of contiguous counties.—a. Local tax districts may be formed as provided in this section out of contiguous portions of two or more counties.

The petition for such a district must be initiated as petitions for local tax elections are initiated under the provisions of this article, must be endorsed by the county boards of education of such contiguous counties and each county board of education shall certify to the board of county commissioners of its county that the metes and bounds of the proposed joint local tax district are in accordance with and are an integral part of the lawfully adopted plan of organization in so far as they pertain to said county.

The board of commissioners of each county, in compliance with the provisions of this article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion and the returns canvassed and recorded as required in this article for local tax districts.

b. In case the election carries in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district; which shall be and become a body corporate by the name and style of '..... Joint Local Tax School District of .... Counties.' The county board of education having the largest school census and the largest area in the part of the joint local tax districts lying in its county shall determine the location of the schoolhouse; but if the largest census and area do not both lie in the same county, then the county boards shall jointly select the site for the building, and in case of a disagreement they shall submit the question to the board of arbitration, consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of the board of arbitration shall be binding upon all county boards of education concerned.

c. The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred in this section. This said committee shall have all the powers and duties of committee of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

d. The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for interest and principal shall be levied and collected as provided in subsection c above for the levy and collection of local taxes.

e. The committee shall have the same power to call and hold elections to ascertain the will of the voters of the district upon the question of increasing the local tax levy to a maximum rate of fifty cents on the one hundred dollars ($100.00) valuation of taxable property as it has in the case of bond elections. But local tax elections called and held in such joint districts shall be held under the general provisions of this article governing local tax elections, except that the district committee is hereby granted the powers of county boards of education and boards of commissioners as to local tax elections.

f. The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Building Funds or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board

that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount is to be repaid by the district from district funds.

g. All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

h. The county board of education and county superintendent of public instruction of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts subject only to the limitations of this section.

i. It shall be the duty of the committee of the joint school district to prepare a budget in accordance with the law requiring budgets. The said budget, which shall show the proportionate part of the expenses to be contributed by each county, the several parts to be ascertained on the basis of the proportions of the total district school census living in each respective county, shall be filed by the committee with the county board of education of each county, and it shall be the duty of each board, if it approves the district budget, to incorporate it in the county budget to be submitted to the commissioners each year. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

j. All districts formed before the ratification of this amendment under the provisions of section two hundred and thirty-two, chapter one hundred and thirty-six, Public Laws of one thousand nine hundred and twenty-three, and all districts incorporated before the ratification of this amendment, under the provisions of section two hundred and thirty-three of said chapter, are hereby authorized and empowered to exercise all the powers and privileges conferred by this section as amended. (1923, c. 136, s. 232; 1924, c. 32; C. S. 5651.)

Editor's Note.—By Ex. Sess. 1924 this section was changed and re-enacted. For the changes made a comparison of the two acts is necessary.

§ 115-198. District already created out of portion of two or more counties.—Districts that have already been created out of portions of two or more counties may be incorporated in the following manner: Upon petition of the county board of education of each county, calling for an election the commissioners of each county shall call an election which shall be conducted in all respects as an election for voting local taxes. The ballots to be used in said election shall have written or printed thereon the words, "For Incorporation," and, "Against Incorporation." If a majority of the qualified voters in the portion in each county shall cast their ballots for incorporation, the district is thereby incorporated and shall possess all the authority of incorporated districts as provided in this article. (1923, c. 136, s. 233; C. S. 5652.)

Art. 23. Special School Taxing Districts.

§ 115-199. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

Cross References.—See §§ 115-192 and 115-204. For definition of district, see § 115-9.

§ 115-200. School taxing districts created.—The following territorial divisions of a county are hereby declared to be special school taxing districts in which special school taxes may be voted as hereinafter provided: (1) A township; (2) two or more contiguous or consecutive districts, all of which may be embraced within one common boundary; (3) two or more contiguous or consecutive townships, all of which may be embraced within one common boundary; (4) one or more districts and one or more townships contiguous, all of which may be embraced within one common boundary, and (5) the entire county excluding one or more tonwships or one or more special charter districts. (1923, c. 136, s. 234; C. S. 5655.)

Editor's Note.—The cases which follow in this note, in the majority of instances, are constructions of § 5526 of Volume II of the Consolidated Statutes, the substance of which is scattered throughout this article. It must be borne in mind, however, that the School Machinery Act, G. S. §§ 115-347 to 115-382, has in many particulars revised the school system which was in effect at the time this article was enacted.

Applicability to Existing Tax Districts.—The application of the provisions of C. S., 5526, [incorporated throughout the various sections of this article] to the formation of new local school tax districts without regard to township lines, etc., refers primarily to instances where new districts are created or formed, as therein prescribed, out of territory exclusive of special tax districts, or out of territory having the same status throughout its entirety, in relation to the then existing school tax or taxes, so as to give every voter a fair chance, uninfluenced by other considerations, to declare with his ballot whether or not he wishes to be taxed for the creation and maintenance of the district proposed. Perry v. Commissioners, 183 N. C. 387, 112 S. E. 6.

Separate Vote in Nontax Territory.—See Hicks v. Board, 183 N. C. 394, 112 S. E. 1; Sparkman v. Board, 187 N. C. 241, 242, 121 S. E. 531.

Form of Ballot Directory.—Under a statute which sets out a form of ballot to be used at an election, the use of such form is directory and not mandatory, unless the statute so declares, this matter being within the discretionary power of the Legislature. Riddle v. Cumberland County, 180 N. C. 321, 104 S. E. 662.

The failure to use forms prescribed by this section will not render the election invalid when a free and fair opportunity has been afforded the voters therein to express their will at the polls. Riddle v. Cumberland County, 180 N. C. 321, 104 S. E. 662.

Cited in Plott v. Board, 187 N. C. 125, 133, 121 S. E. 190; Forester v. North Wilkesboro, 206 N. C. 347, 350, 174 S. E. 112.

§ 115-201. Boundary lines.—The county board of education, after ascertaining in what special school taxing district it is desirable to levy a special local tax, to supplement the nine months school term, shall define or describe the boundary lines so as to include the territorial divisions embracing only the special school taxing district in which a special school tax election for schools is to be called, and to exclude all other territory. The boundary lines of the special school taxing district, having been defined and recorded on the minutes of the board of education, a special school tax election may be held as hereinafter provided to equalize school advantages within

the special school taxing district. (1923, c. 136, s. 235; 1943, c. 255, s. 2; C. S. 5656.)

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in line four.

§ 115-202. Petition for an election.—The petition for an election in a special school taxing district shall be made as follows: The governing school boards of at least a majority of the school districts within the special school taxing district shall indorse the petition, and it shall be approved by the county board of education. Said petition shall state the maximum rate of tax to be voted on, which rate shall not exceed fifty cents (50c) on the one hundred dollars ($100.00) valuation of all property, real and personal: Provided, however, that when a special school taxing district created in accordance with the provision of this article includes or embraces two or more school districts having indebtedness incurred for the erection of school buildings, the maximum rate of fifty cents (50c) specified in this section may be exceeded by an additional rate necessary to take care of the combined aforesaid indebtedness of the several districts incurred for the erection of such school buildings. (1923, c. 136, s. 236; 1927, c. 37; C. S. 5657.)

Editor's Note.—By Public Laws 1927 the proviso in the last part of the section providing for exceeding the specified rate, was added.

Form of Petition. — The character of the petition is not specifically set forth in this article, but the same is manifestly provided for and controlled by section 115-186. Sparkman v. Board, 187 N. C. 241, 245, 121 S. E. 531.

§ 115-203. The election.—Whenever a petition properly indorsed and approved is presented to the board of county commissioners, said board shall call an election in said special school taxing district and fix a date for holding the same. The rules governing the election, the levy and collection of taxes, and the frequency of elections in a special school taxing district shall be the same as rules governing elections, the levy and collection of taxes, and the frequency of elections as provided in article 22. (1923, c. 136, s. 237; C. S. 5658.)

Notice of Election.—The requirements of this section as to the first publication in a newspaper, etc., provided in sec. 115-188, Art. 22, and the giving of the specified time are mandatory if they affect the merits of the election, and directory if they do not. Flake v. Board, 192 N. C. 590, 135 S. E. 467. This case presents splendid illustrations of variations from the terms of the statute which do not affect the merits.—Ed. Note.

Restriction of Boundaries.—In holding an election under this article, the authorities are restricted to districts having established or recognized boundaries, such as a school district or township, or contiguous school districts or townships. Blue v. Board, 187 N. C. 431, 434, 122 S. E. 19. But see note to sec. 115-192.

§ 115-204. Special school taxing districts.—If a majority of the qualified electors in the special school taxing district shall vote in favor of the special school tax, then it shall operate to repeal all school taxes theretofore voted in any local tax district located within said special school taxing district, except such taxes as may have been voted in said local tax district to pay the interest on bonds and to retire bonds outstanding. But the county board of education shall have the authority to assume all indebtedness, bonded and otherwise, of said local tax district and pay all or a part of the interest and installments out of the revenue derived from the rate voted in the special school taxing district: Provided, the revenue is sufficient to equalize educational advantages and pay all or a part of the interest and installments on said bonds. (1923, c. 136, s. 238; C. S. 5659.)

Right of Each District to Vote Separately.—See Sparkman v. Board, 187 N. C. 241, 242, 121 S. E. 531.

Cited in Flake v. Board, 192 N. C. 590, 135 S. E. 467.

§ 115-205. Organization of the schools in special school taxing districts.—The county board of education is hereby authorized to organize the schools in a special school taxing district after a special school tax has been voted, in such a way as to equalize educational opportunities within said district. (1923, c. 136, s. 239; C. S. 5660.)

Art. 24. County Tax for Supplement in Which Part of Local Taxes May Be Retained.

§ 115-206. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-207. Election upon petition of county board of education.—Upon the petition of the county board of education of any county, the county commissioners shall order an election to be held in the county to ascertain the will of the people whether there shall be levied on all taxable property and polls in the county a special county tax, not to exceed fifty cents (50c) on the one hundred dollars ($100.00) valuation of property, to supplement the nine months school fund. (1923, c. 136, s. 242; 1943, c. 255, s. 2; C. S. 5663.)

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in the last line.

Cited in Young v. Commissioners, 194 N. C. 771, 774, 140 S. E. 740; Forester v. North Wilkesboro, 206 N. C. 347, 350, 174 S. E. 112.

§ 115-208. Rules governing election.—The election shall be conducted for the county as nearly as may be under the "Rules Governing Elections for Local Taxes" as provided in this subchapter. (1923, c. 136, s. 243; C. S. 5664.)

§ 115-209. Maximum tax levy.—In the event that a majority of the qualified voters at said election shall vote in favor of a special county tax, said tax shall be in addition to all taxes theretofore voted in any local tax district except as provided in § 115-210. The maximum rate voted shall be annually levied and collected each year in the same manner and at the same time as other taxes of the county are levied and collected, unless the county board of education shall petition for a lower rate. In that event the county commissioners shall levy the rate requested. (1923, c. 136, s. 244; C. S. 5665.)

§ 115-210. The rate in local tax districts. — Whenever the maximum special county tax rate levied or to be levied under the provisions of this article is less than fifty cents (50c), each local tax or special school taxing district shall have the authority to levy an additional rate, not in excess of the local tax rated voted in the district.

All indebtedness, bonded or otherwise, of said

district or districts may be assumed by the county board of education; and such indebtedness, if assumed by the county board of education, shall be paid out of the special county tax levied under the provisions of this article. (1923, c. 136, s. 245; 1925, c. 180, s. 2; 1933, c. 299; C. S. 5666.)

Editor's Note.—By amendment Public Laws 1925, a former provision at the end of the first paragraph limiting the total special tax to not exceeding fifty cents on the hundred dollars, except in case where the tax was for bonds or other such indebtedness which remained an obligation against the district, was omitted.

§ 115-211. Subsequent elections upon failure of first.—In case a majority of qualified voters of said election in any county shall fail to vote for said special county tax, on petition of a majority of the members of the county board of education of the county, the county commissioners may, after six months, order another election in the same manner and under the same rules governing elections for local taxes. (1923, c. 136, s. 246; C. S. 5667.)

§ 115-212. Payment of election expenses.—The expenses of holding said election shall be paid out of the school fund of the county. (1923, c. 136, s 247; C. S. 5668.)

Art. 25. Legal Attendance of Pupils in School Districts.

§ 115-213. Children residing in a school district shall have the advantage of the public school.—The following persons residing in local tax or special school taxing districts shall be entitled to all the privileges and advantages of the public schools of said district or districts unless removed from school for cause:

(a) All residents of the district who have not completed the prescribed course for graduation in the high school.

(b) All children whose parents have recently moved into the district for the purpose of making their legal residence in the same.

(c) Any child or children living with either the father or the mother or guardian who has made his or her permanent home within the district.

(d) Any child received into the home of any person residing in the district as a member of the family, who receives board and other support free of cost. (1923, c. 136, s. 240; C. S. 5661.)

§ 115-214. Credits on tuition to nonresidents whose children attend in district.—Any parent or person in loco parentis residing outside of any local tax or special school taxing district, and owning property within said district, whose child, children, or wards shall attend school in said district, shall be entitled to receive as a credit on the tuition of said child, children, or wards the amount of special school taxes paid on said property. The county board of education may arrange with any such district to send any child or children residing in the county to the school in such district, if they are without adequate educational advantages, for the nine months term, and to pay the actual cost of the instruction of the children, including the appropriations from the nine months school fund. (1923, c. 136, s. 241; 1943, c. 255, s. 2; C. S. 5662.)

Cross Reference.—As to power of the state board of education (successor to the state school commission, 1943, c. 721) to transfer children from one district to another without the payment of tuition, see § 115-352.

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in the second sentence.

SUBCHAPTER IX. BONDS AND LOANS FOR BUILDING SCHOOLHOUSES.

Art. 26. Funding or Refunding Loans from State Literary and Special Building Funds.

§ 115-215. State board of education authorized to accept funding or refunding bonds of counties for loans; approval by local government commission.—In any case where a loan has heretofore been made from the state literary fund or from any special building fund of the State to the county board of education of a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the state board of education be and the same is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the local government commission. (1935, c. 399, s. 1.)

§ 115-216. Issuance of bonds as part of general refunding plan.—In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligations to put same into effect, the state board of education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1935, c. 399, s. 2.)

Art. 27. Collection of Amounts Due State Literary and Revolving Funds.

§ 115-217. Collecting delinquent amounts due by counties; offsetting amounts due counties on account of road contracts.—In all instances where any sum or amount is due from any county or board of education or school unit therein to the state or to the literary fund or to the revolving fund set up by the general assembly providing loans for the construction of school buildings, and where any sum or amount is payable to such county by reason of any contract made on behalf of the state highway commission or its successor, the state highway and public works commission, for loans made to such commission by such county in behalf of roads, it shall be competent and lawful to offset the amount due such county on account of any contract made with the state highway commission or its successor, the state highway and public works commission, not assigned prior to the passage of this article, by the amount due by such county or board of education or school unit in said county to the State or to the literary fund or the revolving fund set up by the general assembly providing loans for construction of school buildings. (1935, c. 411, s. 1.)

§ 115-218. Crediting sums due counties for road loans.—If the amount due such county on account of loans made to the state highway commission or its successor, the state highway and public works commission, and not assigned prior to the passage of this article, is insufficient to pay the amount due the State or the literary fund or to the revolving fund by such county, then the amount due such county on account of loans to the highway commission shall be credited on the amount due by such county to the State or literary fund or revolving fund. (1935, c. 411, s. 2.)

§ 115-219. Provisions of article to be observed by state officers.—The treasurer and other officers of the State charged with the duty of disbursing any funds by reason of such contract between the state highway commission or the state highway and public works commission already made or hereafter to be made are required to observe the provisions of § 115-218 and shall not issue or authorize issuance of any voucher contrary thereto. (1935, c. 411, s. 3.)

Art. 28. Loans from State Literary Fund.

§ 115-220. Loans by state board from state literary fund.—The state board of education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may make loans from the state literary fund to the county board of education of any county for the building and improving of public schoolhouses or dormitories for rural high schools and teacherages in such county; but no warrant for the expenditure of money for such purposes shall be issued by the auditor except upon the order of the state superintendent of public instruction, with the approval of the state board of education. (1923, c. 136, s. 273; C. S. 5683.)

Cross Reference.—As to authority to sell notes evidencing loans from state literary fund, see § 135-7.1.

§ 115-221. Terms of loans.—Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at four per centum, payable annually, and shall be evidenced by the note of the county board of education, executed by the chairman and secretary thereof, and deposited with the state treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county board on the tenth day of February after the tenth day of August subsequent to the making of such loan and the remaining installments, together with the interest, shall be paid, one each year, on the tenth day of February of each subsequent year till all shall have been paid. (1923, c. 136, s. 274; C. S. 5684.)

§ 115-222. How secured and paid.—At the January meeting of the county board of education, before any installment shall be due on the next tenth day of February, the county board shall set apart out of the school funds an amount sufficient to pay such installments and interest to be due, and shall issue its order upon the treasurer of the county school fund therefor, who, prior to the tenth day of February, shall pay over to the state treasurer the amount then due. And any amount loaned under the provisions of this law shall be a lien upon the total school funds of such county, in whatsoever hands such funds may be; and upon failure to pay any installment or interest, or part of either, when due, the state treasurer may deduct a sufficient amount for the payment of the same out of any fund due any county from any state appropriation for public schools, or he may bring action against the county board of education of such county, any person in whose possession may be any part of the school funds of the county, and the tax collector of such county; and if the amount of school funds then on hand be insufficient to pay in full the sum so due, then the state treasurer shall be entitled to an order directing the tax collector of such county to pay over to the state treasurer all moneys collected for school purposes until such debt and interest shall have been paid: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by the authorities of any county or any district. (1923, c. 136, s. 275; C. S. 5685.)

§ 115-223. Loans by county boards to school districts.—The county board of education, from any sum borrowed under the provisions of this article, may make loans only to districts that have already levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at four per centum, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by the authorities of the district. (1923, c. 136, s. 276; C. S. 5686.)

§ 115-224. Appropriation from loan fund for free plans and inspection of school buildings.—The state board of education may annually set aside and use out of the funds accruing to the interest of said state loan fund a sum not exceeding twelve thousand dollars ($12,000.00), to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of state funds, and for such other purposes as said board may determine, to secure the erection of a better type of school building and better administration of said state loan fund. (1923, c. 136, s. 277; C. S. 5687.)

Art. 29. Relending Certain Funds.

§ 115-225. Payment of loans before maturity;

relending.—For the purpose of providing funds to be loaned to the counties of the state for erecting school buildings and providing facilities for maintaining the school term, the state board of education is authorized to accept payment from any district and/or county for the full amount of loans due the state on loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven before the maturity of such loans.

The state board of education is authorized to relend any payments made by counties to counties for the period that the loans would have run had they not been paid before maturity, and at the same rate of interest.

The state board of education shall follow the laws, rules and regulations set up for making loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven in lending money made available by the payment of loans from the said funds before the maturity date thereof.

In making loans from funds made available from payments on the special building funds before maturity, the state board of education shall be governed by laws and amendments to the constitution enlarging or restricting the borrowing power of counties and/or municipalities. (1937, c. 115, ss. 1-4.)

Art. 30. State Bond Sinking Fund Act.

§ 115-226. Title.—This article shall be known and may be cited as "The State School Bond Sinking Fund Act." (1927, c. 177, s. 1.)

§ 115-227. State treasurer to set aside moneys.—From all moneys heretofore or hereafter received in repayment of the principal of or in payment of interest upon loans from the special building funds created under each of the acts known as chapter 147, Public Laws of 1921, sections 278-284, chapter 136, Public Laws of 1923, and chapter 201, Public Laws of 1925, the State Treasurer shall from time to time set aside moneys sufficient for paying interest upon the bonds of the State issued under the same act, and shall use the moneys so set aside in paying such interest when due. (1927, c. 177, s. 2.)

§ 115-228. Remainder declared sinking fund.—The remainder of such repayments of principal and payments of interest under each of said acts, except repayments of the first four annual installments of principal of the original loans made under said Chapter 201, Public Laws of 1925, is hereby declared to constitute a sinking fund, and shall be kept as a separate fund and used for the payment of the principal of the bonds of the state issued under the same act, as such principal shall fall due. (1927, c. 177, s. 3.)

§ 115-229. Duty of State Sinking Fund Commission.—It shall be the duty of the State Sinking Fund Commission to provide for the custody, investment and application of the three sinking funds hereby created. All the provisions of law now or hereafter in force in respect of the custody, investment and application of State sinking funds by said commission including penalties, shall apply to and govern said commission in the custody, investment and application of the said three funds. (1927, c. 177, s. 4.)

§ 115-230. State Treasurer to have custody of notes and evidences of debt.—The State Treasurer shall have the custody of all notes and other evidences of indebtedness on account of such loans, and it shall be the duty of each and every officer or person now having the custody or disposal of any such notes or evidences of indebtedness to deliver the same to the State Treasurer. (1927, c. 177, s. 5.)

§ 115-231. Obligation of treasurer's bond.—The official bond of the State Treasurer shall cover each and all of his duties under the act. (1927, c. 177, s. 6.)

SUBCHAPTER X. BONDS TO PAY OUTSTANDING INDEBTEDNESS OF SPECIAL CHARTER SCHOOL DISTRICTS.

Art. 31. Issuance and Levy of Tax for Payment.

§ 115-232. Issued under supervision of Local Government Commission. — The governing body of any special charter school district may, with the approval of the Local Government Commission, issue bonds of the district to such an amount as may be required to pay indebtedness, other than bonded indebtedness, of the district heretofore incurred and now outstanding whether represented by the original obligation or by renewals, or otherwise. The issue and sale of such bonds shall be subject to the provisions of the Local Government Act relating to the issue and sale of public securities, §§ 159-1 et seq. (1931, c. 180, s. 1.)

§ 115-233. Special tax to be levied and collected.—The authorities charged by law with the duty of levying and collecting school taxes in each special charter school district that shall have issued bonds hereunder, shall annually levy and collect, in addition to all other taxes, a special tax sufficient to meet the interest and principal of all bonds issued by the said district under the authority hereof. (1931, c. 180, s. 2.)

SUBCHAPTER XI. SCHOOL DISTRICT REFUNDING AND FUNDING BONDS.

Art. 32. Issuance and Levy of Tax for Payment.

§ 115-234. "School district" defined.—As used in this article the term "school district" shall be deemed to include each special school taxing district, local tax district and special charter district by which or on behalf of which bonds have heretofore been issued and are now outstanding. (1935, c. 450, s. 1.)

§ 115-235. Continuance of school districts till bonds paid. — Notwithstanding the provisions of any law heretofore enacted or enacted hereafter at the present regular session of the general assembly which affect the continued existence of school districts or the levy of taxes therein for the payment of bonds, each such school district shall continue in existence with the boundaries heretofore established until all bonds thereof now out-

standing or bonds issued to refund the same, together with the interest thereon, shall be paid. (1935, c. 450, s. 2.)

§ 115-236. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.—The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of §§ 159-59 to 159-62, and the Local Government Act §§ 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1935, c. 450, s. 3.)

§ 115-237. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.—In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

(a) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(b) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, §§ 160-379 and 160-383 of the Municipal Finance Act, as amended, shall be read and understood as if they contained no requirements in respect to such matters.

(c) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1937, c. 126; 1941, c. 148.)

SUBCHAPTER XII. SCHOOL DISTRICT TAXES AND SINKING FUNDS.

Art. 33. Transfer to County Treasurer.

§ 115-238. Taxes collected in school districts where bonds assumed by county directed to county treasurer. — In all cases in which the bonds of special school districts have been or may hereafter be assumed by the county in which such district is located, all taxes levied and collected for the purpose of paying the interest upon said bonds and creating a sinking fund for the retirement of said bonds shall be paid to the county treasurer by the sheriff or tax collector. (1935, c. 242, s. 1.)

§ 115-239. Allocation to district bonds of taxes collected.—If a uniform debt service tax is levied and collected by the county in which school district bonds are now outstanding and have been assumed by the county, all of said tax so levied and collected shall be paid to the county treasurer and the county treasurer shall allocate to each issue of school district bonds its proportionate part of the tax so levied and collected each year. (1935, c. 242, s. 2.)

§ 115-240. All sinking fund moneys and securities likewise directed to county treasurers. — In all cases where school district bonds have been assumed or may hereafter be assumed by the county in which district is located any and all moneys and securities held by the treasurer, trustee or committee of such district or sinking fund commissioner such officer is authorized to transfer any and all moneys and securities belonging to such sinking fund account to the county treasurer of such county and upon the transfer of such funds and securities and a proper accounting therefor such district treasurer, trustee, committee or sinking fund commissioner shall be discharged from further responsibility for the administration of and accounting for such sinking funds. (1935, c. 242, s. 3.)

Local Modification.—Richmond: 1935, c. 242, § 4.

SUBCHAPTER XIII. VOCATIONAL EDUCATION.

Art. 34. Duties, Powers and Responsibilities of State Board of Education.

§ 115-241. Acceptance of benefits of federal vocational education act.—The state of North Carolina hereby accepts all of the provisions and benefits of an act passed by the senate and house of representatives of the United States in Congress assembled, entitled "An act to provide for the promotion of vocational education; to provide for coöperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for coöperation with the states in the preparation of teachers of vocational subjects, and to appropriate money and regulate its expenditure"; approved February twenty-third nineteen hundred and seventeen. (1923, c. 136, s. 285; C. S. 5695.)

§ 115-242: Repealed by Session laws 1943, c. 721.

Editor's Note.—The repealed section created a state board for vocational education consisting of four members. The board was abolished by Session Laws 1943, c. 721, § 1, and its property, powers, functions and duties passed to the state board of education. See § 115-19.1.

Session Laws 1943, c. 721, § 5, which amended this subchapter by striking out the words "state board for vocational education" wherever they appeared and inserting in lieu thereof the words "state board of education," provided: "Any reference in any statute to the state board for vocational education shall be deemed a reference to the state board of education."

§ 115-243. Powers and duties of board.—The state board of education shall have all necessary authority to coöperate with the federal board for vocational education in the administration of the federal vocational educational act, to administer any legislation pursuant thereto enacted by the state of North Carolina, and to administer the funds provided by the federal government and the state of North Carolina for the promotion of vocational education in agricultural subjects, trade and industrial subjects and home economics subjects. It shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education in the state of North Carolina, and to provide for the preparation of teachers in such subjects. Subject to the approval of the Budget Bureau, it shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the state of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the result of such investigations, and to issue other publications as seem necessary to the board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to coöperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for the teachers, directors, and supervisors of such subjects; to coöperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. (1923, c. 136, s. 287; 1943, c. 721, s. 5; C. S. 5697.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-244. State superintendent to enforce article.—The state superintendent of public instruction shall serve as executive officer of the state board of education, and shall designate, by and with the advice and consent of the board, such assistants as may be necessary to properly carry out the provisions of this article. The state superintendent shall also carry into effect such rules and regulations as the board may adopt, and shall prepare such reports concerning the condition of vocational education in the state as the board may require. (1923, c. 136, s. 288; 1943, c. 721, s. 5; C. S. 5698.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-245. State appropriation to equal federal appropriation.—The state of North Carolina appropriates out of the state public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the state of North Carolina from the federal treasury, under the provisions of the Smith-Hughes act and the industrial rehabilitation act. Provided, that only such portion of above state appropriation shall be used as may be absolutely necessary to carry on the work outlined in this article and to meet the federal requirements. (1923, c. 136, s. 289; C. S. 5699.)

§ 115-246. State treasurer authorized to receive and disburse vocational education fund.—The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursement thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the state of North Carolina for the purpose of carrying out the provisions of this article upon the order of the state board of education. (1923, c. 136, s. 290; 1941, c. 277; 1943, c. 721, s. 5; C. S. 5700.)

Editor's Note.—The 1941 amendment inserted the words "or any other Acts of Congress passed subsequent thereto." The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-247. Coöperation of county authorities with state board; funds.—The county board of education, board of county commissioners, or the board of trustees of any city administrative unit may coöperate with the state board of education in the establishment of vocational schools or classes giving instruction in agricultural subjects, or trade or industrial subjects, or in home economics subjects, or all three subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that nothing in this article shall be construed to repeal any appropriations heretofore made by any of said boards for said purposes. (1923, c. 136, s. 291; 1943, c. 721, s. 5; C. S. 5701.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-248. Report to governor.—The state board of education shall make a report annually to the governor, setting forth conditions of vocational education in the state, a list of the schools to which federal and state aid have been given, and a detailed statement of the expenditures of federal funds and state funds provided for in this article. (1923, c. 136, s. 292; 1943, c. 721, s. 5; C. S. 5702.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

Art. 35. Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-249. Acceptance of federal aid.—The state of North Carolina hereby accepts all of the provisions and benefits of an act passed by the senate and house of representatives of the United States in Congress assembled to provide for the promotion of vocational rehabilitation of per-

sons disabled in industry or otherwise, and their return to civil employment, approved June second, one thousand nine hundred twenty. (1923, c. 136, s. 315; C. S. 5725.)

§ 115-250. Coöperation; objects and plans; compensation of officials; expenses; publications.— The state board of education shall have all necessary authority to coöperate with the federal board for vocational education in the administration of the act of congress providing for the vocational rehabilitation of persons injured in industry and otherwise; to administer any legislation pursuant thereto enacted by the state of North Carolina; and to administer the funds provided by the federal government and the state of North Carolina under the provisions of § 115-245. It shall have full authority to formulate plans for the promotion of vocational rehabilitation. Subject to the approval of the budget bureau, the board shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the state of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the result of such investigations and to issue other publications as seem necessary to the board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects. (1923, c. 136, s. 316; 1943, c. 721, s. 5; C. S. 5726.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-251. State appropriation from state public school fund.—The state of North Carolina appropriates out of the state public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the state of North Carolina from the federal treasury under an act of Congress to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment: Provided, that only such portions of the above state appropriation shall be used as may be absolutely necessary to carry on the work outlined in articles thirty-four and thirty-five. (1923, c. 136, s. 317; C. S. 5727.)

§ 115-252. Coöperation with state board of health; reports as to persons under treatment.— The state board of health shall, (a) coöperate with the state board of education in arranging with all public and private hospitals, clinics, dispensaries, health officers, and practicing physicians, to send to the state board of education prompt and complete reports of any persons under treatment in such hospitals, clinics, dispensaries, or by such physicians or health officers, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are or will be unable to support themselves, and (b) coöperate generally with the state board of education in carrying out the provisions of this article. (1923, c. 136, s. 318; 1943, c. 721, s. 5; C. S. 5728.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-253. State appropriation. — The state of North Carolina shall appropriate for each fiscal year a necessary amount of money from the state treasury to the state board of education for the purpose of assisting worthy persons who enter training under the federal vocational rehabilitation act: Provided, (1) that this fund shall be used only to pay for the actual living expenses of deserving persons, as determined by investigation of the board, who have no other means of paying said living expenses; (2) that this fund shall be paid out by the state treasurer on the order of the state board of education; (3) that not to exceed ten dollars per week for not more than twenty weeks, unless an extension of time is granted by the board, be paid for the maintenance of any one person in training; (4) that the said state board of education shall keep an accurate account of all expenditures, showing date, the person to whom paid, for what paid, and the amount of each warrant, and shall make a report of same to the governor on or before the first of January each year. (1923, c. 136, s. 319; 1943, c. 721, s. 5; C. S. 5729.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

Art. 36. Textile Training School.

§ 115-254. Commission to investigate suitable site for textile training institute.—The governor of North Carolina is hereby authorized to appoint a commission composed of seven persons, five of whom shall be experienced textile operators, and two selected at large as to qualifications described by the governor. The said committee shall investigate the various cities of the Piedmont section of North Carolina for the selection of a site to establish what will later be known as "North Carolina Textile Institute", or some appropriate name to be selected by the commission. (1941, c. 360, s. 1.)

§ 115-255. Chairman of commission; operation of institution by state board of education. — The governor of North Carolina shall be chairman of the above named commission, and the operation and administration of said institution shall be placed in the hands of the state board of education or such board as it may appoint or designate as its representative in the administration of said institution. (1941, c. 360, s. 2; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-256. Persons eligible to attend institute; subject taught.—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the state of North Carolina. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1941, c. 360, s. 3.)

§ 115-257. Allocation of funds for erection of buildings; contributions; use of federal funds.— The governor of North Carolina and the council of state may allocate a sum not to exceed fifty thousand ($50,000.00) dollars from the contin-

gency and emergency fund or any other funds available for the purpose of erecting buildings for said institute, and the commission shall be authorized to accept the contributions of land and money from interested persons, and shall be authorized to lease and accept loans from machinery manufacturers for the operation of the plant. Vocational education funds appropriated to the state board of education by the federal government and by the general assembly of North Carolina shall be used for instructional purposes in said institute, according to the rules and regulations governing the expenditure of state funds. (1941, c. 360, s. 4; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state board for vocational education."

§ 115-257.1. Additional allocation of funds.—The Governor of North Carolina, with the approval of the Council of State, may allocate from the Contingency and Emergency Fund a sum not to exceed seventy-five thousand dollars ($75,000.00) for the purpose of completing the project, purchasing the necessary machinery and equipment to put the vocational textile school in operation. (1943, c. 778.)

SUBCHAPTER XIV. TEXTBOOKS AND PUBLIC LIBRARIES.

Art. 37. Textbooks for Elementary Grades.

§ 115-258. State board of education adopts textbooks.—The state board of education is hereby authorized to adopt, for the exclusive use in the public elementary schools of North Carolina, supported wholly or in part out of the public funds, textbooks and publications, including instructional materials, to meet the needs of such schools in each grade and on each subject matter in which instruction is required to be given by law. It shall adopt for a period of five years from a multiple list submitted by the textbook commission, as hereinafter provided, two basal primers for the first grade and two basal readers for each of the first three grades, and one basal book or series of books on all other subjects contained in the outline course of study for the elementary grades where a basal book or books are recommended for use: Provided, the state board of education may adopt not exceeding three basal books on the subject of North Carolina history and, if such multiple adoption is made, the state board of education may by rules and regulations prescribe the manner of use of such books in the public schools of the state: Provided further, the state board of education may enter into contract with a publisher for a period less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1923, c. 136, s. 320; 1933, c. 464, s. 1; 1939, c. 68; C. S. 5730.)

Editor's Note.—Prior to Public Laws of 1933, c. 464, the first sentence of this section read as follows: "The state board of education is hereby authorized to adopt textbooks for use in all elementary public schools of the state, supported wholly or in part out of public funds."

The 1939 amendment inserted the first proviso.

§ 115-259. Books adopted for an indefinite period.—At the expiration of the contract now existing between the state board of education and the publisher for any particular book or books, the state board of education, upon satisfactory agreement with the publisher, may continue the contract for any particular book or books indefinitely; that is, for a period not less than one nor more than five years.

The state board of education may, at any time it finds a book unsatisfactory, call for a new report from the textbook commission on the subject adopted for an indefinite length of time. Moreover, the textbook commission at any time, with the approval of the state superintendent of public instruction, may recommend to the state board of education that a given book adopted indefinitely is unsatisfactory or may be greatly improved by the adoption of a new book or books.

In the event that a change of textbooks contracted for for an indefinite length of time is deemed necessary by the state board of education or by the textbook commission, the publisher shall be given at least three months notice prior to the first day of May, and at the expiration of which time the state board of education is authorized to adopt from a list submitted by the textbook commission a new book or books on said subject. Moreover, the publisher of any textbook desiring to end a contract that has been extended indefinitely shall give the state board of education at least three months notice prior to the first day of May. In either event, when it becomes necessary to substitute a new book for an old one on the adopted list, the state board of education shall call for new recommendations from the textbook commission on that book, and proceed as in the first instance. (1923, c. 136, s. 321; C. S. 5731.)

§ 115-260. Classification of textbooks. — The textbooks in use in the public schools are hereby divided into two classes: (1) major subjects, which include readers, arithmetics, language and grammar, history and geography; and (2) all other books on all other subjects shall be considered as minor subjects. (1923, c. 136, s. 322; C. S. 5732.)

§ 115-261. Basal and supplementary books.—All textbooks to be adopted by the state board of education shall be basal books or supplementary books necessary to complete the course of study. (1923, c. 136, s. 322; 1933, c. 464, s. 2; C. S. 5733.)

Editor's Note.—Prior to the Amendment of 1933, the section read: "All subjects on which text-books are to be adopted by the state board of education shall be the basal books, and all other books necessary to complete the course of study shall be supplementary books."

§ 115-262. Basal books not to be displaced by supplementary.—The state board of education is hereby authorized to select and adopt all supplementary books and instructional material necessary to complete the course of study for all schools. Such supplementary books shall neither displace nor be used to the exclusion of basal books. (1923, c. 136, s. 324; 1933, c. 464, s. 3; C. S. 5734.)

Editor's Note.—Prior to Public Laws of 1933, c. 464, county boards of education selected the supplementary books.

§ 115-263. The textbook commission.—The governor and the superintendent of public instruction shall appoint on April first, one thousand nine hundred and forty-three and annually thereafter a textbook commission composed of seven members to be selected from among the teachers, supervisors, principals, and superintendents actually engaged in school work in the state, to serve for one year or until their successors are appointed and

qualified, and the governor and superintendent of public instruction shall have authority to fill any vacancy that may occur in the textbook commission, or to remove for sufficient cause any member of the commission. The members of the commission shall be subject to the call of the state board of education at any time during their term of service. (1923, c. 136, s. 325; 1943, c. 627, s. 1; C. S. 5735.)

Editor's Note.—The 1943 amendment inserted the date, substituted "one year" for "five years" and added the second sentence.

§ 115-264. Organization of commission.—Immediately after the appointment of the textbook commission the superintendent of public instruction shall cause said textbook commission to meet in his office and organize by electing a chairman and secretary, and shall adopt such rules and regulations to govern their work as may be deemed necessary, subject to the approval of the state superintendent of public instruction. The work of the textbook commission shall then be apportioned among the members, and the rules and regulations governing its work shall be published in the daily papers, and a copy shall be sent to all publishers that may submit bids and samples of books for adoption.

The several members of the textbook commission may work independently, seeking information from every legitimate source, but if the members of the textbook commission receive information from representatives of book companies they shall keep a record of each such visit and the purpose of the visit. (1923, c. 136, s. 326; C. S. 5736.)

§ 115-265. Compensation of commission.—Each member of the textbook commission shall be paid five dollars ($5.00) a day for actual attendance upon meetings of the commission and actual expenses incurred by such attendance. (1923, c. 136, s. 327; 1927, c. 249; 1943, c. 627, s. 2; C. S. 5737.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 115-266. Duties of commission.—The textbook commission shall first prepare, subject to the approval of the superintendent of public instruction, and publish at the expense of the state, an outline course of study setting forth what subjects shall be taught in each of the elementary grades. It shall give in outline the number of basal and supplementary books on each subject to be used in each grade in accordance with the law.

After the outline course of study has been prepared and published, the textbook commission shall then prepare a multiple list of basal books to be submitted to the state board of education. The multiple list shall contain not less than four nor more than eight books or series of books on all subjects for each grade. No book shall be included in the multiple list that a majority of the textbook commission deems unsuitable, or that does not conform to the outline course of study.

The textbook commission shall report whether any of the major subjects containing a series of books may be divided, taking one part from one series and another part from another series of books on the same subject, and the commission's report in this respect shall be binding on the state board of education. (1923, c. 136, s. 328; 1933, c. 464, s. 4; C. S. 5738.)

§ 115-267. State board of education makes all contracts.—(a) The state board of education shall make all needful rules and regulations governing the advertisement for bids, when and how prices shall be submitted, when and how sample books for adoption shall be submitted, the nature of the contract to be entered into between the state board of education and the publishers, the nature and kind of bond, if any is necessary, and all other needful rules and regulations governing the adoption of books for all public schools not otherwise specified in this article. After a contract has been entered into between the state board of education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, etc., the attorney-general shall bring suit against said company, when requested by the state board of education, for such amount as may be sufficient to enforce the contract or to compensate the state because of the loss sustained by a failure to keep this contract. (b) It shall be unlawful for any local distributing agency distributing State-adopted textbooks to charge, or to make any deduction from, the purchase price of such textbooks when returned by the purchaser without having been subjected to use or damage. Any person violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction fined not less than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 329; 1925, c. 69; 1933, c. 464, s. 5; C. S. 5739.)

Editor's Note.—Prior to Public Laws 1933, c. 464, this section applied to rules and regulations for elementary schools only. It now applies to all public schools.

§ 115-268. Not more than one major subject to be changed in any one year.—Not more than one major and two minor subjects shall be changed in any one year: Provided, satisfactory arrangements as to prices and distribution may be made. (1923, c. 136, s. 330; C. S. 5740.)

§ 115-269. Publishers to register all agents or employees.—Publishers submitting books for adoption shall register in the office of the state superintendent of public instruction all agents or other employees of any kind authorized to represent said company in the state, and this registration list shall be open to the public for inspection. (1923, c. 136, s. 331; C. S. 5741.)

§ 115-270. Acquisition of manuscripts for textbooks permitted; publication thereof by state board of education.—The said board of education is hereby authorized and empowered in its discretion to purchase and/or acquire a manuscript or manuscripts for school textbooks or supplementary books used or to be used in any or all grades of the public schools of North Carolina and to procure the printing and publishing of such books under contract through competitive bids or otherwise as it may in its discretion determine to be for the best interest of the public schools of the state; and if said board of education finds that by the acquisition of any such manuscript or manuscripts, and that by the making of any such contract for any such school books, either basal or supplementary, such books can be furnished to the public schools of the state at a price less than the same may be acquired

from publishers, then it shall be the duty of said board of education to acquire such manuscripts and cause the same to be published and said books to be distributed in accordance with such rules and regulations and under such terms and conditions as it may deem advisable, having due regard to the standard of the school books so published, after taking into consideration the substance of such books and their adaptability for use in the schools of the state. (1933, c. 464, s. 6.)

§ 115-271. Contracts for distribution of textbooks through depositories or a state agency. — The state board of education is authorized and empowered to make and enter into all such contracts as may be necessary to provide for the proper distribution of textbooks either through a depository or depositories, or through the state division of purchase and contract or other state agency, utilizing county boards of education or city boards of trustees, if found feasible, for local distribution, as to it may seem advisable; and is further authorized and empowered to make all needed rules, regulations, and contracts governing the disposition, sale, and return of school books as are not disposed of to the patrons of the schools, and to determine the nature of the contract or contracts to be entered into between the state board of education and the publisher or publishers, for the distribution of school textbooks adopted by it or in use in any of the public schools of the state. It may also determine the nature and kind of bond, if necessary, to be given by any depository or other agency carrying out the terms of this article, to the end that school textbooks shall be delivered to the patrons of the schools at the lowest possible net cost. (1933, c. 464, s. 7.)

Art. 38. Textbooks for High Schools.

§ 115-272. State Board of Education may adopt textbooks.—The State Board of Education is hereby authorized to adopt textbooks for the use in all public high schools of the State, supported in whole or in part out of public funds, and the high school textbooks adopted by the State Board of Education in accordance with the provisions of this article shall be used by all the public high schools of the State. (1931, c. 359, s. 1.)

§ 115-273. State committee on high school textbooks.—The governor and state superintendent of public instruction, at the expiration of the terms of office of the members of the state committee on high school textbooks, and annually thereafter, shall appoint a state committee on high school textbooks, consisting of five members, five of whom are actively engaged in school work, who shall serve for a term of one year. Members of the committee shall be paid five dollars ($5.00) a day for actual attendance upon meetings of the committee called by or under the direction of the superintendent of public instruction, and actual expenses incurred by such attendance. (1931, c. 359, s. 2; 1943, c. 627, s. 4.)

Editor's Note.—Prior to the 1943 amendment members of the committee served without compensation and the term of office was five years.

§ 115-274. Grouping of high school instruction; examination of books; submission of multiple list and annual reports. — It shall be the duty of the State Committee on high school textbooks to list all the high school fields of instruction in five separate groups as nearly equal as possible in the cost of textbooks. The Committee on high school textbooks shall further arrange these groups in the order in which they will be considered, and notify the State Board of Education in its first report of this arrangement. During the first year of its term of office, it shall be the further duty of the State Committee on high school textbooks to make a thorough examination of any and all books submitted by any publisher in the first group of fields of instruction as arranged by said State Committee on high school textbooks, with a view of determining whether the contents, quality and price of said books are such as to make them suitable and desirable for use in the public high schools of the State, and submit, not later than the first day of January, one thousand nine hundred and thirty-four, a multiple list not exceeding three books in each field of instruction in the first group. Not later than January first in each succeeding year, the State Committee on high school textbooks shall make a similar report on the fields of instruction in the order fixed by it, unless it receives a notice from the State Board of Education prior to May first in said year that such report is not desired. (1931, c. 359, s. 3.)

§ 115-275. Selection of one book per subject by State Board of Education; indefinite contract with publishers; annual report by publishers. — It shall be the duty of the State Board of Education to select one book in each field of instruction from the multiple list submitted by the State Committee on high school textbooks for exclusive use in the public high schools of the State for a period not less than five years. In case the State Board of Education finds it impossible to make a satisfactory contract for any one of the books on the multiple list, then it shall notify the State Committee on high school textbooks that it cannot make a satisfactory contract for any book on the multiple list in that field of instruction. The State Committee on high school textbooks shall then submit another multiple list in that field of instruction from which the State Board of Education shall make an adoption. It shall be the further duty of the State Board of Education to make an indefinite contract with all the publishers having books in groups two, three, four and five for a period not less than one year nor more than five years, and these books shall continue in use until the State Board of Education, in accordance with the provisions of this article, shall adopt a book for State-wide use in any given field of instruction: Provided, that the contract shall require each publisher to report annually to the State Board of Education the total sales of each book in the State of North Carolina. (1931, c. 359, s. 4.)

§ 115-276. Attorney General to bring suit on publishers' contracts in event of failure to execute. —After a contract has been entered into between the State Board of Education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, an adequate supply of the edition of books as adopted, etc., the

Attorney General shall bring suit against said company when requested by the State Board of Education, for such an amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by failure to keep this contract. (1931, c. 359, s. 5.)

§ 115-277. Sale of books at lower price elsewhere reduces price to State.—If the publishers of any high school textbook on the adopted list in this State shall contract with another state, or with any county, city or town or other municipality, or shall place its books on sale anywhere in the United States, for or at a less price than that in its contract with the State of North Carolina, it shall be, and is hereby, made a part of the contract of that company to furnish that book to the high schools of this State at a price not to exceed that for which the book is furnished, sold, or placed on sale in any other state, or in any such other county, city, town or other municipality. (1931, c. 359, s. 6.)

§ 115-278. Adoption made exclusive.—The textbooks for high school instruction adopted under the provisions of this article shall be for the exclusive use of the high schools of this State when so adopted and placed upon the approved list in the manner as set out in this article. (1931, c. 359, s. 7.)

Art. 39. Furnishing Textbooks.

§ 115-279. Free textbooks.—Any county board of education, the committee of any local tax district, or the board of trustees of any city administrative unit in the state is authorized to purchase books for the use of pupils in said county or district to be loaned to said pupils, without charge for the same, under such needful rules and regulations governing the loan of said textbooks as the said board may prescribe.

If instruction is given in the manual and domestic arts, the county board of education, the committee or board of trustees may, in its discretion, purchase and lend the necessary implements and materials to the pupils. And it shall also in a similar manner procure such apparatus, reference books, and other means of illustration as may be needed in the school.

1. The board of county commissioners, in addition to levying taxes for the current expense fund, the capital outlay fund, and the debt service fund, is hereby authorized to levy an additional tax to be known as the "tax for supplying free textbooks," which shall be sufficient to pay the cost of purchasing and loaning textbooks after an estimate has been submitted and approved by the commissioners. Any committee of a local tax district, or any board of trustees of a city administrative unit in a county not supplying free textbooks, is hereby authorized to use any part of the local tax funds, not otherwise appropriated in the district, to carry out the provisions of this section.

2. In the event that the county board of education, or the board of county commissioners, or both, shall fail to provide in the budget a sum sufficient to supply free textbooks in accordance with this section, or in the event that the sum derived from the local taxes in any local tax district is insufficient to provide free textbooks in such district or unit after other necessary expenses are met, the question of supplying free textbooks may be submitted to the qualified voters in the following manner:

Whenever the written petition of one-fourth of the qualified voters of a county, or of a local tax district or city administrative unit, setting forth the tax rate to be levied and calling for an election to be held upon the question of levying an additional special annual tax with which to purchase and supply free textbooks, is presented to the governing board, said board shall present the petition to the tax leving authority of said county, district or unit, which body shall order an election and conduct the same as near as may be under the rules governing the election for local taxes. If a majority of the qualified voters in said county, district or unit, shall cast their ballots "for free textbooks," the tax shall be levied and collected as all other county or local taxes for schools are levied and collected. It shall be the duty of the governing body of the school to purchase books for the use of the pupils in said county, district or unit, and loan the same to pupils without charge in accordance with this section. (1923, c. 136, s. 340; C. S. 5750.)

§ 115-280. Rental of textbooks.—The county board of education or the board of trustees of any local tax district or city administrative unit is hereby authorized to rent such books to the children of any school district at a rental price not to exceed that set by the state board of education; and wherever books are rented that have not been contracted for by the state, the rental price shall not exceed that set by the state board of education. (1923, c. 136, s. 341; 1943, c. 721, s. 9; C. S. 5751.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state commission." The amendatory act provided that wherever reference is made in any statute relating to any such commissions as "state commission," "state textbook commission" and "state textbook purchase and rental commission," with reference to state textbooks, the reference shall be deemed to be to the state board of education.

§ 115-281. County and local boards to make rules; to use incidental expense fund.—The county board of education or the board of trustees of any local tax district or city administrative unit is hereby authorized to make all needful rules and regulations governing the rental of public school textbooks, and to apply any funds of the current expense fund remaining to the credit of the county or the city administrative unit to the purposes of this article: Provided, that before any amount is appropriated from this fund for these purposes, provisions shall be made for all needful expenses of said schools. (1923, c. 136, s. 342; C. S. 5752.)

§ 115-282. Books for indigent children.—County boards of education or the board of trustees of any local district or city administrative unit may set aside an amount not to exceed one hundred dollars ($100.00) from the incidental expense fund to be used in purchasing public school textbooks, to be used in the manner designated, namely, that when it shall appear that the education of any child is limited because of the inability of said child to purchase necessary textbooks or to pay the rental price, said board or boards may loan free of cost all necessary books to any such child during the term of the school, subject to rules and regulations by the county board of education or the board of

trustees of any local tax district or city administrative unit, and approved by the state superintendent of public instruction. (1923, c. 136, s. 343; C. S. 5753.)

§ 115-283. State superintendent to inform local school authorities.—The state superintendent of public instruction is hereby requested to inform all superintendents of schools of the provisions of this article. (1923, c. 136, s. 344; C. S. 5754.)

§ 115-284. Local units authorized to establish capital fund for renting of textbooks.—The board of county commissioners in any county, upon the request of the county board of education therein, or of the board of trustees, of any city administrative unit therein, is hereby authorized and empowered to establish a capital fund in such county under the terms of and in accordance with the provisions of §§ 115-284 to 115-291, which fund shall be used by the county board of education, or by the board of trustees of any city administrative unit making such request for the operation of a system of textbook rentals to the patrons of the public schools of the county or city administrative unit, for which such capital fund may be established: Provided, however, that before any such request shall be presented to the board of county commissioners, the county board of education, or the board of trustees of any city administrative unit presenting the same shall obtain the approval of the state board of education as hereinafter provided. It shall be the duty of the state board of education to prepare rules and regulations governing the establishment of rental depositories in accordance with the provisions of §§ 115-284 to 115-291. It shall be the duty of the State Superintendent of Public Instruction to acquaint the public school officials with the rules and regulations of the state board of education and to present to said board for its approval or rejection all applications for such permission. (1931, c. 210, s. 1; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-285. Computation of amount of fund.—The necessary amount of such capital fund shall be determined by the board of county commissioners upon the basis of a comprehensive budget estimate prepared by the county board of education, or the board of trustees of any city administrative unit making such request, not exceeding, however, the extent and amount thereof approved by the state board of education. (1931, c. 210, s. 2; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-286. Budget estimate to be made up; repayments to fund out of rental fees.—Before the board of commissioners of any county shall establish such capital fund it shall be the duty of the county board of education, or the board of trustees of any city administrative unit making request therefor to prepare a budget estimate covering a definite and specified period showing the estimated income from rentals for each year, the estimated cost of textbooks and supplies for each year and a balanced budget at the end of a specified and definite period. Such budget shall be prepared in accordance with rules and regulations to be adopted and promulgated by the state board of education. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit requesting and securing the establishment of any such capital fund for its benefit to make provision for the payment out of rental fees of the principal fund of the capital fund and the interest arising thereon in the manner and within the term provided for in the certificate of approval granted by the state board of education, and it shall be the duty of the state board of education in granting the approval to any such request to specify in its order granting said approval the time within which said repayments shall be made and the amount of such repayment to be made during each year of such time. (1931, c. 210, s. 3; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-287. Details of administration of fund; record of receipts and disbursements; annual audit.—Any capital fund established under the provisions of §§ 115-284 to 115-291 shall be placed to the credit of the county board of education, or the board of trustees of any city administrative unit making request therefor, which board shall administer the fund under such rules and regulations as the said board may prescribe, with the approval of the state board of education, not in conflict, however, with the provisions of §§ 115-284 to 115-291. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit for whose benefit such capital fund is established, to keep accurate record of receipts and disbursements made from this fund and to cause such records and the accounts thereof to be audited in July of each and every year and a copy of said audit shall be kept as a part of the permanent records of the office of said state board of education and one copy thereof shall be filed with the board of county commissioners of the county, one copy with the State Superintendent of Public Instruction and one copy with the state board of education. It shall be unlawful for the county board of education, or the board of trustees of any city administrative unit to use any part of the funds so provided for any purpose, even temporarily, other than the purposes for which said fund is established and in accordance with the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 4; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-288. Purchase of books, etc., with fund; schedules of rentals; patrons may purchase at cost.—The county board of education, or board of trustees of any city administrative unit for whose use and benefit such capital fund has been established is hereby authorized to purchase textbooks and instructional supplies and pay for same out of the said capital fund, together with such rental fees as said board may determine upon and to rent such textbooks and instructional supplies and to rent or furnish said textbooks and instructional supplies to the patrons of the public schools of such county, or such city administrative unit: Provided, that the rental fees charged therefor shall be in accordance with schedules submitted

to and approved by the state board of education: Provided, further, that any patron of the public schools may purchase textbooks at net cost from any rental depository. (1931, c. 210, s. 5; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-289. Handling of fund by fiscal agent; warrants on fund. — Such capital fund so established shall be deposited with the fiscal agent of the county to the credit of the county board of education, or board of trustees of any city administrative unit for which said fund is established and shall be paid out upon a warrant signed by the chairman and secretary of such board and approved by such officer as the County Fiscal Control Act may require: Provided, that such officer required to approve the same by the County Fiscal Control Act shall receive no additional compensation for such services. (1931, c. 210, s. 6.)

§ 115-290. Units and counties excepted.—Sections 115-284 to 115-291 shall not apply to any county, or territory formerly known as a special charter district which has heretofore established a fund for the purchase and rental of textbooks to patrons of the public schools of such county, or territory formerly known as a special charter district: Provided, however, that the county board of education, or the board of trustees of any city administrative unit may, with the approval of the majority of any such board, bring themselves under the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 7.)

Local Modification.—Caswell, Richmond: 1931, c. 210, s. 7.

§ 115-291. Fumigation and disinfection of books. —The State Superintendent of Public Instruction, in conjunction with the State Board of Health, shall adopt rules and regulations governing the use and fumigation and/or disposal of textbooks from quarantined homes and for the regular disinfection of all textbooks used in the public schools of the State: Provided, that said rules shall be attached to any rules and regulations that the state board of education may promulgate. (1931, c. 210, s. 8; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

Art. 40. State Board of Education.

§ 115-292: Repealed by Session Laws 1943, c. 721, s. 9.

§ 115-293. Powers and duties of board. — The state board of education is hereby authorized and directed to administer funds and to establish rules and regulations necessary to:

(1) Acquire by contract and/or purchase such textbooks and instructional supplies that are or may be on the adopted list of the state of North Carolina as the board may find necessary to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks and supplies to the children in the public schools of the state, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the state.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades of the elementary public schools of North Carolina as may be determined by the state board of education. Title to said books shall be vested in the state. For the purposes of this article, the elementary grades shall be considered the grades from one to seven, inclusive. The basal elementary textbooks in the hands of the state board of education, when this measure is put in effect, shall become a part of the stock of books needed to carry out the provisions of this article. Provided, the state board of education may furnish basal elementary textbooks on a rental basis in any or all elementary grades if it is deemed necessary.

(4) Provide books for high school children in the public high schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks. Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the board finds it advisable to take such action.

(5) Provide supplementary readers for the elementary children in the public elementary schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks.

(6) Provide and distribute all blanks, forms, and reports necessary to keep a careful records of all the books, including their use, state of repair and such other information as the board may require.

(7) Buy, sell, or rent library books to be placed in the public schools of this state from a list to be selected by the state superintendent of public instruction, with the approval of the state board of education, and to be placed in such schools as may be designated by the state board of education: Provided, that such library books shall be purchased in accordance with rules and regulations duly promulgated by the state board of education.

(8) Provide for the use of said textbooks without charge to the indigent children of the state.

(9) Cause an annual audit to be made of the affairs of the said board and a certified copy of same to be furnished the governor and council of state.

Nothing in this section shall be construed to prevent the purchase of textbooks needed for any child in the public schools of the state from said board by any parent, guardian, or person in loco parentis.

Whenever any county or city administrative unit has paid over to the state board of education, in rentals, a sum equal to the price fixed by said board for the sale of rental textbooks, said county or city administrative unit may, at its option, with the approval of the board, withdraw from the textbook rental system set up under rules and regulations adopted by the board, and upon such withdrawal, shall become the absolute owner of all such textbooks for which the purchase price has been paid in full to the said board. (1935, c. 422, s. 2; 1937, c. 169, s. 2; 1939, c. 90; 1941, c. 301; 1943, c. 721, s. 9.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state textbook commission" and "state textbook purchase and rental commission."

§ 115-294. Books not interchangeable between white and colored schools.—Books shall not be interchangeable between the white and colored

schools, but shall continued to be used by the race first using them. (1935, c. 422, s. 2.)

§ 115-295. Purchases through division of purchase and contract. — The purchase of all textbooks and supplies under the provisions of this article adopted as now provided by law shall be made through the division of purchase and contract. (1935, c. 422, s. 3.)

§ 115-296. Rentals paid to state treasury; disinfecting books.—All sums of money collected as rentals under the provisions of this article shall be paid monthly as collected into the state treasury, to be entered as a separate item known as the "state textbook rental fund." Disbursement of said funds shall only be had by order of the council of State: Provided, that the state board of education in conjunction with the state board of health shall adopt rules and regulations governing the use and fumigation for the regular disinfection of all textbooks used in the public schools of the State.

The governor, with the approval of the council of state, may, upon request and certification of the state board of education that surplus funds in the state textbook rental fund herein provided for are not needed for the purchase of rental textbooks, transfer so much of said surplus to the general fund of the State to be used for the purchase of free textbooks as, in their judgment, may be necessary for the operation of the free textbook system now provided by law. (1935, c. 422, s. 4; 1937, c. 169, s. 1; 1943, cc. 391, 721, s. 9.)

Editor's Note.—The first 1943 amendment added the second paragraph, and the second 1943 amendment substituted "state board of education" for "state textbook commission" in the first paragraph.

§ 115-297. Local rental systems unaffected; rental fees limited; purchases from state board of education allowed.—Any county or city board of education now operating a textbook rental system shall be permitted to continue such local rental system without interference from the state board of education: Provided, that the rental fees charged by such local rental authority shall not exceed the rental charges set by the state board of education: Provided, further, that such local textbook rental authority may purchase from the state board of education textbooks for its local use. (1935, c. 422, s. 5; 1943, c. 721, s. 9.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state commission."

§ 115-298. Legal custodians of books furnished by state.—The county board of education in each county administrative unit and the school governing board in each city administrative unit shall be designated the legal custodians of all books furnished by the state, either for free use or on a rental basis. It shall be the duty of the said boards to provide adequate and safe storage facilities for the proper care of said books. (1937, c. 169, s. 3.)

§ 115-299. Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.—It shall be the duty of the superintendent of each administrative unit as ex officio agent of the commission to administer the provisions of this article and the rules and regulations of the state board of education, in so far as said article and said rules and regulations may apply to said unit. He shall also have authority to require the co-operation of principals and teachers to the end that the children may receive the highest possible service, and that all books and moneys may be properly accounted for. In the event any teacher or principal shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary checks of said principal or teacher until the duties imposed hereby have been performed.

In the event any superintendent shall fail to comply with the provisions of this section it shall be the duty of the state board of education and the state superintendent of public instruction to withhold salary checks of said superintendent and the state treasurer shall not pay same until the duties imposed hereby have been performed, and it shall be the duty of the secretary of the state board of education to notify the state board of education, the state superintendent of public instruction, and the state treasurer in the event any superintendent shall fail to comply with the provisions of this section, and no payments shall be made until notice has been received from the secretary of the state board of education that the provisions of this section have been complied with. (1937, c. 169, s. 4; 1941, c. 190; 1943, c. 721, ss. 8, 9.)

Editor's Note.—The 1941 amendment added the last sentence of this section.

The 1943 amendment substituted "state board of education" for "state textbook commission" and "state school commission."

Art. 41. Public Libraries.

§ 115-300. Rules and regulations governing their establishment.—The state board of education is hereby authorized to adopt such rules and regulations governing the establishment of public libraries receiving state aid as will best serve the educational interest of the people. It shall have authority to use all of the state appropriation for rural libraries, to encourage the establishment of county circulating libraries, or to coöperate with the state library commission in providing circulating libraries for schools. (1923, c. 136, s. 345; C. S. 5755.)

§ 115-301. Aid in establishing local libraries.—The state board of education may use such portion of the state appropriation to rural libraries as it may deem necessary to aid the public schools in establishing local libraries as provided herein.

When the patrons and friends of any union school in which a standard high school is or is to be maintained shall raise by private subscription and tender to the treasurer of the county school fund for the establishment of a library to be connected with the school the sum of fifty dollars, the county board of education shall appropriate from the current expense fund the sum of fifty dollars for this purpose.

As soon as the county board shall have made an appropriation for a library in the manner prescribed, the county superintendent shall inform the secretary of the state board of education of the fact, whereupon the state board, if the funds on hand are sufficient, shall remit to the treasurer of the county school fund the sum of fifty dollars additional for the purchase of books. (1923, c. 136, s. 346; C. S. 5756.)

SUBCHAPTER XV. COMPULSORY ATTENDANCE IN SCHOOLS.

Art. 42. General Compulsory Attendance Law.

§ 115-302. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in the state having charge or control of a child between the ages of seven and fourteen years shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse the child temporarily from attendance on account of sickness or distance of residence from the school, or other unavoidable cause which does not constitute truancy as defined by the state board of education. The term "school" as used in this section is defined to embrace all public schools and such private schools as have tutors or teachers and curricula that are approved by the county superintendent of public instruction or the State Board of Education.

All private schools receiving and instructing children of compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children as are required of public schools; and attendance upon such schools, if the school or tutor refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district, town or city which the child shall be entitled to attend: Provided, instruction in a private school or by private tutor shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1923, c. 136, s. 347; 1925, c. 226, s. 1; C. S. 5757.)

Editor's Note.—The last sentence of the first paragraph and all of the last paragraph of this section was added by the amendment, Public Laws 1925.

In 3 N. C. Law Rev. 149, in discussing this amendment, it is said: "Ch. 226 is a step in making more effective the compulsory school attendance law by regulating the attendance of children of compulsory school age in private schools. The statute requires that private schools keep such records of attendance and render such reports as are required of public schools. If this is not done, attendance at a private school shall not be accepted in lieu of attendance upon a public school, and teachers and principals of private schools who violate this statute may be punished as for a misdemeanor. Authorized private schools must have courses of instruction which run concurrently with the term of the public school."

Failure to Charge as to Other Than District School.—For a conviction under the provision of this section it is necessary for the indictment to allege, and the State offer evidence tending to show not only that the parent or guardian of the children within the described age had failed or refused to send them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time which the public school in the district in which they reside shall be in session. State v. Johnson, 188 N. C. 591, 125 S. E. 183.

Same—Burden Not on Parent.—Where the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to another than the district school, etc., under the provisions of this section and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury placing the burden upon the defendant to so show, is reversible error. State v. Johnson, 188 N. C. 591, 125 S. E. 183.

Validity of Expenditure for School Houses Emphasized.—See Lacy v. Fidelity Bank, 183 N. C. 373, 11 S. E. 612.

Applied in Hayes v. Benton, 193 N. C. 379, 384, 137 S. E. 169.

§ 115-303. State board of education to make rules and regulations; method of enforcement.—It shall be the duty of the state board of education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the state. It shall be the duty of all school officials to carry out such instructions from the state board of education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that § 115-302 shall not be in force in any city or county that has a higher compulsory attendance law now in force than that provided herein; but in any such case it shall be the duty of the state board of education to investigate the same and decide that any such law now in force has a higher compulsory attendance feature than that provided by this article.

Mental incapacity shall be an excuse for nonattendance, and is interpreted to mean feeblemindedness or such nervous disorder as to make it either impossible for such child to profit by instruction given in the school or impracticable for the teacher properly to instruct the normal pupils of the school. In the case of feeble-minded children the teacher shall designate the same in her reports to the County Superintendent of Public Welfare, and it shall be his duty to report all such cases to the State Board of Charities and Public Welfare. Whereupon said Board shall make, or cause to be made, an examination to ascertain the mental incapacity of said child and report the same to the county or city superintendent involved. Upon receipt of said report the local school authorities are hereby authorized, under such limitations and rules as the State Board of Education may adopt, to exclude said child from the public school when it is ascertained that the child can not benefit by said instruction and his presence becomes a source of disturbance to the rest of the children. In all such cases in which a child is excluded from school a complete record of the whole transaction shall be filed in the office of the county or city superintendent and kept as a public record. (1923, c. 136, s. 348; 1931, c. 453; C. S. 5758.)

Editor's Note.—The Act of 1931 added the second paragraph to this section.

Private Schools.—An indictment under the provisions of this section, charging a parent with unlawfully and wilfully failing to cause his children, between the ages of 8 and 14 years, to attend the public schools of the district of his and the children's residence, as required by the statute, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be had under the charge set out in the indictment. State v. Lewis, 194 N. C. 620, 140 S. E. 434.

§ 115-304. Attendance officers; reports; prosecutions.—The state superintendent of public instruction shall prepare such rules and procedure and furnish such blanks for teachers and other

school officials as may be necessary for reporting each case of truancy or lack of attendance to the chief attendance officer referred to in this article. Such rules shall provide, among other things, for a notification in writing to the person responsible for the nonattendance of any child, that the case is to be reported to the chief attendance officer of the county unless the law is immediately complied with. The county board of education in a county administrative unit and the board of trustees in a city administrative unit may employ special attendance officers to be paid from funds derived from fines, forfeitures and penalties, or other local funds, and said officers shall have full authority to prosecute for violations of this article: Provided that in any unit where a special attendance officer is employed, the duties of chief attendance officer or truant officer as provided by law shall, in so far as they relate to such unit, be transferred from the county superintendent of public welfare to the special attendance officer of said unit. (1923, c. 136, s. 349; 1939, c. 270; C. S. 5759.)

Editor's Note.—The 1939 amendment changed the latter half of this section.

§ 115-305. Violation of law; penalty.—Any parent, guardian, or other person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be liable to a fine not less than five dollars nor more than twenty-five dollars, and upon failure or refusal to pay such fine, the said parent, guardian or other person shall be imprisoned not exceeding thirty days in the county jail. (1923, c. 136, s. 350; C. S. 5760.)

§ 115-306. Investigation and prosecution by county superintendent or attendance officer.—The county superintendent of public welfare or chief school attendance officer or truant officer provided for by law shall investigate and prosecute all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the chief attendance officer shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1923, c. 136, s. 351; 1925, c. 226, s. 2; C. S. 5761.)

Editor's Note.—The last sentence to this section was added by Public Laws 1925.

§ 115-307. Investigation as to indigency of child.—If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and fourteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance officer shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making a bona fide effort to comply with the compulsory attendance act, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the county board of education of the county or, in city administrative units, to the board of trustees in which the case may arise. (1923, c. 136, s. 352; C. S. 5762.)

§ 115-308. Aid to indigent child.—The county board of education shall in its discretion order aid to be given the family from the current expense fund of the county school budget to an extent not to exceed ten dollars per month for such child during the continuance of the compulsory term; and shall at the same time require said officer to see that the money is used for the purpose for which it is appropriated and to report from time to time whether it shall be continued or withdrawn. And the county board of education is hereby authorized in making out the county budget to provide a sum to meet the provisions of this article. (1923, c. 136, s. 353; C. S. 5763.)

Art. 43. Compulsory Attendance of Deaf and Blind Children.

§ 115-309. Deaf and blind children to attend school; age limits; minimum attendance.—Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a state school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of seven and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of seven and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as is herein provided: Provided, that the board of directors of any school for the deaf or blind may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a deaf or blind child shall reach the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall continue in said school until it reaches the age of twenty-one, unless it becomes self-supporting sooner. (1923, c. 136, s. 354; C. S. 5764.)

§ 115-310. Parents, etc., failing to send deaf child to school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any deaf children between the ages of seven and eighteen years failing to send such deaf child or children to some school for instruction, as provided in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, (1) that parents, guardians, or custodians may elect two years between the ages of seven and eighteen years that a deaf child or children may remain out of school, and (2) that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and

their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1923, c. 136, s. 355; C. S. 5765.)

§ 115-311. Parents, etc., failing to send blind child to school, guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any blind child or children between the ages of seven and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians, directing that such child be sent to the school whereof they have charge; and (2) that the authorities of the state school for the blind and the deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1923, c. 136, s. 356; C. S. 5766.)

§ 115-312. County superintendent to report defective children.—It shall be the duty of the county superintendent to report through proper legal channels, the names and addresses of parents, guardians, or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each, and upon the failure of the county superintendent to make such reports, he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 357; C. S. 5767.)

SUBCHAPTER XVI. RURAL RECREATION.

Art. 44. School Extension Work.

§ 115-313. Moving pictures for rural communities; cost. — It shall be the duty of the state superintendent of public instruction to provide for a series of rural entertainments, varying in number and cost and consisting of moving pictures selected for their entertaining and educational value, which entertainments may be given in the rural schoolhouses of the state as herein provided. The cost of such entertainment shall be borne one-third by the state and two-thirds by the county board of education or the rural school community desiring said entertainment. (1917, c. 186, ss. 1, 2; C. S. 5776.)

§ 115-314. State superintendent to supply information and provide for entertainments; community deposit.—It shall be the duty of the state superintendent of public instruction to inform the various county boards of education of the number, character, and cost of the entertainments provided by him under the provisions of this article; and upon application of any county board of education, agreeing to pay two-thirds of the cost of any such entertainments, it shall be the duty of the state superintendent of public instruction to provide for the giving of such entertainments in the rural schoolhouse or houses designated in the application. Any rural school community shall be entitled to the benefits of this article by depositing with its county board of education two-thirds of the cost of entertainments desired, and in all cases it shall be the duty of the county board of education receiving such deposits to make immediate application to the state superintendent of public instruction as herein provided. (1917, c. 186, s. 3; C. S. 5777.)

§ 115-315. Health and agricultural authorities to coöperate.—The state board of health and the commissioner of agriculture are hereby authorized and directed to coöperate with the state superintendent of public instruction in arranging for the entertainments provided for by this article, to the end that the entertainment may, if it is deemed advisable, include the subjects of public health and agriculture. (1917, c. 186, s. 4; C. S. 5778.)

SUBCHAPTER XVII. HEALTH.

Art. 45. Physical Examination of Pupils.

§ 115-316. State board of health and state superintendent to make rules for physical examination.—It shall be the duty of the state board of health and the state superintendent of public instruction to prepare and distribute to the teachers in all public schools of the state instructions and rules and regulations for the physical examination of pupils attending the public schools. (1919, c. 192, s. 1; C. S. 5779.)

§ 115-317. Teachers to make examinations; state covered every three years.—Upon receipt of such instructions, rules and regulations, it shall be the duty of every teacher in the public schools to make a physical examination of every child attending the school and enter on cards and official forms furnished by the state board of health a record of such examination. The examination shall be made at the time directed by the state board of health and the state superintendent of public instruction, but every child shall be examined at least once every three years. The state board of health and the state superintendent of public instruction shall so arrange the work as to cover the entire state once every three years. (1919, c. 192, s. 2; C. S. 5780.)

§ 115-318. Record cards transmitted to state board of health; punishment for failure.—The teacher shall transmit the record cards and other blank forms made by him or her to the North Carolina state board of health, and if any teacher fails within sixty days, after receiving the aforesaid forms and requests for examination and report, to make such examination and report as herein provided, the teacher shall be guilty of a misdemeanor and subject to a fine of not less than ten dollars nor more than fifty dollars or thirty days in prison. (1919, c. 192, s. 3; C. S. 5780(a).)

§ 115-319. Disposition of records; reexamination of pupils.—The North Carolina state board of health shall have the records filed by the teacher carefully studied and classified, and shall notify the parent or guardian of every child whose card shows a serious physical defect to bring such child before an agent of the state board of health on some day designated by the state board of health between the hours of nine a. m. and five p. m. for the purpose of having said child thoroughly examined; and if, upon receipt of such notice, any

parent or guardian shall fail or refuse to bring said child before the agent of the state board of health without good cause shown, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than fifty dollars or imprisoned not more than thirty days: Provided, that the distance the child must be carried shall not exceed ten miles.

No pupil or minor shall be compelled to submit to medical examination or treatment whose parent or guardian objects to the same. Such objection may be made by a written and signed statement delivered to the pupil's teacher or to any person who might conduct such examination or treatment in the absence of such objection. (1919, c. 192, s. 4; C. S. 5780(b).)

§ 115-320. Treatment of pupils, expenses.—Within thirty days after the completion of the examination of the children by the agent of the state board of health and after written statement of the proper authority hereinafter designated, a sum not exceeding ten dollars per hundred children enrolled in the county or city shall be paid to the state board of health to be used exclusively for the purpose of treating school children for defects other than dental, the same to be paid by the county commissioners of the county, and in cities or towns having a separate school system, to be paid by the city manager, city council, city board of aldermen, or city commissioners. Any funds so paid and not needed in enforcing the provisions of this article shall be returned to the county or city from which it was received. (1919, c. 192, s. 5; C. S. 5780(c).)

§ 115-321. Free dental treatment.—The state board of health shall provide free dental treatment for as many school children as possible each year. (1919, c. 102, s. 14, c. 192, s. 6; C. S. 5780(d).)

SUBCHAPTER XVIII. STATE BOARD OF EDUCATION TO LICENSE CERTAIN INSTITUTIONS.

Art. 46. State Board of Education to Regulate Degrees.

§ 115-322. Right to confer degrees restricted.—No educational institution hereafter created or established by any person, firm, or corporation in this state shall have power or authority to confer degrees upon any person except as herein provided. (1923, c. 136, s. 358; C. S. 5780(e).)

§ 115-323. Powers to grant license to confer degrees.—The state board of education is authorized to issue its license to confer degrees in such form as it may prescribe to any educational institution hereafter established by any person, firm, or corporation in this state; but no educational institution hereafter established in the state shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, and unless its baccalaureate degree is conferred only upon students who have completed a four-year college course, preceded by the usual four-year high school course, or their equivalent. (1923, c. 136, s. 359; C. S. 5780(f).)

§ 115-324. Inspection of institutions; revocation of license.—All institutions licensed under this article shall file such information with the state superintendent of public instruction as the state board of education may direct, and it shall have full authority to send an expert to visit any institution applying for a license to confer degrees under this article. And if any one of them shall fail to keep up the required standard the state board of education shall revoke the license to confer degrees, subject to a right of review of this decision by a judge of the superior court upon action instituted by the educational institution whose license had been revoked. (1923, c. 136, s. 360; C. S. 5780(g).)

SUBCHAPTER XIX. COMMERCIAL EDUCATION.

Art. 47. Licensing of Commercial Schools.

§ 115-325. Commercial college or business school defined.—A commercial college or business school shall be defined as follows: Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the state of North Carolina, which teaches, publicly, for compensation, any or all the branches of accounting, bookkeeping, stenotype, stenography, typing, telegraphy, and other commercial subjects which are usually taught in commercial colleges or business schools: Provided, however, that any person or individual who undertakes to give instruction in the above subjects to five or less students shall not be construed as the operator of a commercial college or business school. (1935, c. 255, s. 1; 1937, c. 184.)

Editor's Note.—The 1937 amendment inserted the words "person" and "or operators of correspondence schools within the state of North Carolina," and added the proviso to this section.

§ 115-326. Securing permit before operating.—Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the state of North Carolina, desiring to open a commercial college or to establish a branch college or school in this state for the purpose of teaching bookkeeping, stenography, stenotype, typing, telegraphy, and other courses which are usually taught in commercial colleges, before commencing business, must secure a permit from the state board of education of the state of North Carolina authorizing such person, partnership, association of persons or corporation to open and conduct such commercial college or branch college or school. (1935, c. 255, s. 2; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note.—The 1937 amendment made this section applicable to operators of correspondence schools.

The 1943 amendment substituted "state board of education" for "state board of commercial education."

§ 115-327: Repealed by Session Laws 1943, c. 721, s. 6.

§ 115-328. Application for permit; investigation; fees.—Application for such permit to open and conduct a business or correspondence school shall state specifically the name of such person, partnership or corporation, and said application shall be filed with the state board of education at Raleigh. If, after due investigation on the part of said board, it is shown to the satisfaction of said board that said applicant is professionally

qualified to conduct said school and possesses good moral character for fair and honest dealings, then said board shall approve said application and issue permit to said applicant. Before such permit shall be issued, the applicant shall pay to the state board of education a fee of ten ($10) dollars as a minimum, and twenty-five ($25) dollars as a maximum, the amount needed being left to the discretion of the board of education, which fee shall be paid annually on the first day of July to the said board so long as said school shall continue to operate. Said fees shall be used for office and traveling expenses by said board or its authorized representatives for investigating applications for conducting commercial schools and also complaints against such schools, and the secretary of the board shall keep an account of all moneys received and disbursed which account shall be open at all times to inspection by all persons operating commercial schools and licensed by said board. (1935, c. 255, s. 3; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note.—The 1937 amendment changed the first two sentences.

The 1943 amendment substituted "state board of education" for "state board of commercial education."

§ 115-329. Execution of bond required; filing and recording. — Before the state board of education shall issue such permit, the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand ($1,000) dollars, signed by a solvent guaranty company authorized to do business in the state of North Carolina, or by two solvent sureties, payable to the clerk of the superior court of the county in which such college, branch college, or school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and all contracts, made and entered into by said college or branch college or school, acting by and through its officers and agents, with any student who desires to enter such college and to take any course in commercial training, and will pay back to such student all amounts collected for tuition and fees in case of failure on the part of the parties obtaining a permit from the state board of education to open and conduct a commercial college, or branch college or school, to comply with its contracts to give the instructions contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the clerk of superior court of the county in which the college or branch or school executing the bond is located, and recorded by such clerk in a book provided for that purpose.

The requirement herein specified for giving the aforesaid bond of one thousand dollars ($1,000.00) shall apply to all commercial colleges, business schools and correspondence schools and branches thereof operating in North Carolina, and the said state board of education shall not issue any permit or license to any person, firm, or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of superior court has been filed with said board of education. Operators' bonds of one thousand dollars ($1,000.00) each shall be required for each branch of such commercial colleges, business schools, or correspondence schools operated within the state by any person, partnership, or corporation. (1935, c. 255, s. 4; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note. — Prior to the 1937 amendment, which added the second paragraph, bond of guaranty company was required.

The 1943 amendment substituted "state board of education" for "board of commercial education."

§ 115-330. Right of action upon bond in event of breach; revocation of permit; board generally to supervise schools.—In any and all cases where the party receiving the permit from the state board of education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then said student, parent or guardian entering into the contract shall have a cause of action against the sureties on the bond as herein provided for the full amount of the payments made to such person, with six (6) per cent interest from the date of payment of said amount. For a proven violation of its contracts with its students, the state board of education is authorized to revoke the license issued to the offending school. Through periodic reports required of licensed commercial schools and by inspections made by members of the state board of education or its authorized representatives, the board of education shall have general supervision over commercial schools of the State, the object of said supervision being to protect the public welfare by having the licensed commercial schools to maintain proper school quarters, equipment and teaching forces and of having the school carry out its advertised promises and its contracts made with its students and patrons. (1935, c. 255, s. 5; 1943, c. 721, s. 6.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "board of commercial education."

Cited in Moore v. Board of Education, 212 N. C. 499, 193 S. E. 732.

§ 115-331. Operating school without permit made misdemeanor. — Any person, or each member of any partnership, or each member of any association of persons, or each officer of any corporation who opens and conducts a commercial college or branch college or school without first having obtained the permit required in § 115-326, and without first having executed the bond required in § 115-329, shall be guilty of misdemeanor and punishable by a fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars, and each day said college continues to be open and operated shall constitute a separate offense. (1935, c. 255, s. 6.)

§ 115-332. Institutions exempted. — The provision of this article shall not apply to any established university, professional, or liberal arts college, regular high school or any state institution which has heretofore adopted or which may hereafter adopt one or more commercial courses, provided the tuition fees and charges, if any, made by such university, college, high school or state institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, or high school; but the provisions of this article shall apply to all commercial colleges, business schools and correspondence schools operated within the state of

North Carolina as commercial institutions. (1935, c. 255, s. 7; 1937, c. 184.)

Editor's Note.—Prior to the 1937 amendment established commercial colleges having one or more commercial courses were also exempted.

§ 115-333. Application of article to non-residents, etc.—All persons, partnerships, associations of persons, which are non-residents of North Carolina, or corporations organized and chartered under the laws of any other state, must comply with the provisions of this article before such can open and conduct a commercial college or branch college, or school in the State of North Carolina. (1935, c. 255, s. 8.)

§ 115-334. Solicitors. — All persons soliciting students within the state of North Carolina for commercial colleges, business schools or correspondence schools located within or without the state of North Carolina, shall be required to secure on July first of each year an annual license from the state board of education, such license to cost two dollars ($2.00). When application is made for such license by a solicitor he shall submit to said board for its approval a copy of the contract offered prospective students and used by his said school, together with advertising material and other representations made by said school to its students or prospective students. When a license is issued to such solicitor he shall receive a license card permitting him to solicit students for his school, but such license shall be issued only on an annual basis expiring June thirtieth of each year and must be renewed to entitle such solicitor to solicit students thereafter. Every commercial college, business school, or correspondence school employing such solicitors shall be responsible for the acts, representations and contracts made by its solicitors. Any person soliciting students for any such schools without first having secured a license from the state board of education shall be guilty of a misdemeanor and be punishable by a fine of fifty dollars ($50.00) or thirty days imprisonment, or both, at the discretion of the court. (1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "board of commercial education."

SUBCHAPTER XX. OBSERVANCE OF SPECIAL DAYS.

Art. 48. Special Days to Be Observed in Public Schools.

§ 115-335. North Carolina Day.—The twelfth day of October in each and every year, to be called "North Carolina Day," may be devoted, by appropriate exercises in the public schools of the state, to the consideration of some topic or topics of our state history, to be selected by the superintendent of public instruction: Provided, that if the said day shall fall on Saturday or Sunday, then the celebration shall occur on the Monday next following: Provided, further, that if the said day shall fall at a time when any such schools may not be in session, the celebration may be held within one month from the beginning of the term, unless the superintendent of public instruction shall designate some other time. (1923, c. 136, s. 367; C. S. 5780(n).)

§ 115-336. Temperance or Law and Order Day. —There shall be one day in each scholastic year of the public and high schools of the state of North Carolina, to be known as Temperance or Law and Order Day, and the fourth Friday in January in each year, or some other day to be set by the superintendent of public instruction to suit local conditions, is hereby designated as Temperance or Law and Order Day. This day shall be observed as such in each public and high school of the state, or if preferred, in each subdivision thereof. The state superintendent of public instruction shall have prepared and furnished in due time to every teacher of said public and high school for the state a suitable program to be used on said Temperance or Law and Order Day.

The state superintendent of public instruction may have prepared and furnished to the teachers in the public and high schools placards printed in large type which shall set forth in attractive style statistics, epigrams, mottoes and up-to-date scientific truths showing the evils of intemperance and lawlessness.

When placards are distributed it shall be the duty of every teacher in the state, paid entirely or in part out of the public funds, to keep posted in a conspicuous place in the schoolroom occupied by said teacher one of said placards. (1923, c. 136, s. 368; C. S. 5780(o).)

§ 115-337. Arbor Day.—Friday following the fifteenth day of March of each year shall be known as Arbor Day, to be appropriately observed by the public schools of the state. The superintendent of public instruction shall issue each year a program for its observance by the school children of the state in order that they may be taught to appreciate the true value of trees and forests to their State. The superintendent of public instruction is authorized to provide a suitable program and plan of instruction to county school officials under his charge for the appropriate observance of this day. (1923, c. 136, s. 369; 1927, c. 73; C. S. 5780(p).)

§ 115-338. Other Days.—The superintendent of public instruction is hereby authorized to provide suitable material for the proper observance in schools of the birthdays of Washington, Lee, Jackson, of Armistice Day, Memorial Day, and such other days as may be deemed of educational and patriotic value not only to the children but to the citizens of the state. All literature necessary for the proper observance of the days specified in this article shall be prepared by the superintendent of public instruction and printed at the expense of the state. (1923, c. 136, s. 370; C. S. 5780(q).)

Cross Reference.—As to observance of "Indian Day" in the public schools, see § 147-18.

§ 115-339. Combined programs. — The state superintendent of public instruction may fix a later or an earlier date for the observance of any special day the observance of which is required for a specific date if it shall appear to him to be more convenient; and he may combine the programs required to be issued in the foregoing sections so as to require the observance of any two or more of the special days at the same time. (1923, c. 136, s. 371; C. S. 5780(r).)

SUBCHAPTER XXI. COMPENSATION TO CHILDREN INJURED IN SCHOOL BUSSES.

Art. 49. Certain Injuries to School Children Compensable.

§ 115-340. State board of education authorized to pay claims.—The state board of education of North Carolina is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. (1935, c. 245, s. 1; 1943, c. 721, s. 7.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-341. Payment of medical or funeral expenses to parents or custodians of children.—The state board of education is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor, or administrator of any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the State, medical, surgical, hospital, and funeral expenses incurred on account of such injuries and/or death of such child in an amount not to exceed the sum of six hundred and no one-hundredths dollars ($600.00). (1935, c. 245, s. 2; 1943, c. 721, s. 7.)

Local Modification.—Surry: 1935, c. 458.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-342. Claim must be filed within one year.—The right to compensation as authorized under § 115-341 shall be forever barred, unless a claim be filed with the state board of education within one year after the accident, and if death results from the accident, unless a claim be filed with the said board within one year thereafter. (1935, c. 245, s. 3; 1943, c. 721, s. 7.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-343. Approval of claims by state board of education final.—The state board of education is hereby authorized and empowered, under rules and regulations to be promulgated by said state board of education to approve any claim authorized by this subchapter, and when such claim is so approved, such action shall be final; any payment made by the state board of education for hospital and medical treatment shall be deducted from the benefits provided in § 115-341, and said board is hereby authorized to pay medical and hospital and funeral bills provided for in this subchapter, not to exceed, however, the benefits herein provided for. (1935, c. 245, s. 4; 1943, c. 721, s. 7.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-344. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.—The claims authorized in § 115-341 shall be paid by the said state board of education, regardless of whether or not the injury received by said school child shall have been due to the negligence of the driver of the said school bus: Provided that whenever there is recovery on account of said accident by the father, mother, guardian, or administrator of such child, against any person, firm, or corporation, the amount expended by the state board of education hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1935, c. 245, s. 5; 1943, c. 721, s. 7.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-345. Disease and injuries incurred while not riding on bus not compensable.—Nothing in this subchapter shall be construed to mean that the State shall be liable for sickness, disease, and for personal injuries sustained while not actually riding on the bus to and from the school, and for personal injuries received otherwise than by reason of the operation of such bus. (1935, c. 245, s. 6.)

§ 115-346. Application to terms additional to nine months term.—The provisions of this subchapter shall be applicable to any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the state during any term of public school additional to the regular school term paid for by the state: Provided, that nothing herein contained shall be construed as imposing any obligation upon the state board of education to provide funds for this purpose. The tax levying authorities of any school district which provides a supplement for the maintenance of an additional school term are hereby authorized and directed to set up in their respective budgets a sum of money which is deemed sufficient to pay the claims authorized by this subchapter, and to pay out of such sum the expenses authorized to be paid in accordance with the provisions of this subchapter. No person, firm, or corporation making voluntary contributions for an extended term shall be liable on account of any accident or injury. (1939, c. 267; 1943, c. 255, 1943, c. 721, s. 7.)

Editor's Note.—Formerly, the words "the ninth month, or" appeared between the word "during" and the word "any," and the words "eight months" appeared between the word "regular" and the word "school" in the first sentence. The words "a ninth month or" appeared between the word "of" and the word "additional" in the second sentence. These words were omitted and the words "paid for by the state" were inserted just before the proviso to reflect the first 1943 amendment as authorized by Session Laws 1943, c. 15, s. 3. The second 1943 amendment substituted "state board of education" for "state school commission."

SUBCHAPTER XXII. SCHOOL LAW OF 1939.

Art. 50. The School Machinery Act.

§ 115-347. Purpose of the law.—The purpose of this subchapter is to provide for the administration and operation of a uniform system of public schools of the state for the term of nine months without the levy of an ad valorem tax therefor, and it is the purpose of this general assembly to change the policy heretofore followed by previous general assemblies of re-enacting biennially the School Machinery Act, and this subchapter shall remain in force until repealed or

amended by subsequent acts of the general assembly. (1939, c. 358, s. 1(a); 1943, c. 255, s. 2.)

Local Modification.—Hyde, Ocracoke Island: 1937, c. 303.

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in line four.

The following cases were decided under similar or identical provisions of the former law.

The purpose of this act is to promote efficiency in the organization and economy in the administration of the public schools, and to provide for the operation of a uniform system of schools for the entire state. This signifies that the state has adopted a policy of supporting its public schools and has consequently in part modified and in part abolished the former system. Evans v. Mecklenburg County, 205 N. C. 560, 563, 172 S. E. 323.

Other Statutes Are Subordinate to Act.—This act indicates a legislative intent to annul or to subordinate to the new law all statutes relating to the public schools which were in effect at the time of its enactment and to establish a uniform system under which all the public schools of the state shall be conducted. Evans v. Mecklenburg County, 205 N. C. 560, 563, 172 S. E. 323.

The authority of a county to issue without a vote bonds for sanitary improvements of its schoolhouses necessary to maintain the constitutional school term is not affected by the school law. See §§ 153-77, 115-92. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608.

Abolition of Special School Districts.—For cases construing former statute abolishing special school districts, see Board of Education v. Burgin, 206 N. C. 421, 174 S. E. 286 (use of unexpended fund by new district); Hickory v. Catawba County, 206 N. C. 165, 173 S. E. 56, holding that statute did not alter the policy that under the provisions of § 115-158 a county may include in its debt service fund in its budget the indebtedness lawfully incurred by any of its school districts.

Special Statute Not Repealed.—Chapter 279, Public-Local Laws of 1937, providing for the establishment of special tax school districts in Buncombe county, was not repealed by implication by the School Machinery Act of 1937, since the special statute prevailed as an exception to the general statute. Fletcher v. Collins, 218 N. C. 1, 9 S. E. (2d) 606.

Cited in Mears v. Board of Education, 214 N. C. 89, 197 S. E. 752.

§ 115-348. Appropriation. — The appropriation made under Title nine "(IX-1)-Support of Eight Months' Term Public Schools," of "an act to make appropriations for the maintenance of the state's departments, bureaus, institutions, and agencies, and for other purposes," and such funds as may be made available by acts of the Congress of the United States for public schools, and such other funds as may be made available from all other sources for the support of the eight months' term public schools, for the year ending June thirtieth, one thousand nine hundred forty, and annually thereafter, shall be apportioned for the operation of an nine months school term as hereinafter provided. (1939, c. 358, s. 1(b); 1943, c. 255, s. 2.)

Editor's Note.—The 1943 amendment substituted "nine" for "eight" in the next to last line.

§ 115-349: Repealed by Session Laws 1943, c. 721, s. 8.

§ 115-350. Administration of funds for nine months' term; executive committee.—In addition to the duties and powers vested in the state board of education as set out in § 115-349, together with such powers as may be conferred by law, it shall be the duty of the said board in accordance with the provisions of this subchapter, to administer funds for the operation of the schools of the state for one hundred eighty days on standards to be determined by said board and within the total funds set out in § 115-348. The state board of education may designate from its membership an executive committee, which executive committee shall perform such duties as may be prescribed by the state board of education. The secretary shall keep a record of the proceedings of any meetings of the executive committee in the same manner as proceedings of the full board are kept and recorded. The comptroller appointed by the state board of education shall approve such employees as work under his direction in the administration of the fiscal affairs of the state board of education. (1939, c. 358, s. 3; 1943, c. 255, s. 2; 1943, c. 721, ss. 7, 8.)

Editor's Note.—The first 1943 amendment substituted in the first sentence the words "one hundred eighty" for the words "one hundred sixty." Section 7 of the second 1943 amendment substituted "state board of education" for "state school commission," and section 8 rewrote the last three sentences.

§ 115-351. Length of school term; school month defined; payment of salaries.—The minimum six months' school term required by article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and district in the state, which shall request the same, a uniform term of nine months: Provided, that the state board of education or the governing body of any administrative unit, with the approval of the state board of education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred and eighty days, when in the sound judgment of the state board of education or the governing body of any administrative unit, with the approval of the state board of education, the low average of daily attendance in any school justified such suspension, or when the state board of education or the governing body of any administrative unit, with the approval of the state board of education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof: Provided, that all schools served by the same school bus or busses shall have the same opening date.

Provided that for the one thousand nine hundred and forty-three—one thousand nine hundred and forty-four and one thousand nine hundred and forty-four—one thousand nine hundred and forty-five school terms the one hundred and eighty days (180) may be reduced to one hundred and seventy days (170) by the governor as director of the budget if in his opinion the revenues decrease to such an extent that such action would be justified.

A school month shall consist of twenty teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions, in the unit or district make it desirable that schools be taught on such days. In order that the total term of one hundred and eighty days might be completed in a shorter time than nine calendar months, when the needs of agriculture require it, the governing body of any administrative unit may require that schools shall be taught on legal holidays, except Sundays, but nothing herein contained shall prevent the inclusion of teaching on any legal holiday in a school month in accordance with the custom and practice of any such district, or as may be otherwise ordered by the governing body of such administrative unit.

Salary warrants for the payment of all state teachers, principals, and others employed for the

school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the state board of education on or before October first of each school year. Before such request shall be filed, it shall be approved by the governing board, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period less than nine months.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recess or adjournment of the public schools in any section of the state where the planting or harvesting of crops or any other emergency conditions make such action necessary. (1939, c. 358, s. 4; 1943, c. 255, s. 1.)

Local Modification.—Watauga: 1941, c. 27.

Cross References.—For definition of school day, see § 115-12. As to power of local school authorities to determine the length of a school day, see § 115-58.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission," increased the school term from eight to nine months and rewrote the section generally.

§ 115-352. School organization.—All school districts, special tax, special charter, or otherwise, as constituted on May 15, 1933, are hereby declared non-existent as of that date; and it shall be unlawful for any taxes to be levied in said district for school operating purposes except as provided in this article. The state board of education, in making provision for the operation of the schools, shall classify each county as an administrative unit, and shall, with the advice of the county boards of education, make a careful study of the district organization as the same was constituted under the authority of § 4 of chapter 562 of the Public Laws of 1933, and as modified by subsequent school machinery act. The state board of education may modify such district organization when it is deemed necessary for the economical administration and operation of the state school system, and it shall determine whether there shall be operated in such district an elementary or a union school. Provisions shall not be made for a high school with an average daily attendance of less than sixty pupils, nor an elementary school with an average daily attendance of less than twenty-five pupils, unless a careful survey by the state superintendent of public instruction and the state board of education reveals that geographic or other conditions make it impracticable to provide for them otherwise. Funds shall not be made available for such schools until the said survey has been completed and such schools have been set up by the said board.

It shall be within the discretion of the state board of education, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: Provided further, the provision as to the nonpayment of tuition shall not apply to children who have not been transferred as set out in this section.

City administrative units as now constituted shall be dealt with by the state school authorities in all matters of school administration in the same way and manner as are county administrative units: Provided, that in all city administrative units as now constituted the trustees of the said special charter districts, included in said city administrative unit, and their duly elected successors, shall be retained as the governing body of such district; and the title to all property of the said special charter district shall remain with such trustees, or their duly chosen successors; and the title to all school property hereafter acquired or constructed within the said city administrative unit, shall be taken and held in the name of the trustees of said city administrative unit; and the county board of commissioners of any county shall provide funds for the erection or repair of necessary school buildings on property, the title to which is held by the board of trustees as aforesaid, and the provisions of § 115-88, to the extent in conflict herewith, is hereby repealed: Provided, that nothing in this subchapter shall prevent city administrative units, as now established, from consolidating with the county administrative unit in which such city administrative unit is located, upon petition of the trustees of the said city administrative unit and the approval of the county board of education and the county board of commissioners in said county: Provided, further, that nothing in this subchapter shall affect the right of any special charter district, or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by existing law, and nothing herein shall be construed to restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by existing law.

The board of trustees for any special charter district in any city administrative unit shall be appointed as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of such board of trustees, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county board of education of the county embracing such special charter district. (1939, c. 358, s. 5; 1943, c. 721, s. 8.)

Cross Reference.—As to tuition of children in certain tax districts, see § 115-214.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

Assumption of Payment as County-Wide Obligation.—Where bonds to provide funds for buildings and equipment have been voted by special school districts and by a city constituting a special charter district which has since be-

come a part of the general county schools, the county may assume the payment of such bonds as a county-wide obligation, and it is not necessary that payment therefor be made from taxes levied only in such special districts. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454.

Since under § 115-83 it is the duty of the county commissioners of each county to provide for the construction and equipment of schools in each district necessary to the maintenance of the constitutional school term, where some of the school districts of the county provide the necessary buildings and equipment upon failure of the county to do so, by issuing school bonds or otherwise, the county may assume such indebtedness upon the request of its board of education. Marshburn v. Brown, 210 N. C. 331, 186 S. E. 265.

Applied in Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873. See East Spencer v. Rowan County, 212 N. C. 425, 193 S. E. 837.

§ 115-353. Administrative officers. — The administrative officer in each of the units now designated shall be a county superintendent of schools for a county administrative unit and a city superintendent of schools for a city administrative unit.

The salaries of county superintendents and city superintendents shall be in accordance with a state standard salary schedule to be fixed and determined by the state board of education as provided for in § 115-359; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published: Provided, that it shall be lawful for the county superintendent of schools in any county, with the approval of the state superintendent of public instruction, to serve as principal of a high school of said county; and the sum of not exceeding three hundred dollars ($300.00), to be paid from state instructional service funds, may be added to his salary and shall be included in the budget approved by the state board of education: Provided, further, that a county superintendent may also be elected and serve as a city superintendent in any city administrative unit in the county which he serves as county superintendent: Provided, further, that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of such county, to be paid from county funds, subject to the approval of the state board of education.

At a meeting to be held the first Monday in April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education shall meet and elect a county superintendent of schools, subject to the approval of the state superintendent of public instruction and the state board of education, who shall take office July first and shall serve for a period of two years, or until his successor is elected and qualified. The county board of education shall give public notice of the date of the election in a paper published or circulating in the county and shall post a notice of the same at the courthouse door at least fifteen days before the date of the election. A certification to the county board of education by the state superintendent of public instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four year standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the state eligible for this office. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the state superintendent of public instruction.

In all city administrative units, the superintendent of schools shall be elected by the board of trustees, or other school governing agency of such unit, to serve for a period of two years; and the qualifications, approval, and date of election shall be the same as for county superintendents. The city superintendent is hereby ex officio secretary to the governing body of said city administrative unit.

At its first regular meeting in April or as soon thereafter as practicable, the board of trustees, or other governing board of a city administrative unit, shall elect principals, teachers, and other necessary employees of the schools within said unit on the recommendation of the city superintendent. (1923, c. 136, s. 43; 1939, c. 358, s. 6; 1943, c. 721, s. 8; C. S. 5452.)

Cross Reference.—As to county superintendents in general, see §§ 115-102 et seq.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

Constitutional Office.—The office of superintendent of public instruction is such an office as comes within the provision of Art. XIV, sec. 7, of the Constitution, which prohibits the holding of more than one office by any person. Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976.

§ 115-354. School committees. — At the first regular meeting during the month of April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter, the county boards of education shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three nor more than five persons for each school district, whose term of office shall be for two years: Provided, that in the event of death or resignation of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term: Provided, that in units desiring the same, by action of the county board of education and subject to the approval of the state board of education, one-third of the members may be selected for a term of one year, one-third of the members for a term of two years, and one-third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms.

The district committees shall elect the principals for the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The principals of the districts shall nominate and the district committees shall elect the teachers for all the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The distribution of the teachers between the several schools

of the district shall be subject to the approval of the county board of education. In the event the local school authorities herein provided for are unable to agree upon the nomination and election of teachers, the county board of education shall select the teacher or teachers, which selection shall be final for the ensuing school term. All principals and teachers shall enter into a written contract upon forms to be furnished by the state superintendent of public instruction before becoming eligible to receive any payment from state funds. It shall be the duty of the county board of education in a county administrative unit, and of the governing body of a city administrative unit, to cause written contracts on forms to be furnished by the state to be executed by all teachers and principals elected under the provisions of this subchapter before any salary vouchers shall be paid: Provided that such contract shall continue from year to year until said teacher or principal is notified as provided in § 115-359: Provided, further, that such teacher or principal shall give notice to the superintendent of schools of the administrative unit in which said teacher or principal is employed, within ten days after the close of school, of his or her acceptance of employment for the following year: Provided, further, that the county board of education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property and perform such other duties as may be defined by the county board of education. (1939, c. 358, s. 7; 1941, c. 267, s. 2; 1943, c. 721, s. 8.)

Local Modification.—Onslow: 1941, c. 149.

Cross References.—As to the duties and powers of school committees in general, see §§ 115-130 et seq. As to election of teachers, see also, § 115-134. As to power to dismiss, see § 115-143.

Editor's Note.—The 1941 amendment inserted the first and second provisos in the second paragraph of this section.

The 1943 amendment substituted "state board of education" for "state school commission."

Jurisdiction of County Board of Education to Elect Principal.—The county board of education is not authorized to elect a principal of a school unless it appears that the local school authorities are in disagreement as to such election, and therefore, in a suit to compel the county board to approve an election made by the local school authorities, a plea in abatement on the ground that the county board had already elected another to the position is properly overruled in the absence of a showing of disagreement by the local school authorities. Harris v. Board of Education, 216 N. C. 147, 4 S. E. (2d) 328.

§ 115-355. Organization statement and allotment of teachers.—On or before the twentieth day of May in each year, the several administrative officers shall present to the state board of education a certified statement showing the organization of the schools in their respective units, together with such other information as said board may require. The organization statement as filed for each administrative unit shall indicate the length of term the state is requested to operate the various schools for the following school year, and the state shall base its allotment of funds upon such request. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the state board of education may promulgate, the state board of education shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the state budget on the basis of the average daily attendance figures of the continuous six months period of the preceding year during which continuous six months' period the average daily attendance was highest, provided that loss in attendance due to epidemics or apparent increase in attendance due to the establishment of army camps or other national defense activities shall be taken into consideration in the initial allotment of teachers: Provided, further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance: Provided, further, that for the duration of the present war and for the first school term thereafter, it shall be the duty of the state board of education to provide any union school, that is, a school embracing both elementary and high school grades, in the state of North Carolina, having four high school teachers or less, not less than the same number of teachers as were allotted to said school for the school year of one thousand nine hundred and forty-two—one thousand nine hundred and forty-three. The provisions of this section as to the allotment of teachers shall apply only to those schools where the reduction in enrollment is shown to be temporary as determined by the state board of education.

It shall be the duty of the governing body in each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the state board of education to make changes in the allocation of teachers to meet requirements of the said unit. (1939, c. 358, s. 8; 1941, c. 267, s. 3; 1943, c. 255, s. 2¾; 1943, c. 720, s. 1; 1943, c. 721, s. 8.)

Editor's Note.—The 1941 amendment made changes in the third sentence of the first paragraph and added the first proviso.

The first 1943 amendment inserted in the third sentence the provision as to average daily attendance. The second 1943 amendment added the last proviso and the last sentence to the first paragraph. The third 1943 amendment substituted "state board of education" for "state school commission."

§ 115-356. Objects of expenditure. — The appropriation of state funds, as provided under the provisions of this subchapter, shall be used for meeting the costs of the operation of the public schools as determined by the state board of education, for the following items:

1. General Control:
   a. Salaries of superintendents
   b. Travel of superintendents
   c. Salaries of clerical assistants for superintendents
   d. Office expense of superintendents
   e. Per diem county boards of education in the sum of one hundred dollars ($100.00) to each county
   f. Audit of school funds
2. Instructional Service:
   a. Salaries for white teachers, both elementary and high school
   b. Salaries for colored teachers, both elementary and high school
   c. Salaries of white principals
   d. Salaries of colored principals
   e. Instructional supplies
3. Operation of Plant:
   a. Wages of janitors
   b. Fuel

c. Water, light and power
d. Janitors' supplies
e. Telephone expense
4. Auxiliary Agencies:
a. Transportation
(1) Drivers and contracts
(2) Gas, oil, and grease
(3) Mechanics
(4) Parts, tires, and tubes
(5) Replacement busses
(6) Compensation for injuries and/or death of school children as now provided by law
b. Libraries
c. Health

In allotting funds for the items of expenditures hereinbefore enumerated, provision shall be made for a school term of only one hundred eighty days.

The state board of education shall effect all economies possible in providing state funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals, and superintendents in order that the appropriation of state funds for the public schools may insure their operation for the length of term provided in this subchapter: Provided, however, that the state board of education and county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other purposes.

The objects of expenditure designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school funds of the county and derived from fines, forfeitures, penalties, dog taxes, and poll taxes, and from all other sources except state funds: Provided, that when necessity shall be shown, and upon the approval of the county board of education or the trustees of any city administrative unit, the state board of education may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget, including the supplementing of the teaching of vocational subjects; and in such cases the tax levying authorities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges, and capital outlay: Provided, further, that the tax levying authorities in any county administrative unit, with the approval of the state board of education, may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from federal vocational educational funds: Provided, further, that nothing in this subchapter shall prevent the use of federal and/or privately donated funds which may be made available for the operation of the public schools under such regulations as the state board of education may provide. (1939, c. 358, s. 9; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Cross Reference.—As to procedure where county commissioner refuse to levy school tax, see § 115-160.

Editor's Note.—The first 1943 amendment changed the term from one hundred sixty days to one hundred eighty days. The second 1943 amendment substituted "state board of education" for "state school commission."

§ 115-357. State budget estimate.—The state budget estimate shall be determined by the state board of education for each county and city administrative unit by ascertaining the sum of the objects of expenditure according to and within the limits fixed by this subchapter, and within the meaning of the rules and regulations promulgated by the state board of education; and the certification of same shall be made to each county superintendent, city superintendent, and the state superintendent of public instruction on or before June first of each year. (1939, c. 358, s. 10; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-358. Salary costs.—Upon receipt of notice from the state board of education of the total number of teachers, by races and for county and city administrative units separately, the state superintendent of public instruction shall then determine, in accordance with the schedule of salaries established, the total salary cost in each and every administrative unit for teachers, principals, and superintendents to be included in the state budget for the next succeeding fiscal year for the consolidated school term as herein defined. This amount as determined from a check of the costs for the preceding year with adjustments resulting from changes in the allotment of teachers, shall be certified to the comptroller appointed by the state board of education; together with the number of elementary and high school teachers and principals employed in accordance with the provisions of this subchapter, separately by races, and for city and county administrative units. (1939, c. 358, s. 11; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted in line two the words "board of education" for the words "state school commission." It also substituted in lines fifteen and sixteen the words "comptroller appointed by the state board of education" for the words "state school commission."

§ 115-359. State standard salary schedule.—The state board of education shall fix and determine a state standard salary schedule for teachers, principals, and superintendents, which shall be the maximum standard state salaries to be paid from state funds to the teachers, principals, and superintendents; and all contracts with teachers and principals shall be made locally by the county board of education and/or the governing authorities of city administrative units, giving due consideration to the peculiar conditions surrounding each employment, the competency and experience of the teacher or principal, the amount and character of work to be done, and any and all other things which might enter into the contract of employment: Provided, however, that the compensation contracted to be paid out of state funds to any teacher, principal, or superintendent shall be within the maximum salary limit to be fixed by the state board of education, as above provided, and within the allotment of funds as made to the administrative unit for the item of instructional salaries: Provided, further, that no teacher or principal shall be required to attend summer school during the years one thousand nine hundred forty-three and one thousand nine hundred forty-four, and the certificate of such teacher or principal as

may have been required to attend such school shall not lapse but shall remain in full force and effect, and all credits earned by summer school and/or completing extension course or courses shall not be impaired, but shall continue in full force and effect.

Any teacher or principal desiring election as teacher or principal in a particular administrative unit who was not employed by said unit during a current year shall file his or her application in writing, with the county or city superintendent of schools.

It shall be the duty of such county superintendent or administrative head of a city administrative unit to notify all teachers and/or principals now or hereafter employed, by registered letter, of his or her rejection prior to the close of the school term subject to the allotment of teachers made by the state board of education: Provided, further, that principals and teachers desiring to resign must give not less than thirty days' notice prior to opening of school in which the teacher or principal is employed to the official head of the administrative unit in writing. Any principal or teacher violating this provision may be denied the right to further service in the public schools of the state for a period of one year unless the county board of education or the board of trustees of the administrative unit where this provision was violated waives this penalty by appropriate resolution.

In the employment of teachers, no rule shall be made or enforced which discriminates with respect to the sex, marriage, or nonmarriage of the applicant.

In the event a teacher is rejected under the provisions of this section, such rejection shall be subject to the approval or disapproval of the governing authorities of the administrative unit in which said teacher is employed. (1939, c. 358, s. 12; 1941, c. 267, ss. 4, 5; 1943, c. 720, s. 2; 1943, c. 721, s. 8.)

Cross References.—As to contracts with teachers, see § 115-119. As to application for teaching position, see § 115-141. As to penalty for resigning without proper notice, see also, § 115-142. As to authority of county superintendent to suspend teachers, see § 115-117.

Editor's Note.—The 1941 amendment made changes in the proviso at the end of the first paragraph, inserted the provision relative to administrative unit in the second paragraph, and changed the first sentence of the third paragraph.

The first 1943 amendment changed the years in the proviso at the end of the first paragraph from 1941-1942 to 1943-1944. It also added the last paragraph. The second 1943 amendment struck out the words "and the state school commission" formerly appearing after the words "state board of education" in the first paragraph, and substituted "board of education" for "school commission" in the third paragraph.

§ 115-360. Principals allowed.—In all schools with fewer than fifty teachers allowed under the provisions of this subchapter, the principals shall be included in the number of teachers allowed. In schools with fifty or more teachers, one whole time principal shall be allowed; that for each forty teachers in addition to the first fifty, one additional whole time principal, when and if actually employed, shall be allowed: Provided, that in the allocation of state funds for principals, the salary of white principals shall be determined by the number of white teachers employed in the white schools, and the salary of colored principals shall be determined by the number of colored teachers employed in the colored schools: Provided, further, that where the schools of a district are under the control of the same district committee, the district principal shall have general supervision of all the schools in the district: Provided, further, that where a white school and a colored school are both under the control of the same district committee, and where the principal of the white school is called upon by the district committee to perform certain duties in connection with the operation of the colored school such as aiding in the employment of teachers and in the general supervision of the colored school, the state board of education may in their discretion take such service into consideration in the fixing of the principal's salary and may make a reasonable allowance for same. (1939, c. 358, s. 13; 1941, c. 267, s. 6; 1943, c. 721, s. 8.)

Editor's Note.—The 1941 amendment inserted the second proviso to the second sentence.

The 1943 amendment deleted the words "the state school commission and" formerly appearing in the last proviso.

§ 115-361. Local supplements. — The county board of education in any county administrative unit and the school governing board in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the state board of education, in order to operate schools of a higher standard than that provided by state support in said administrative unit having a school population of one thousand (1,000) or more, but in no event to provide for a term of more than one hundred eighty (180) days, may supplement the funds from state or county allotments available to said administrative unit: Provided, that before making any levy for supplementing said allotments, an election shall be held in said administrative unit or district to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the county board of education in a county administrative unit and/or the school governing authorities in a city administrative unit, the tax levying authorities of such unit shall provide for an election to be held under laws governing such elections as set forth in articles 22, 23 and 24 of this chapter: Provided, that the rate voted shall remain the maximum until revoked or changed by another election: Provided, further, that nothing herein contained shall be construed to abolish any city administrative unit heretofore established under § 142-20 et seq.

Upon a written petition of a majority of the governing board of any district which has voted a supplementary tax, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this section: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of the qualified voters in such new territory shall vote in favor of such tax, the new territory shall be and become a part of said dis-

trict, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of the qualified voters at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1939, c. 358, s. 14; 1943, c. 721, s. 8.)

Cross Reference.—See also, § 115-192 and note thereto.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

The following cases were decided under similar provisions of the former law: Forester v. North Wilkesboro, 206 N. C. 347, 174 S. E. 112 (enjoining collection of special tax); Freeman v. Charlotte, 206 N. C. 913, 174 S. E. 453 (applying law); Evans v. Mecklenburg County, 205 N. C. 560, 564, 172 S. E. 323 (citing law).

§ 115-362. County boards may supplement funds of any district for special purposes.—The county board of education in any county administrative unit, with the approval of the tax levying authorities in said unit and the state board of education, in order to operate schools of a higher standard than that provided by state support, or to employ additional vocational teachers, or both, in any district in said county administrative unit having a school population of one thousand (1,000) or more, but in no event to provide for a term of more than one hundred and eighty days, may supplement the funds now available to said district: Provided, that before making any levy for supplementing said allotments, an election shall be held in said district to determine whether there shall be levied a tax to provide said supplemental funds and to determine the maximum rate which may be levied therefor. Before said election can be held in such district, a petition of the district committee setting out the purposes for which said election is to be had and the maximum rate of tax which may be levied shall be approved by the county board of education, the tax levying authorities of said county, and the state board of education. When such approval is had, then upon the request of the county board of education, the tax levying authorities of such unit shall provide for an election under the laws governing such elections as are set forth for county and city administrative unit supplementary elections in § 115-361. (1939, c. 358, s. 14½; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The first 1943 amendment rewrote the part of the first sentence preceding the proviso. The second 1943 amendment substituted "state board of education" for "state school commission" in the next to the last sentence.

Contribution to Retirement Fund.—The provision of this section under which a local unit desiring to supplement state support for the schools is required to submit the question to a popular vote is not in deference to Art. VII, § 7, or the Constitution. It is simply the legislative adoption of a similar method of control over extravagant expenditure pro hac vice. It does not affect the status of the administrative unit as an agency of the state, and when the burden is assumed § 135-8 not only confers authority, but is mandatory in its provisions that the local administrative unit make its contribution to the state retirement fund, and that the taxing authorities therein provide the necessary funds. Bridges v. Charlotte, 221 N. C. 472, 481, 20 S. E. (2d) 825.

§ 115-363. Local budgets. — (a) The request for funds to supplement state school funds, as permitted under the above conditions, shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the state board of education. The tax levying authorities in such units may approve or disapprove this supplemental budget in whole or in part, and upon approval being given, the same shall be submitted to the state board of education, which shall have authority to approve or disapprove any object or item contained therein. In the event of approval by the state board of education, the same shall be shown in detail upon the minutes of said tax levying body, and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy.

(b) In the same manner and at the same time, each county and/or city administrative unit may file a capital outlay budget, subject only to the approval of the tax levying authorities and the state board of education.

(c) In the same manner and at the same time, each county and/or city administrative unit shall file a debt service budget, which shall include debt service budgets of special bond tax districts, as set forth in § 115-364, and which shall be subject to the approval of the tax levying authorities in each such unit and the state board of education: Provided, that nothing in this subchapter shall prevent counties, local taxing districts and/or special charter districts from levying taxes to provide for debt service requirements.

The tax levying authorities in each of the above named units filing budgets from local funds shall report their action on said budgets on or before the tenth day of July, and the same shall be reported to the state board of education on or before the twentieth day of July. The action of the state board of education on all requests for local funds budgets shall be reported to boards of education and/or school governing authorities of city administrative units and the tax levying authorities in such units on or before the twentieth day of August.

All county-wide current expense school funds shall be apportioned to county and city administrative units monthly, and it shall be the duty of the county treasurer to remit such funds monthly as collected to each administrative unit located in said county on a per capita enrollment basis. County-wide expense funds shall include all funds for currrent expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and including also all fines, forfeitures, penalties, poll and dog taxes and funds for vocational subjects.

All county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by said units to the county commissioners and for the amounts and purposes approved by said commissioners. Capital outlay funds so provided for expenditure by the county administrative unit shall be paid out upon warrants drawn by the county board of education, and those provided for expenditure by a city administrative unit shall be paid out upon warrants drawn by the governing board of the city administrative unit: Provided, that funds derived from payments on insurance losses shall be used in the replacement of buildings destroyed, or in the event the buildings are not replaced, said funds shall be used to re-

duce the indebtedness of the special bond taxing unit to which said payment has been made, or for other capital outlay purposes within said unit. All county-wide debt service funds shall be apportioned to county and city administrative units and distributed at the time of collection and when available shall be expended in the same manner as are county-wide current expense school funds: Provided, that the payments to any administrative unit shall not exceed the actual needs of said units, including sinking fund requirements. The per capita enrollment basis shall be determined by the state board of education and certified to each administrative unit: Provided, further, that the debt service apportionment between county and city administrative units shall apply only to debt service for capital outlay obligations incurred by counties and cities prior to July 1, 1937, except in those counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of school districts, and special bond tax units. The provisions of this Act shall not apply to refunding bonds issued for school capital outlay obligations. (1939, c. 358, s. 15; 1941, c. 200, c. 267, s. 7; 1943, c. 721, s. 8.)

Cross References.—As to contents of school budgets, see § 115-157. As to deposit of school taxes collected with the county treasurer, see § 115-163.

Editor's Note.—The first 1941 amendment made changes in the third paragraph of subsection (c). The second 1941 amendment, which added the proviso at the end of this section, provided that its provisions "shall not apply to refunding bonds issued for school capital outlay obligations."

The 1943 amendment substituted "state board of education" for "state school commission."

Apportionment of County-Wide Taxes.—The principle upon which county-wide taxes were apportioned under the earlier law is fundamentally just and is preserved in the current School Machinery Act. Board of School Trustees v. Benner, 222 N. C. 566, 571, 24 S. E. (2d) 259.

§ 115-364. School indebtedness.—If a boundary, territorial district, or unit in which a special bond tax has heretofore been voted or in anyway assumed prior to July first, one thousand nine hundred thirty-three, has been or may be divided or consolidated, and the whole or a portion of which has been or may be otherwise integrated with a new district so established under any reorganization and/or redistricting, such territorial unit, boundary, or district, special taxing or special charter, which has been abolished for school operating purposes, shall remain as a district for the purpose of the levy and collection of the special taxes theretofore voted in any unit, boundary, or district, special taxing or special charter, for the payment of bonds issued and/or other obligations so assumed, the said territorial boundary, district, or unit shall be maintained until all necessary taxes have been levied and collected therein for the payment of such bonds and/or other indebtedness so assumed. Such boundary, unit, or district shall be known and designated as the "..... Special Bond Tax Unit" of ..... County.

All uncollected taxes which have been levied in the respective school districts for the purposes of meeting the operating costs of the schools shall remain as a lien against the property as originally assessed and shall be collectible as are other taxes so levied and, upon collection, shall be made a part of the debt service fund of the special bond tax unit, along with such other funds as may accrue to the credit of said unit; and in the event there is no debt service requirement upon such district, all amounts so collected for whatever purpose shall be covered into the county treasury to be used as a part of the county debt service for schools: Provided, that unpaid teacher's vouchers for the year in which the tax was levied shall be a prior lien: Provided, further, that nothing in this subchapter shall be construed as abolishing special taxes voted in any city administrative unit since July first, one thousand nine hundred thirty-three. (1939, c. 358, s. 16.)

§ 115-365. The operating budget.—It shall be the duty of the county board of education in each county and the school governing authorities in each city administrative unit, upon receipt of the tentative allotment of state funds for operating the schools and the approval of all local funds budgets, including supplements to state funds for operating schools of a higher standard, funds for debt service, and funds for capital outlay, to prepare an operating budget on forms provided by the state and file the same with the state superintendent of public instruction and the state board of education on or before the first day of October. Each operating budget shall be checked by the state school authorities to ascertain if it is in accordance with the allotment of state funds and the approval of local funds; and when found to be in accordance with same, shall be the total school budget for said county or city administrative unit. (1939, c. 358, s. 17; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The first 1943 amendment struck out the words "funds for extending the term" formerly appearing before the word "funds" in line nine. The second 1943 amendment substituted "state board of education" for "state school commission."

Cited in Bridges v. Charlotte, 221 N. C. 472, 485, 20 S. E. (2d) 825 (con. op.).

§ 115-366. Bonds.—The state board of education, subject to the approval of the local government commission, shall determine and provide all bonds necessary for the protection of the state school funds.

The tax levying authorities in each county and city administrative unit, subject to the approval of the local government commission, shall provide such bonds as the state board of education may require for the protection of county and district school funds. (1939, c. 358, s. 18; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-367. Provision for the disbursement of state funds.—The deposits of state funds in the state treasury to the credit of the county and city administrative units may be made in monthly installments, at such time and in such amounts as may be practicable to meet the needs and necessities of the nine months' school term in the various county and city administrative units: Provided, that prior to the crediting of any monthly installment, it shall be the duty of the county board of education or the board of trustees to file with the comptroller of the state board of education a certified statement of all expenditures and of all salaries and other obligations that may be due and payable in the succeeding month, said statement to be filed on or before the first day of each month.

When it shall appear to the comptroller from

said certified statement that any amounts are due and necessary to be paid, he shall draw a requisition on the state auditor covering the same; and upon receipt of notice from the state treasurer showing the amount placed to their credit, the duly constituted authorities may issue state warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries of administrative officers of county or city units if any reports required to be filed with the state school authorities are more than thirty days overdue. (1939, c. 358, s. 19; 1943, c. 769.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 115-368. How school funds shall be paid out.—The school funds shall be paid out as follows:

1. State School Funds.—School funds shall be released only on warrants drawn on the state treasurer signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the board of trustees for city administrative units, and countersigned by such officer as the county government laws may require.

2. County and District Funds.—All county and district funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and the secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of and are within the budget amounts appropriated for the particular administrative unit. Upon the basis of budget approval and upon receiving the certificate of per capita enrollment as set out in § 115-363, the county auditor or accountant shall ascertain and determine the proportion of all taxes levied by the county which shall be apportionable to the county administrative unit and any city administrative unit therein. As taxes are collected within said county, the proportion thereof allocable to the county administrative unit and any city administrative unit in said county shall be set up to the credit of such administrative unit by the county accountant or auditor. All funds due to the county administrative unit set up and ascertained as aforesaid shall be paid out as hereinbefore provided, and all funds due any city administrative unit therein shall be paid out as hereinbefore provided.

3. Records and Reports.—The state superintendent of public instruction and state board of education shall have full power and authority to make rules and regulations to prescribe the manner in which records shall be kept by all county and city administrative units as to the expenditure of current expense funds, capital outlay funds, and debt service funds, derived from local sources, and to prescribe for making reports thereof to the state superintendent of public instruction. (1939, c. 358, s. 20; 1941, c. 267, s. 8; 1943, c. 721, s. 8.)

Editor's Note.—The 1941 amendment inserted the proviso at the end of the first sentence of subsection 2.

The 1943 amendment substituted "state board of education" for "state school commission."

Cited in Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (con. op.).

§ 115-369. Audit.—The state board of education, in co-operation with the state auditor, shall cause to be made an audit of all school funds, state, county, and district; and the cost of said audit shall be borne by each fund audited in proportion to the total funds audited, as determined by the state board of education. The tax levying authorities for county and city administrative units shall make provision for meeting their proportionate part of the cost of making said audit, as provided in this subchapter.

Copies of said audits shall be filed with the state board of education, the state auditor and the state superintendent of public instruction not later than October first after the close of the fiscal year. (1939, c. 358, s. 21; 1943, c. 721, s. 8.)

Cross Reference.—See also § 115-168.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-370. Workmen's compensation and sick leave.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the state board of education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from state school funds. Liability of the state for compensation shall be confined to school employees paid by the state from state school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state operated nine months school term. The state shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the nine months school term is paid from state funds or in part supplemented by local funds. The county and city administrative units shall be liable for workmen's compensation for school employees whose salaries or wages are paid by such local units from local funds, and such local units shall likewise be liable for workmen's compensation of school employees employed in connection with teaching vocational agriculture, home economics, trades and industrial vocational subjects, supported in part by state and federal funds, which liability shall cover the entire period of service of such employees. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The state board of education is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall not be less than three dollars per day.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter. (1939, c. 358, s. 22; 1943, c. 255, s. 2; 1943, c. 720, s. 3; 1943, c. 721, s. 8.)

Editor's Note.—The first 1943 amendment changed the school term from eight to nine months. The second 1943 amendment substituted the words "be less than" for the word "exceed" in the second sentence of the second paragraph. The third 1943 amendment substituted "state board of education" for "state school commission."

Vocational Instruction.—This section purports to make the local county board of education liable "for workmen's compensation of school employees employed in connection with teaching vocational agriculture, home economics, trades and industrial vocational subjects, supported in part by state and federal funds, which liability shall cover the entire period of service of such employees." The law is based on the equitable principle that the fund, provided for state-wide support of the public schools, most of which do not enjoy the privilege of vocational instruction as part of the curriculum, should not bear a burden more appropriate to a local enterprise, to which the state has given its aid. Callihan v. Board of Education, 222 N. C. 381, 385, 23 S. E. (2d) 297.

Maintenance Work Paid for by Municipal Board.—The findings of fact of the industrial commission, supported by evidence, were to the effect that claimant employee was employed as janitor of a school for 8 months out of the year, his salary for this work being paid in part by the state school commission, and was also employed in school maintenance work outside of his regular working hours as janitor and during the remaining four months of the year, his compensation for maintenance work being paid exclusively by the municipal board of education, and that he was injured in the course of his employment in maintenance work after regular hours in a school of which he was not custodian. It was held that the findings support the conclusion of law that he was injured during his employment by the municipal board of education and that the municipal board and its carrier are solely liable for compensation for his injury. Casey v. Board of Education, 219 N. C. 739, 14 S. E. (2d) 853.

§ 115-371. Age requirement and time of enrollment.—Children to be entitled to enrollment in the public schools for the school year one thousand nine hundred thirty-nine-forty, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year. (1939, c. 358, s. 22½.)

§ 115-372. Purchase of equipment and supplies.—It shall be the duty of the county boards of education and/or the governing bodies of city administrative units to purchase all supplies, equipment and materials in accordance with contracts and/or with the approval of the state division of purchase and contract: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the state purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1939, c. 358, s. 23.)

§ 115-373. Determination of manner of heating school buildings.—For the purpose of determining the most economical manner and method of heating school buildings, including type of insulation, the state board of education in co-operation with state department of public instruction is hereby authorized to conduct experiments in the different types of heating. (1939, c. 358, s. 23½; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "school commission."

§ 115-374. School transportation; use of school busses by state guard or national guard.—The control and management of all facilities for the transportation of public school children shall be vested in the state of North Carolina under the direction and supervision of the state board of education, which shall have authority to promulgate rules and regulations governing the organization, maintenance, and operation of the school transportation facilities. The tax levying authorities in the various counties of the state are authorized and empowered to provide in the capital outlay budget adequate buildings and equipment for the storage and maintenance of all school busses. Provision shall be made for adequate inspection each thirty days of each vehicle used in the transportation of school children, and a record of such inspection shall be filed in the office of the superintendent of the administrative unit. It shall be the duty of the administrative officer of each administrative unit to require an adequate inspection of each bus at least once each thirty days, the report or reports of which inspection shall be filed with the administrative officers. Every principal, upon being advised of any defect by the bus driver, shall cause a report of such defect to be made to this administrative officer immediately, whose duty it shall be to cause such defect to be remedied before such bus can be further operated. The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day: Provided, in cases of sudden illness or injury requiring immediate medical attention of any child or children while attending the public schools, the principal of the school may send the child or children by school bus, if no other vehicle is available, to the nearest doctor or hospital for medical treatment; provided the expense of such transportation shall be paid from county funds.

The state board of education is authorized and empowered, under rules and regulations to be adopted by said state board of education, to permit the use and operation of school busses for the transportation of school children on necessary field trips while pursuing the courses of vocational agriculture, home economics, trade and industrial vocational subjects, to and from demonstration projects carried on in connection therewith; provided that under no circumstances shall the total round trip mileage for any one trip exceed twenty-five miles nor on any such trip shall a State owned school bus be taken out of the State of North Carolina. The costs of operating such school busses for said purpose, including the liability for workmen's compensation therewith and the employment of drivers of such busses, shall be paid for out of State funds, and the drivers of such busses shall be selected and employed as is provided for the operation of busses for the regularly organized school day under § 115-378: Provided, further, that the state board of education shall approve and designate any busses used for the purposes herein set forth.

When ordered to do so by the governor, the state board of education is authorized and empowered, and it shall be its duty, to furnish a sufficient number of school busses to the North Carolina state guard or the national guard, and to permit the use of such school busses by the state guard or the national guard for the purpose of transporting members of the state guard or

national guard to and from authorized places of encampment, or for the purpose of transporting members of the state guard or national guard to places where they are needed and authorized to go for the purpose of suppressing riots or insurrections or repelling invasions. Such busses, when used for the transportation of members of the state guard or national guard, shall be operated by members or employees of these organizations and the expenses of such operation and of repairs occasioned by such operation shall be paid from the appropriations available for the use of the state guard or the national guard. (1939, c. 358, s. 24; 1941, cc. 214, 267, s. 9; c. 315; 1943, c. 197; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The first 1941 amendment added the second paragraph.

The first 1943 amendment added the last paragraph. The second 1943 amendment struck out the former second and third paragraphs of this section which had been changed by the second and third 1941 amendments. The third 1943 amendment substituted "state board of education" for "state school commission."

§ 115-375. Operation of school busses one day prior to opening of term.—The state board of education is hereby empowered, in order to properly organize the public schools of the State, to operate the school busses one day prior to the opening of the regular school term for the purpose of registration of students, organizing classes, distributing textbooks, and such other purposes as will promote the efficient organization and operation of the public schools of the State. The costs of operating the same for said purpose, including the liability for workmen's compensation therewith, shall be paid out of State funds. (1941, c. 101; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-376. Bus routes. — In establishing the route to be followed by each school bus operated as a part of the state school transportation system, in all schools where transportation is now or may hereafter be provided, the state board of education shall, in co-operation with the district principal, unless road or other conditions make it inadvisable, route the busses so as to get within one mile of all children who live more than one and one-half miles from the school to which they are assigned: Provided, that all routes so established shall be subject to the approval of the county board of education and with a view to the needs of the students to the end that the necessity of students waiting on the road for busses in inclement weather be eliminated. The state shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made. All bus routes thus established shall be filed with the county board of education prior to the opening of school; and in the event any of said routes are disapproved by the county board of education, notice of same shall be filed with the state board of education, and a hearing on such appeal shall be had by said board within thirty days. (1939, c. 358, s. 25; 1941, c. 267, s. 10½; 1943, c. 721, s. 8.)

Editor's Note.—The 1941 amendment added that part of the proviso to the first sentence relative to waiting in inclement weather.

The 1943 amendment substituted "state board of education for "state school commission."

§ 115-377. Purchase of new equipment. — It shall be the duty of the tax levying authorities in the various counties, and they are hereby authorized, empowered, and directed to make provision in the capital outlay budget for the purchase under state contract of new busses needed to relieve overcrowding and to provide for the transportation of children not transported during the school year one thousand nine hundred thirty-nine. It shall be the duty of the state board of education to determine the rated capacity of each public school bus transporting children to or from school, and it shall be the duty of the local school authorities to see that no bus is loaded more than twenty-five per cent (25%) above its rated capacity. The county boards of education shall determine when the busses are overcrowded as specified in this section, and the state shall provide for the operation of all new busses purchased by the counties. It shall be the duty of the state of North Carolina to purchase all school busses used as replacements for old publicly owned busses which were operated by the state during the school year one thousand nine hundred forty, forty-one. It shall be the duty of the state board of education to promulgate rules and regulations that will insure for the children the greatest possible safety, including a standard signaling device for giving the public due notice that the bus is making a stop. Before purchasing new school busses, the state board of education shall cause to be made a thorough study of the most modern materials and construction for insuring the safest equipment possible within the funds available. The state board of education, in its discretion, may effect fire insurance coverage on the school busses, or act as a self-insurer. (1939, c. 358, s. 26; 1941, c. 267, ss. 8½, 10; 1943, c. 721, s. 8.)

Cross Reference.—As to maximum speed school busses allowed to travel, see § 20-218.

Editor's Note.—The 1941 amendment inserted the second and third sentences of this section. It also substituted "forty, forty-one" for "thirty-eight, thirty-nine" in the fifth sentence.

The 1943 amendment substituted "state board of education for "state school commission."

§ 115-378. Bus drivers.—The authority for selecting and employing the drivers of school busses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the state board of education for that particular type of employee. (1939, c. 358, s. 27; 1943, c. 721, s. 8.)

Cross Reference.—As to standard qualifications of school bus drivers, see § 20-218.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-379. Contract transportation. — In counties where school transportation is provided by contract with private operators, the state shall

provide funds for operating costs on the standards adopted for publicly owned busses, and it shall be the duty of the tax levying authorities in the various counties to provide in the capital outlay budget the additional funds necessary to pay contracts. (1939, c. 358, s. 28.)

§ 115-380. Co-operation with highway and public works commission in maintenance of equipment.—The state board of education is hereby authorized to negotiate with the highway and public works commission in co-ordinating all facilities for the repair, maintenance, and upkeep of equipment to be used by the state board of education in the school transportation system. In all cases where this is done, the state highway and public works commission shall be reimbursed in the amount of the actual cost involved for labor and parts to be determined by an itemized statement filed with the state board of education. (1939, c. 358, s. 29; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

§ 115-381. Lunch rooms may be provided.—In such cases as may be deemed advisable by the trustees or school committee in any school, and where the same may be deemed necessary because of the distance of the said school from places where meals may be easily obtained, it shall be permissible for the said trustees and the said school committees, as a part of the functions of the said public schools, to provide cafeterias and places where meals may be sold, and operate or cause the same to be operated for the convenience of teachers, school officers, and pupils of the said schools. There shall be no personal liability upon the said trustees and school committees, or members thereof, arising out of the operation of the said eating places, and it is understood and declared that the same are carried on and conducted in connection with the public schools, and because of the necessities arising out of the consolidation of the said schools and the inconvenience and interruption of the school day caused by seeking meals elsewhere: Provided, that no part of the appropriation made by the state for the public schools shall be expended for the operation of said cafeterias or eating places, nor shall the provisions of § 115-370 apply to the employees of the cafeterias or eating places, except such persons as are regularly employed otherwise in the schools. (1939, c. 358, s. 30.)

§ 115-382. Miscellaneous funds. — It shall be the duty of the county superintendent of public instruction to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes are correctly accounted for to the school fund each year, and to examine the records of the several courts of the county, including courts of justices of the peace, at least once every three months to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund, are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be his duty to make prompt report thereof to the state board of education and also to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of poll taxes, dog taxes, fines, forfeitures, and penalties to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court: Provided, however, that this section shall not be construed as making unlawful the use of such portions of said funds for other purposes as may be provided by the provisions of this subchapter. The clear proceeds of poll taxes, dog taxes, fines, forfeitures and penalties shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including justices of the peace, who shall wilfully fail or refuse to account for all poll taxes, dog taxes, fines, forfeitures or penalties coming into the hands of such officer, shall, upon conviction thereof, be guilty of a felony and imprisoned in the state's prison in the discretion of the court, or fined in the discretion of the court, or both. (1939, c. 358, s. 31; 1943, c. 721, s. 8.)

Cross Reference.—As to fines, forfeitures and penalties belonging to the school fund generally, see § 115-177 et seq.

Editor's Note.—The 1943 amendment substituted "state board of education" for "state school commission."

SUBCHAPTER XXIII. NORTH CAROLINA STATE THRIFT SOCIETY.

Art. 51. North Carolina State Thrift Society.

§ 115-383. North Carolina state thrift society incorporated.—In order the better to provide for the education of the school children of the state in the principles and practice of thrift and saving and in order to aid them in making better provision for their future advanced education, there is hereby created under the patronage and control of the state a non-stock corporation to be known as the North Carolina state thrift society. (1933, c. 385, s. 1.)

Editor's Note.—Session Laws 1943, c. 543, directed that former sections 55-14 to 55-25, inclusive, be transferred to follow immediately after § 115-382 and that they be appropriately renumbered.

§ 115-384. Charter perpetual.—The charter of the society shall be perpetual. (1933, c. 385, s. 2.)

§ 115-385. Membership and directors.—The membership of the society shall be identical with the membership of the governing board, which shall consist of sixteen directors. The state treasurer, the superintendent of public instruction, the president of the North Carolina bankers association and the president of the University of North Carolina shall throughout their terms of office be ex officio members of the board. The remaining twelve members of the board shall be appointed by the governor for successive terms of four years each, and shall be equally divided between the business and financial and the educational interests of the state, six members to each of the named groups: Provided that at least four of those representing business must be experienced bankers. (1933, c. 385, s. 3.)

§ 115-386. Vacancies.—In the event of a vacancy occurring before the expiration of the terms of office of any director, the board by a majority

vote of its full membership, including ex officio members, shall have power to elect persons to fill out the unexpired terms. (1933, c. 385, s. 4.)

§ 115-387. Officers of society.—The officers of the society shall be elected by the board, and shall include a president, vice-president, secretary, treasurer and auditor. The treasurer of the society shall be responsible for the funds of the society, and shall furnish good and sufficient surety in such amount as may be fixed from time to time by the board of directors. (1933, c. 385, s. 5; 1935, c. 489, s. 1.)

Editor's Note.—Prior to the amendment of 1935 the state treasurer was ex officio treasurer and depository of the fund of the society. The last sentence as it now reads is entirely new.

§ 115-388. Powers of purchase and sale.—The society shall have power and authority to purchase, lease and otherwise acquire such real and personal property as may be deemed useful to the prosecution of the objects for which it is created. It may sell and dispose of the same and may hold or may sell and convey such property also as may be taken in whole or partial satisfaction of any debt due to it. It may also receive gifts of money and property to be applied to its corporate purposes. (1933, c. 385, s. 6.)

§ 115-389. Deposits of school children.—The society may receive deposits of the funds of children and others attending any of the public schools or colleges of North Carolina, as provided in § 55-25, and subject to repayment on terms established by the board, provided that no individual account may exceed $1,000. (1933, c. 385, s. 7.)

§ 115-390. Depositories.—The funds in the treasurer's hands may be deposited by him, to his credit, with banks which are members of the Federal Deposit Insurance Corporation. In no case may the amount in any one bank exceed the amount covered by insurance. The interest accruing and paid on such deposits shall be added to the funds of the society. (1933, c. 385, s. 8; 1935, c. 489, s. 2.)

Editor's Note.—By the amendment of 1935 this section was changed to conform to the changes effected in section 115-387. As the state treasurer is no longer ex officio treasurer of the society this change is necessary.

§ 115-391. Exemption from taxation.—Neither deposits in the society nor its property, investments and assets shall at any time be subject to taxation by the state of North Carolina or any of its sub-divisions, except that gift, inheritance or estate taxes may be levied on the transfer of private deposits in the society. (1933, c. 385, s. 9.)

§ 115-392. Investments.—The funds of the society may, at the discretion of the board, be invested in obligations of the United States Government, or of the State of North Carolina, or deposited as previously provided in § 55-21. (1933, c. 385, s. 11; 1935, c. 489, s. 4.)

Editor's Note.—Prior to the amendment of 1935 this section provided that the funds where not required for student loans could at the discretion of the board be invested in obligations of the United States government or of the state of North Carolina.

§ 115-393. No expense to state.—Provided, that no liability of any kind shall rest on the state of North Carolina by reason of this article. (1933, c. 385, s. 12; 1935, c. 489, s. 5.)

Editor's Note.—Prior to the amendment of 1935 this section provided also that "no expense of any nature" should rest on state. This provision was omitted.

§ 115-394. Thrift instruction provided by superintendent of public instruction in schools. — Within 150 days from May 13, 1933, the state superintendent of public instruction shall provide in the public schools of the state for instruction in thrift and the principles, practice and advantage of saving.

In connection with the instruction so provided arrangements shall be made at each school for the receiving of students' savings deposits into the North Carolina state thrift society, subject to its rules and on the terms provided therein.

The administration of the system in each school shall be in charge of one or more of the teachers in said school to be designated by the principal.

The savings deposits shall be transmitted to the treasurer of the said society from time to time, in accordance with rules to be established by the governing board of the North Carolina state thrift society, and shall be held for the purposes declared in the charter of the said society. (1933, c. 481, ss, 1-4; 1935, c. 489, s. 6.)

Editor's Note.—Prior to the amendment of 1935 this section provided, in the last paragraph, that deposits should be transmitted to the state treasurer instead of the treasurer of the society.

Chapter 116. Educational Institutions of the State.

Art. 1. The University of North Carolina.

Part 1. General Provisions.

Art. 1. The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Constitutional provisions. — The general assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in anywise granted to or conferred upon the trustees of such University; and the general assembly may make provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of such University. The general assembly shall provide that the benefits of the university, as far as practicable, be extended to the youth of the state free of expense for tuition; also that all the property which has heretofore accrued to the

state, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the university, and the general assembly shall establish and maintain, in connection with the university, a department of agriculture, of mechanics, of mining, and of normal instruction. (Rev., s. 4259; Const., art. 9, ss. 6, 7, 14; C. S. 5781.)

Construction of the Word "Dividend." — The word "dividend" as used in this section is synonymous with "distributive shares," and is used as a convertible term. Trustees v. North Carolina R. Co., 76 N. C. 103.

§ 116-2. Consolidated University of North Carolina.—The University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women are hereby consolidated and merged into "The University of North Carolina." (1931, c. 202, s. 1.)

§ 116-3. Incorporation and corporate powers.—The trustees of the university shall be a body politic and corporate, to be known and distinguished by the name of the "University of North Carolina," and by that name shall have perpetual succession and a common seal; and by that name shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the university, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the university, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the university, or according to the terms of donation.

The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

In addition to these powers, the board of trustees shall succeed to all the rights, privileges, duties and obligations by law, or otherwise, enjoyed by or imposed upon the University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women, prior to March 27, 1931. (Rev., ss. 4260, 4261; Code, ss. 2610, 2611, 2630; R. S., vol. 2, pp. 424, 425; 1789, c. 305, ss. 1, 2; 1874-5, c. 236, s. 2; 1931, c. 202, s. 4; C. S. 5782.)

Devise to University—Capacity to Take.—See Brewer v. University, 110 N. C. 26, 14 S. E. 644.

§ 116-4. Trustees; number, election and term.—There shall be one hundred trustees of the University of North Carolina, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in one thousand nine hundred and thirty-one shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, twenty-five for terms expiring April 1, 1935, twenty-five for terms expiring April 1, 1937, and twenty-five for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. The superintendent of public instruction is ex officio a trustee of the University.

The members of the board of trustees of the University or other state institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Art. XIV of the Constitution of North Carolina. (Rev., s. 4268; Const. Art. 9, s. 6; Code, ss. 2620, 2625; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; 1909, c. 432; 1917, c. 47; 1931, c. 202, ss. 4, 5; 1937, c. 139; C. S. 5789.)

This section is constitutional. Trustees v. McIver, 72 N. C. 76.

§ 116-5. Living Governors made honorary members of board of trustees.—Each of the former Governors of North Carolina now living is hereby made an honorary member of the Board of Trustees of the University of North Carolina for life, with the power to vote on all matters coming before said board of trustees for consideration. The present Governor of North Carolina, and each succeeding Governor, shall, at the expiration of the term of office of each, automatically become an honorary member of the Board of Trustees of the University of North Carolina for life, with the power to vote on all matters coming before the said board of trustees for consideration. (1941, c. 136.)

§ 116-6. Trustees may remove members of board.—The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at a regular meeting of the board, and there shall be present at the doing thereof at least twenty of the members of the board. (Rev., s. 4270; Code, s. 2619; R. S., vol. 2, p. 432; C. S. 5790.)

§ 116-7. Filling vacancies in board.—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the general assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section, but shall not apply to members serving in any branch of the United States Armed Forces or in the military forces of any of the Allies of the United States. (Rev., ss. 4721, 4272; Code, s. 2622; 1804, c. 647; 1805, c. 678,

s. 2; 1873-4, c. 64, s. 3; 1891, c. 98; 1907, c. 828; 1943, c. 175; C. S. 5791.)

Editor's Note.—The 1943 amendment added the exception clause to the last sentence.

§ 116-8. Meetings of trustees, regular and special; quorum.—There shall be two regular meetings of the board of trustees each calendar year. One of these regular meetings shall be in the city of Raleigh, which meeting shall be held during the session of the general assembly during the years that body convenes. The other regular meeting shall be held at such time and place as the governor may appoint. At any of the regular meetings of the board any number of trustees, not less than ten, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of any regular meeting; and the board of trustees at any regular meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at any regular meeting shall be absolutely, to all intents and purposes, null and void. (Rev., s. 4269; Code, ss. 2616, 2618, 2621; R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2; C. S. 5792.)

§ 116-9. Governor to preside at trustees' meetings or appoint presiding officer.—The governor shall preside at all the meetings of the board at which he may be present; and if, by indisposition or other cause, the governor shall be absent from any meeting of the board, he may appoint, in writing, some other person, being a trustee, to act in his stead for the time being, which appointee shall preside accordingly; and if at any time the governor shall be absent from the meeting of the board and shall not have appointed some trustee to act in his stead it shall be lawful for the board to appoint some one of their number to preside for the time being. (Rev., s. 4263; Code, s. 2615; R. S., vol. 2, p. 432; 1805, c. 678; C. S. 5788.)

§ 116-10. Rules and regulations.—The trustees shall have power to make such rules and regulations for the management of the university as they may deem necessary and expedient, not inconsistent with the constitution and laws of the state. (Rev., s. 4273; Code, s. 2623; 1873-4, c. 64, s. 4; C. S. 5794.)

§ 116-11. Executive committee. — The trustees shall have power to appoint from their own number an executive committee which shall be clothed with such powers as the trustees may confer. (Rev., s. 4267; Code, s. 2624; 1873-4, c. 64, s. 5; C. S. 5795.)

§ 116-12. President and faculty.—The trustees shall have the power of appointing a president of the University of North Carolina and such professors, tutors, and other officers as to them shall appear necessary and proper, whom they may remove for misbehavior, inability, or neglect of duty. (Rev., s. 4264; Code, s. 2613; R. S., vol. 2, p. 427; 1789, c. 305, s. 7; C. S. 5796.)

§ 116-13. Treasurer; duties and bond.—The trustees shall elect and commission some person to be treasurer for the corporation during the term of two years and until his successor shall be elected and qualified; which treasurer shall enter into bond, with sufficient sureties, payable to the state of North Carolina, in the sum of not less than ten thousand dollars, conditioned for the faithful discharge of his office and the trust reposed in him, and that all moneys and chattels belonging to the corporation that shall be in his hands at the expiration of his office shall then be immediately paid and delivered into the hands of the succeeding treasurer. Every treasurer shall receive all moneys, donations, gifts, bequests, and charities whatsoever that may belong or accrue to the corporation during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer; and on his neglect or refusal so to pay and deliver the same proceedings may be had against him as is or may be provided for the recovery of moneys from sheriffs or other persons chargeable with public moneys. (Rev., s. 4265; Code, s. 2612; R. S., vol. 2, p. 426; 1789, c. 305, s. 4; C. S. 5797.)

§ 116-14. Vacancies in offices of secretary and treasurer.—In case the office of secretary or treasurer of the corporation shall be vacant from any cause whatever in the recess of the board of trustees, the president shall appoint a suitable person to fill the same until the annual meeting of the board of trustees, at which time the board shall elect a proper person to fill such vacancy. (Rev., s. 4266; Code, s. 2617; R. S., vol. 2, p. 433; C. S. 5798.)

§ 116-15. Extension work.—It shall be the duty of the faculty of the University to extend its influence and usefulness as far as possible to the persons of the state who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S. 5837.)

§ 116-16. Awarding of degrees, etc., by consolidated University.—The faculty of the University, that is to say, the president and professors, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities. All degrees or marks of literary distinction conferred by the University of North Carolina or any of its component colleges as herein specified, shall be conferred by the faculty of the University of North Carolina or the faculty of any one of its component colleges by and with the consent of the board of trustees, but degrees or marks of literary distinction conferred by the faculty of any one of the said colleges shall designate the college through or by which said degree or mark of literary distinction is conferred. (1931, c. 202, s. 11; C. S. 5796.)

§ 116-17. Application of receipts.—All receipts shall be applied to the maintenance and promotion of the particular unit of the university receiving same and to the objects specified in any laws making appropriations for its support, or in accordance with the expressed wishes of any donor, as far as practicable. (1907, c. 406, s. 17; C. S. 5815.)

§ 116-18. Gifts and endowments belong to institution to which made; administration of such funds.—All gifts and endowments, whether moneys, goods or chattels, or real estate, heretofore or hereafter given or bestowed upon or conveyed to any one of the institutions, as existing before March 27, 1931, shall continue thereafter to be used, enjoyed, and administered by the particular unit to which they were given or conveyed; but if there were trusts, they shall be administered by said unit in accordance with the provisions of the trust deed creating them, for the benefit of the particular institution to which such trust deed was executed. The administration of all these funds, endowments, gifts, and contributions shall, however, be under the control of the board of trustees of the University of North Carolina. (1931, c. 202, s. 12.)

§ 116-19. Tax exemption.—The lands and other property belonging to the corporation shall be exempt from all kinds of public taxation. (Rev., s. 4262; Const., art. 5, s. 5; Code, s. 2614; R. S. vol. 2, p. 428; 1789, c. 306, s. 3; C. S. 5783.)

§ 116-20. Escheats to university.—All real estate which has heretofore accrued to the state, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. (Rev., s. 4282; Const., art. 9, s. 7; Code, s. 2626; R. C., c. 113, s. 11; 1789, c. 306, s. 2; C. S. 5784.)

Vested Right Cannot Be Impaired by Repeal of Section.—The legislature is without power under the due process clause of the constitution to deprive the trustees of such escheated property which by virture of this section has vested in them, by a subsequent act repealing this section. Trustees v. Foy, 5 N. C. 58.

Land held by incorporated town held to escheat upon repeal of town charter under the facts of this case. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511.

Applied in In re Will of Neal, 182 N. C. 405, 109 S. E. 70.
Cited in Smith v. Dicks, 197 N. C. 355, 148 S. E. 464.

§ 116-21. Evidence making prima facie case.—In all cases where land situated in this state is claimed by the University of North Carolina by right of escheat, it shall be sufficient to prove, in order to make out a prima facie case of escheat, that the land claimed was granted by the state of North Carolina; that the grantee, or any subsequent owner thereof, died without disposing of said land either by conveyance or will, registered or probated prior to the institution of the action, and that for fifty (50) years subsequent to the death of the last known owner, no person has appeared to claim the land either as devisee, grantee, or heir. (Ex. Sess. 1920, c. 43; C. S. 5784(a).)

Section Applicable to Proof.—The provisions of this section apply only to proof and not to pleading. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511.

§ 116-22. Unclaimed personalty on settlements of decedents' estates to university.—All sums of money or other estate of whatever kind which shall remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto; and if no such claim shall be preferred within ten years after such money or other estate be received by such corporation, then the same shall be held by it absolutely. (Rev., s. 4283; Const., art. 9, s. 7; Code, ss. 2627, 1504; 1868-9, c. 113, s. 76; R. S., c. 46, s. 20; 1784, c. 205, s. 2; 1809, c. 763, s. 1; C. S. 5785.)

Applied in Warner v. Western North Carolina R. Co., 94 N. C. 250.

§ 116-23. Other unclaimed personalty to university.—Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely. (Rev., s. 4284; Code, ss. 2628, 2629; C. S. 5786.)

Escheat Officer Not Liable.—Funds representing amounts apportioned to claimants of an insolvent bank who failed to prove their claims, which are turned over to the secretary of state as escheat officer, are not assets of the liquidated bank, but are to be held by the University, subject solely to the rights of those who failed to prove their claims, and a depositor who proved his claim and received dividends thereon as a common claim may not hold the escheat officer liable for the balance unpaid on his claim upon his contention that the claim should have been paid in full as a preferred claim. Windley v. Lupton, 212 N. C. 167, 193 S. E. 213.

§ 116-24. Certain unclaimed bank deposits to university.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. (1937, c. 400; 1939, c. 29.)

Cross Reference.—As to escheats of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (12).

Editor's Note.—See 15 N. C. Law Rev. 350, 351.

Prior to the 1939 amendment this section applied only to deposits of five dollars and less.

§ 116-25. Other escheats. — Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation engaged in construction work in North Carolina for services rendered in such construction work within the state are hereby declared to be escheats coming within the laws of this state, and the same shall be paid to the University of North Carolina immediately upon the expiration of one year from the time the same became due.

Rebates and returns of overcharges due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the utilities commission, shall be paid to the University of North Carolina.

All monies now in the hands of clerks of the superior court, the state treasurer, or any other officer or agency of the state or county, or any other depository whatsoever, as proceeds of the liquidation of state banks by receivers appointed in the superior court prior to the liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies now in the hands of the treasurer of the state, represented by state warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

All monies, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such monies, claims, or property shall be received by it, then the same shall be held by it absolutely.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund. (1939, c. 22.)

§ 116-26. Application of receipts.—All receipts heretofore had or hereafter to be had from dividends, escheated property, derelict property, money or other property in the hands of executors, administrators, or collectors, and from any source whatever under authority of the state, and all interest thereon, shall be exclusively devoted by the trustees to the maintenance of the university. (Rev., s. 4285; Code. s. 2630; 1874-5, c. 236, s. 2; C. S. 5787.)

Part 2. North Carolina State College of Agriculture and Engineering of the University of North Carolina.

§ 116-27. Operation of State College at Raleigh.—The North Carolina State College of Agriculture and Engineering shall from and after March 27, 1931 be conducted and operated as part of the University of North Carolina. It shall be located at Raleigh, North Carolina, and shall be known as the North Carolina State College of Agriculture and Engineering of the University of North Carolina. (1931, c. 202, s. 2.)

§ 116-28. Object of the college.—The object of this college shall be to teach the branches of learning relating to agricultural and mechanical arts and such other scientific and classical studies as the board of trustees may elect to have taught, and to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. (1907, c. 406, s. 3; C. S. 5807.)

§ 116-29. Share in appropriations by congress.—The appropriations made or which may hereafter be made by the congress for the benefit of colleges of agricultural and mechanical arts shall be divided between the white and colored institutions in this state in the ratio of the white population to the colored, as ascertained by the preceding national census. (1907, c. 406, s. 1; C. S. 5808.)

§ 116-30. Board to accept gifts and congressional donations.—The board of trustees shall use, as in its judgment may be proper, for the purposes of such college and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the state, property, personal, real or mixed, and any donations from the United States congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the congress in relation thereto. (1907, c. 406, s. 6; C. S. 5816.)

§ 116-31. Land scrip fund.—The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the state treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of such college in accordance with the act of the congress approved July second, one thousand eight hundred and sixty-two, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts." (1907, c. 406, s. 8; C. S. 5817.)

§ 116-32. Agricultural experiment station.—The agricultural experiment and control station shall be connected with the college and controlled by the board of trustees. (1907, c. 406, s. 12; C. S. 5825.)

Cross Reference.—As to agricultural experiment station and test farms under auspices of board of agriculture, see § 106-15.

§ 116-33. Land for experimental purposes.—The State Highway and Public Works Commis-

sion and the board of trustees of the University of North Carolina are hereby authorized to enter into an agreement for the benefit and use of the North Carolina State College of Agriculture and Engineering of the University of North Carolina whereby a certain portion of the land located near Method, North Carolina, and in the possession of the State Highway and Public Works Commission may be conveyed to the University for a term of years or in fee simple, to be used by said college for research, experimental or demonstration purposes, and whenever an agreement is entered into, the Governor and Secretary of State are authorized to execute a lease or deed conveying to the University the number of acres of land agreed upon. (1925, c. 198, s. 1.)

§ 116-34. Joint employment by college and state.—Whenever it shall be to the advantage of the North Carolina State College of Agriculture and Engineering and any department of the State government to employ jointly any person, the board of trustees and the governing authority of the department, on the approval of the Governor, are hereby authorized to make such employment and to prorate the amount of the salary and other expenses that each shall be required to pay. (1925, c. 198, s. 2.)

§ 116-35. Co-ordinating committee of college and department of agriculture created.—A co-ordinating committee is hereby created consisting of thirteen members as follows: The president of the board of trustees of the University of North Carolina, who shall be ex officio chairman of said committee, the president of the University, the dean of administration of State College of Agriculture and Engineering, and the dean of agriculture, the commissioner of agriculture, the assistant commissioner of agriculture, and the state chemist or any other officer in the department of agriculture which the commissioner of agriculture may designate, three members of the board of trustees of the University of North Carolina who have a practical knowledge of agriculture, to be appointed by the president of the said board, and three members of the state board of agriculture, to be appointed by the commissioner of agriculture, the members so appointed to serve for a term of two years or until their successors are duly appointed. (1939, c. 255, s. 1.)

§ 116-36. Duties of co-ordinating committee.—It shall be the duty of the co-ordinating committee herein created to deal with and handle any existing matters of duplication, overlapping or disagreement, and such controversial matters as may arise in the future in the agricultural agencies of the State College of Agriculture and Engineering and the department of agriculture. Whenever there is an overlapping or disagreement in consequence of closely allied functions and duties of the said agencies, it shall be the duty of the co-ordination committee to allocate, after due consideration, such duties and functions as may be in disagreement or overlapping, and that are not already allocated by law, to the proper agency as it may deem wise, and to require such co-operation between the employees in the agencies as it may deem necessary. The co-ordinating committee may investigate, on complaint, or on its own initiative, any overlapping, duplication or disagreement and the decision of the said committee shall be binding on all parties. (1939, c. 255, s. 2.)

§ 116-37. Findings of committee to be binding on commissioner of agriculture and president of University.—The findings and recommendations of the co-ordinating committee shall be binding on the commissioner of agriculture and the president of the University of North Carolina and it shall be their duty to see that the findings and recommendations of the committee shall be put into effect in their respective departments. (1939, c. 255, s. 3.)

Part 3. Woman's College of the University of North Carolina.

§ 116-38. Operation of College for Women at Greensboro. — The North Carolina College for Women shall from and after March 27, 1931, be conducted and operated as a part of the University of North Carolina. It shall be located at Greensboro, North Carolina, and shall be known as the Woman's College of the University of North Carolina. (1931, c. 202, s. 3; 1943, c. 543.)

Editor's Note.—The 1943 amendment substituted the word "Woman's" for the word "Women's" in the next to the last line.

§ 116-39. Objects of institution.—The objects of the Woman's College of the University of North Carolina shall be to teach young white women all branches of knowledge recognized as essential to a liberal education, such as will familiarize them with the world's best thought and achievement and prepare them for intelligent and useful citizenship; to make special provision for training in the science and art of teaching, school management, and school supervision; to provide women with such training in the arts, sciences, and industries as may be conducive to their self-support and community usefulness; to render to the people of the state such aid and encouragement as will tend to the dissemination of knowledge, the fostering of loyalty and patriotism, and the promotion of the general welfare. (1919, c. 199, s. 2; C. S. 5835.)

§ 116-40. Admission of students.—The board of trustees shall make rules and regulations for the admission of students, but shall not discriminate against any county in the number of students allowed it, in case all applicants cannot be accommodated. Each county shall have representation in proportion to its white school population, if it desires it; and, should any county fail to avail itself of its proportional number, the board of trustees may recognize applicants from counties which already have their proportionate representation. (Rev., s. 4254; 1891, c. 139, s. 4; C. S. 5836.)

§ 116-41. Dining halls. — For the benefit of those who may desire to avail themselves of it dining halls shall be established at which meals shall be furnished at actual cost. (Rev., s. 4257; 1891, c. 139, s. 12; 1905, c. 502; 1919, c. 199, s. 4; C. S. 5838.)

Part 4. Miscellaneous Provisions.

§ 116-42. License for operating billiard tables, etc., to be approved by President of University.—

No person, firm or corporation shall apply for or receive from the governing body, or the representative of such governing body, of any county or incorporated city or town, any license or authorization to set up, maintain or keep in Chapel Hill, or within five miles thereof, any public billiard table or other public table of any kind, by whatever name called, at which games of chance or skill may be played, without first obtaining written permission therefor from the President of the University of North Carolina. Nor shall any person, firm or corporation apply for or receive a license from any such governing body, or the representative thereof, to keep, maintain or operate within the Town of Chapel Hill or within five miles of the boundaries thereof, any house, place or establishment wherein ten pin alleys, bowling alleys, or other games of chance or skill shall be operated or conducted without first obtaining written permission therefor from the President of the University of North Carolina. (Rev., s. 4278; Code, s. 2644; R. C., c. 113, s. 5; R. S., c. 116, s. 4; 1794, c. 429; 1931, c. 41; C. S. 5802.)

Editor's Note.—The Act of 1931 repealed the former prohibitory section and inserted the above in lieu thereof.

§ 116-43. License for exhibiting any form of amusements and entertainments to be approved by President of University.—No person, firm or corporation shall apply for or obtain from the governing body, or the representative of such governing body, or any county or incorporated city or town any license or permit to exhibit within the Town of Chapel Hill or within five miles thereof any theatrical, sleight of hand, equestrian performance, or any dramatic recitation, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade or performance in music, singing or dancing, without first securing a written permission for said performance from the President of the University of North Carolina. A copy of the President's permission shall be filed with the governing body, or the representative of such governing body, or any county or incorporated city or town at the time said license or permit is applied for in all cases covered by this section. (Rev., s. 4279; Code, s. 2645; R. C., c. 113, s. 6; R. S., c. 116, s. 3; 1824, c. 1252; 1931, c. 41; C. S. 5803.)

Editor's Note.—The Act of 1931 repealed the former section and substituted the above in lieu thereof.

§ 116-44. Violation of two preceding sections; misdemeanor; jurisdiction; participant must testify.—Any person violating §§ 116-42 or 116-43 shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars, or be imprisoned not less than ten days nor more than thirty days; and if the offender is not brought to trial before some justice of the peace within twelve months after the commission of the offense, the superior court in term for the county in which the offense was committed may take jurisdiction of the same and punish the offender at the discretion of the court. No person shall be excused or incapacitated from testifying touching the violation of any of the two next preceding sections by reason of his having been a participant in the offenses; but the testimony of such person shall not be used against him in any criminal prosecution on account of such participation. (Rev., s. 4280; Code, s. 2646; R. C., c. 113, s. 7; 1879, c. 232, s. 3; C. S. 5804.)

Art. 2. Western Carolina Teachers' College.

§ 116-45. Western Carolina Teachers' College.—The Western Carolina Teachers' College, successor to The Cullowhee Normal and Industrial School created a public institution by Chapter 369 of the Private Laws of 1905, is and shall remain a corporation under the name of the Western Carolina Teachers' College, with power to sue and be sued, to make contracts and to exercise all other corporate rights and privileges incident to a public educational institution of the state and necessary to the management of the school. (1905 (Pr.), c. 369; 1925, c. 270; C. S. 5839.)

§ 116-46. Trustees; appointment; terms; to hold property.—The board of trustees of the Western Carolina Teachers' College shall consist of nine persons to be appointed by the Governor, and shall hold office for four years from and after their appointment. Within thirty days from March 10, 1925, the Governor shall appoint five members of the board. Within six months from March 10, 1925, the Governor shall appoint four others members of the board. At the time of making the appointments as herein provided for the Governor shall designate which members of the present board are to be succeeded by his appointees. Any vacancies occurring in the board shall be filled by the Governor. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate, to be known as "the board of trustees of Western Carolina Teachers' College." All property, real, personal, or mixed, of every kind and character, now owned and under the control of the board of trustees of the Cullowhee Normal and Industrial School at Cullowhee, or owned and under the control of the State Board of Education or of any other person or corporation for the use and benefit of the Cullowhee Normal and Industrial School, is hereby transferred to and the title thereof is hereby vested in the board of trustees of the Western Carolina Teachers' College who shall take, receive and hold the same for the use and benefit of the Western Carolina Teachers' College; the trustees may purchase and hold real and personal property; receive donations, which donations shall be received by them for the purposes expressed by the donors thereof and shall be used for such purpose and no other, and do all other things necessary, proper and useful to carry out the provisions of this article. All property now owned by the Cullowhee Milling Company, a corporation, the stock of which is owned by the trustees, shall be transferred to the board of trustees of the Western Carolina Teachers' College and the said corporation shall be dissolved according to law. The trustees shall take over the property of the Cullowhee Milling Company and use it for the benefit of the Western Carolina Teachers' College as fully as if it was now owned by the Cullowhee Normal and Industrial School and not by the Cullowhee Milling Company. (1925, c. 270, s. 2; 1929, c. 251, s. 2.)

§ 116-47. Meeting and organization of trus-

tees.—It shall be the duty of said board of trustees to hold at Cullowhee an annual meeting, at which meeting they shall qualify and organize, and consider recommendations of the president of the normal school, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925, c. 270, s. 3.)

§ 116-48. Trustees to hold property.—It shall be the duty of the board of trustees of the Western Carolina Teachers' College to take and hold all property, of whatever kind, heretofore held by the trustees of the Cullowhee Normal and Industrial School. The said boards of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purposes of said school. (1925, c. 270, s. 4; 1929, c. 251, s. 2.)

§ 116-49. Duties of trustees.—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by, the Western Carolina Teachers' College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of the said normal school, and may do all things deemed useful and wise by them for the good of the school: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the Secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925, c. 270, s. 5; 1929, c. 251, s. 2.)

§ 116-50. Election of president, teachers, employees; qualifications of teachers.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office and their respective salaries. No person shall be elected as a teacher or shall teach in the regular classes of the Western Carolina Teachers' College whose academic and professional qualifications are lower than that represented by graduation from a standard college or its undoubted equivalent: Provided, that persons who do not have such qualifications may be elected and may teach as a substitute or temporary teacher. (1925, c. 270, s. 6; 1929, c. 251, s. 2.)

§ 116-51. Awarding of degrees.—The trustees, upon the recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions. (1925, c. 270, s. 1; 1929, c. 251, s. 1.)

§ 116-52. Duties of president. — It shall be the duty of the president to act as secretary of the board of trustees, to keep, in a book to be provided for the purpose, a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointment pursuant to § 116-46. The president shall be the administrative and executive head of the institution. He shall prepare annually, for the board of trustees, a detailed report of the normal school for the preceding year, a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925, c. 270, ss. 7, 11.)

§ 116-53. Purpose of school, standards. — The central purpose of the Western Carolina Teachers' College shall be to prepare teachers for the public schools of North Carolina. To that end, the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Western Carolina Teachers' College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade shall be maintained. The standards shall not be lower in the main, than the average standard of normal schools of like rank in the United States. (1925, c. 170, s. 8; 1929, c. 251, s. 2.)

§ 116-54. Practice or demonstration school.—It shall be the duty of the board of education and county superintendent of Jackson County to cooperate with the board of trustees of the Western Carolina Teachers' College in maintaining a practice or demonstration school. It shall be the duty of board of trustees to furnish buildings, equipment, water and lights for such practice school; while the county board of education and the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school, while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records, and the like as other graded schools of the county. In case of any disagreement between the officials herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925, c. 270, s. 9; 1929, c. 251, s. 2.)

§ 116-55. Endowment fund. — The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations, and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the utilities commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925, c. 270, s. 10; 1933, c. 134, s. 8; 1941, c. 97.)

Art. 3. East Carolina Teachers' College.

§ 116-56. Incorporation and corporate powers.— The trustees of the East Carolina Teachers' College, established by an act of the general assembly of North Carolina of one thousand nine hundred and seven, and located at Greenville, North Carolina, shall be and are hereby constituted a body corporate by and under the name and style of "The Board of Trustees of the East Carolina Teachers' College," and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges incident to corporations of like character as are necessary for the proper administration of said college. (1907, c. 820, ss. 11, 12, 16; 1911, c. 159, s. 1; Ex. Sess. 1921, c. 27, s. 1; C. S. 5863.)

Editor's Note.—This section was amended by Ex. Sess. 1921, ch. 27, sec. 1, by substituting the word "college" for the original words "training school" twice appearing in this section.

Validity of Bond for Establishment.—See Cox v. Com., 146 N. C. 584, 60 S. E. 516.

§ 116-57. Object of college.—The college shall be maintained by the state for the purpose of giving to young white men and women such education and training as shall fit and qualify them to teach in the public schools of North Carolina. (1907, c. 820, s. 15; 1911, c. 159, s. 2; C. S. 5864.)

§ 116-58. Diplomas and certificates.—The board of trustees, upon the recommendation of the faculty, shall give those students in said college who have completed the prescribed course of study a diploma of graduation, and shall have the power to confer degrees; and they may upon the recommendation of the faculty grant certificates of proficiency for the completion of special courses. (1907, c. 820, s. 14; 1911, c. 159, s. 5; Ex. Sess. 1920, c. 68, s. 1; C. S. 5865.)

Editor's Note.—The amendment (Ex. Sess. 1920, ch. 68, sec. 1) authorized the board of trustees to confer degrees upon students completing the course of said college.

§ 116-59. Board of Trustees. — The board of trustees of the East Carolina Teachers' College shall consist of 12 members, who shall be appointed by the Governor and confirmed by the Senate; in addition to this number, the superintendent of Public Instruction shall be ex officio chairman.

The twelve appointed members of the first board of trustees authorized by this section shall be appointed for terms beginning July 1, 1929, and shall serve as follows: four members for two years, four members for four years and four members for six years. Thereafter the members of the board shall serve for terms of six years and until their successors are appointed and qualified.

Members of the board of trustees may be removed from office by the Governor and Council of State after a hearing before them, upon complaint being filed by the chairman of the board.

Whenever a trustee shall fail to be present for one year at the regular meetings of the board, his place as trustee shall be deemed vacant, and said vacancy shall be filled by the Governor subject to the approval of the Senate when it next convenes. (1907, c. 820, s. 15; 1911, c. 159, s. 2; 1925, cc. 94, 306, s. 7; 1927, c. 164; 1929, c. 259; C. S. 5866.)

Editor's Note.—The amendment of 1925 provided that the board be appointed by the governor instead of the board of education. The amendment of 1927, increased the number of trustees from nine to twelve, and provided that whenever a trustee shall fail to be present for one year at the regular meetings of the Board, his place as trustee shall be deemed vacant and said vacancy shall be filled by the Governor.

§ 116-60. Course of study.—The board of trustees shall have power to prescribe the course of study of said college and shall lay special emphasis on those subjects taught in the public schools of the state, and on the art and science of teaching. (1907, c. 820, s. 13; 1911, c. 159, s. 4; Ex. Sess. 1920, c. 68, s. 2; C. S. 5867.)

Editor's Note.—The Laws of 1920 Extra Session 1920, ch. 68, sec. 2, struck out from the end of this section the prohibition upon the power of the board of trustees that they would not prescribe a curriculum beyond that which would fit and prepare a student for unconditional entrance into the freshman's class of the University of North Carolina.

§ 116-61. Discrimination against counties.—The board of trustees shall make no rules that discriminate against one county in favor of another in the admission of pupils into said college. (1907, c. 820, s. 17; C. S. 5868.)

§ 116-62. Power of exclusion from dormitories. —When, in the judgment of the board of trustees, the best interest of the college will be promoted thereby, the board may decline to admit young men into the rooms of the dormitories. (1911, c. 159, s. 6; C. S. 5869.)

§ 116-63. Vesting the rights and titles. — All rights and titles heretofore acquired in any way for the use and benefit of said college shall vest and remain in the said board of trustees as herein incorporated. (1911, c. 159, s. 7; Ex. Sess. 1921, c. 27, s. 2; C. S. 5870.)

Editor's Note.—The amendment 1921 (Ex. Sess. 1921, ch. 27, sec. 2) substituted the word "college" for the words "training school."

§ 116-64. Biennial reports to governor.—The trustees shall report biennially to the governor, before the meeting of each general assembly, the operation and condition of said college. (1907, c. 820, s. 15; 1911, c. 159, s. 8; C. S. 5871.)

Art. 4. Appalachian State Teachers College.

§ 116-65. Name of school.—The name of the institution first known as the "Appalachian State Training School" and later changed to "Appalachian State Normal School" at Boone, North Carolina, formerly operated under the provisions of §§ 5855-5862 of the Consolidated Statutes of 1919, is hereby changed to the "Appalachian

State Teachers College." (1925 (Pr.), c. 204, s. 1; 1929 (Pr.), c. 66.)

§ 116-66. Trustees; transfer of property.—The board of trustees of the Appalachian State Teachers College, shall consist of nine persons to be appointed by the Governor. Within thirty days from March 10th, 1925, the Governor shall name five members of the board and in naming the said five members, he shall designate which members of the present board are to be succeeded by the five so named. Within six months from March 10th, 1925, the Governor shall name the four other members of the said board and in naming the said four other members, he shall designate which of the members of the present board are to be succeeded by two of the four so named. The term of office of the first five named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-seven. The term of office of the last four named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-nine. Any vacancies occurring in said board shall be filled by the Governor. The Governor shall transmit the names of the trustees appointed by him to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate to be known as "The board of trustees of the Appalachian State Teachers College." All property, real, personal or mixed of every kind and character now owned and under the control of the board of trustees of the Appalachian Training School or the Appalachian State Normal School, at Boone, North Carolina, or owned and under the control of the State Board of Education for the use and benefit of the Appalachian Training School or the Appalachian State Normal School, or under the control and in the possession of any other person for the use and benefit of the said institutions, is hereby transferred to and the title thereof vested in the board of trustees of the Appalachian State Teachers College, who shall take, receive and hold the same for the use and benefit of the said school; the said trustees may purchase, and hold real and personal property, receive donations and do all things necessary and useful to carry out the provisions of this article. (1925 (Pr.), c. 204, s. 2; 1929 (Pr.), c. 66.)

§ 116-67. Term of office of trustees; vacancies.—Except as herein otherwise provided, the trustees of the Appalachian State Teachers College shall be appointed for the term of four years each. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointments. (1925 (Pr.), c. 204, s. 12; 1929 (Pr.), c. 66.)

§ 116-68. Meetings.—It shall be the duty of said board of trustees to hold at Boone an annual meeting at which meeting they shall qualify and organize, and consider recommendations of the president of the College, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925 (Pr.), c. 204, s. 3; 1929 (Pr.), c. 66.)

§ 116-69. Duty to hold property.—It shall be the duty of the board of trustees of the Appalachian State Teachers College to take and hold all property, of whatever kind, heretofore held by the trustees of the Appalachian Training School or the Appalachian State Normal School. The said board of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purpose of said school. (1925 (Pr.), c. 204, s. 4; 1929 (Pr.), c. 66.)

§ 116-70. Duty to provide for spending of moneys and erection of buildings, improvements, etc.—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the Appalachian State Teachers College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of said normal school, and may do all things deemed useful and wise by them for the good of the school, not contrary to the educational policies of the State or the laws of North Carolina: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the Secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925 (Pr.), c. 204, s. 5; 1929 (Pr.), c. 66.)

§ 116-71. Election of president and faculty.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office and their respective salaries. (1925 (Pr.), c. 204, s. 6; 1929 (Pr.), c. 66.)

§ 116-72. Board to confer degrees.—The trustees, upon recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions in America. (1929 (Pr.), c. 66.)

§ 116-73. President to keep record of board meetings; reports.—It shall be the duty of the president to act as secretary of the board of trustees, to keep in a book to be provided for the purpose a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. The president shall be the administrative and executive head of the institution. He shall prepare annually for the board of trustees a detailed report of the normal school for the preceding year, a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925 (Pr.), c. 204, s. 7; 1929 (Pr.), c. 66.)

§ 116-74. Purpose of school; state superintendent to visit school.—The central purpose of the Appalachian State Teachers College shall be to prepare teachers for the public schools of North Carolina. To that end the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Appalachian State Teachers College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade be maintained. The standards shall not be lower, in the main, than the average standard of normal schools of like rank in the United States: Provided, however, that no person shall teach in the regular classes of the normal school, unless as a substitute or temporary teacher, whose academic and professional qualifications are lower than that represented by graduation from a standard college, or its undoubted equivalent. (1925 (Pr.), c. 204, s. 8; 1929 (Pr.), c. 66.)

§ 116-75. Practice or demonstration school.—It shall be the duty of the board of education and county superintendent of Watauga County to cooperate with the board of trustees of the Appalachian State Teachers College in maintaining a practice or demonstration school. It shall be the duty of the board of trustees to furnish buildings, equipment, water and lights for such practice school; while the county board of education and the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records and the like as other graded schools in the county. In case of any disagreement between the bodies herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925 (Pr.), c. 204, s. 9; 1929 (Pr.), c. 66.)

§ 116-76. To establish permanent endowment fund.—The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the Utilities Commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925 (Pr.), c. 204, s. 10; 1929 (Pr.), c. 66; 1933, c. 134, ss. 1, 8.)

§ 116-76.1. Trustees of endowment fund; gifts; investments and use of income.—(1) The board of trustees of the Appalachian State Teachers College, together with other persons to be appointed by them, not to exceed nine in number, and to be known as the trusteees of the endowment fund of the Appalachian State Teachers College, are hereby created a body politic to do specific things hereinafter enumerated.

(2) The chairman of the board of trustees of the Appalachian State Teachers College shall be the chairman of the trustees of the endowment fund.

(3) The trustees may receive gifts, donations, bequests, and use the same, together with any other moneys or properties of any kind that may come to the board of trustees of the Appalachian State Teachers College or to the trustees of the endowment fund of the Appalachain State Teachers College—excepting, always, state appropriations and moneys received from tuition, fees and the like, collected from students and used for the general operations of the college—and set the same up as a permanent endowment fund.

(4) It shall be the duty of the trustees of the endowment fund to invest the funds coming into their hands with safety and to the best advantage in accordance with their judgment.

(5) The principal of said endowment fund shall be kept intact; only the interest, dividends or incomes may be expended each year.

(6) In the management of the endowment fund no discrimination shall be made against any person from any state that may be eligible to register at the Appalachian State Teachers College.

(7) It is not the intent that the income from this endowment fund take the place of state appropriations or any part thereof, but to supplement the state appropriations to the end that the college (1) may increase its functions, (2) may enlarge its areas of service, and (3) may become more useful to a greater number of people.

(8) All incomes derived from the endowment fund are to be used to bring teachers with superior training and widely recognized ability to the college campus:

1. To study the child and his development.
2. To study the learning processes.
3. To study the best teaching techniques.
4. To study education, especially elementary education.
5. To hold conferences, to experiment, to lecture, to write, to teach, to inspire, to the end that student teachers in attendance at the college may gather greater knowledge, power, and skill, and return to their schools with new zeal and with higher goals, giving finer opportunities to children everywhere.

(9) Nothing in this section shall be construed to prevent the trustees of the endowment fund from receiving gifts, donations and bequests, and from using the same as the donor or donors designate.

(10) The trustees of the endowment fund are authorized to do all things deemed useful and wise by them to carry out the true intent of this section. (1943, c. 193, ss. 1-10.)

§ 116-77. Hunting and fishing on premises.—It shall be unlawful for anyone to hunt or fish on the premises of the Appalachian State Teachers College without written permission. Any person

so doing shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court. He may have a preliminary hearing before any justice of the peace or before the mayor of the town of Boone. The board of trustees may fix a fee for hunting or fishing upon said premises and set aside any proceeds therefrom for the loan fund. (1925 (Pr.), c. 204, s. 11; 1929 (Pr.), c. 66.)

§ 116-78. Infirmary arrangement to be made with Watauga Hospital, Inc.—The Trustees of the Appalachian State Teachers College are hereby authorized to make such contract or contracts with the Watauga Hospital, Incorporated, for the reception of and treatment in of the officers, teachers and students of the Appalachian State Teachers College in the Watauga Hospital, Incorporated, as may secure the benefit of medical treatment for them.

The trustees are further authorized and empowered to pay any cost of such treatment, nursing and care to the Watauga Hospital, Incorporated, from time to time in accordance with the contract or contracts hereinbefore authorized, provided, such Appalachian State Teachers College shall thereby assume no responsibility for the proper conduct of the said Watauga Hospital, Incorporated.

The said Board of Trustees may aid in the construction of the Watauga Hospital, Incorporated, out of any funds available or hereafter may be secured for the purpose of erecting an infirmary. (1929, c. 212; 1929 (Pr.), c. 66.)

Art. 5. Pembroke State College for Indians.

§ 116-79. Incorporation and corporate powers; location.—The Pembroke State College for Indians shall be and remain a state institution for educational purposes, in the county of Robeson, under the name and style aforesaid, and by that name may have perpetual succession, sue and be sued, contract and be contracted with; have and hold school property, including buildings, lands, and all appurtenances thereto, situated in the county of Robeson, at any place in that county to be selected by the trustees between Bear swamp and Lumber river; acquire by purchase, donation, or otherwise, real and personal property for the purpose of establishing and maintaining a school of high grade for teachers of the race of Cherokee Indians of Robeson county in North Carolina. (Rev., s. 4236; 1887, c. 400, ss. 1, 6; 1911, cc. 168, ss. 1, 2, 215, s. 4; 1913, c. 123, ss. 4, 6; 1941, c. 323, s. 1; C. S. 5843.)

Local Modification.—Robeson County and Pembroke State College for Indians: 1929, c. 195; 1941, c. 323.

Editor's Note.—The 1941 amendment substituted "Pembroke State College for Indians" for "Cherokee Indian Normal School of Robeson County" as the name of this school.

§ 116-80. Supervision by State Board of Education.—The State Board of Education shall make all needful rules and regulations concerning the expenditure of funds, the selection of president, teachers and employees of said Pembroke State College for Indians. The State Board of Education shall control and supervise said school to the same extent substantially as that provided for the organization, control and supervision of the white normal and training schools; and it may change the organization to suit conditions in so far as the needs of the school and the funds appropriated demand such change. (1931, c. 276, s. 3; 1941, c. 323, s. 2.)

§ 116-81. Trustees.—The Governor shall appoint eleven trustees for the Pembroke State College for Indians. The terms of office of nine of such trustees shall begin on April 1, 1937, and the terms of office of the remaining two shall begin on April 1, 1939. The terms of office of all trustees shall be four years and until the successors of such trustees are appointed and qualified. The trustees shall be such as the Governor shall determine, after such inquiry and consideration as he may desire to make, to be fit, competent and proper for the discharge of all the duties that shall devolve upon them as such trustees. The governor shall fill all vacancies. The Governor shall transmit to the senate at the next session of the General Assembly following their appointment the names of persons appointed by him for confirmation.

The Governor shall have the power to remove any member of the board of trustees provided for in this section whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14; 1929, c. 238; 1931, c. 275; 1941, c. 323.)

§ 116-82. President; election and duties.—The trustees shall elect one of their own number president of the corporation, whose duties shall be such as devolve upon such officers in similar cases, or such as shall be defined by the trustees. (Rev., s. 4237; 1887, c. 400, s. 2; 1911, c. 168, s. 2; C. S. 5845.)

§ 116-83. Trustees to employ and discharge teachers and manage school.—The board of trustees of said Pembroke State College for Indians shall have the power to employ and discharge teachers, to prevent negroes from attending said school, and to exercise the usual functions of control and management of said school, their action being subject to the approval of the state board of education. (1911, c. 168, s. 3; 1941, c. 323, s. 1; C. S. 5846.)

§ 116-84. Department for teaching of deaf, dumb and blind.—The board of trustees of the Pembroke State College for Indians are hereby authorized, empowered and directed to employ some person trained in the teaching of the deaf and dumb or blind and to provide a department in said school in which said deaf, dumb and/or blind Indian children of Robeson and surrounding counties may be taught, no provisions being now made for the teaching of said children, the said teacher to be employed in the same manner and under the same rules and regulations governing other teachers in the said school. (1935, c. 435; 1941, c. 323, s. 1.)

§ 116-85. Admission and qualification of pupils.—Persons of the Indian race of Robeson County who are descendants of those that were determined to constitute those who were within the terms and contemplation of chapter fifty-one, Laws one thousand eight hundred and eighty-five, and within the census taken pursuant thereto by the County Board of Education of Robeson County, of either sex, resident in North Carolina,

who are not under thirteen years of age, may attend the Pembroke State College for Indians, and children not under eleven years of age may be admitted who can stand an approved examination in spelling, reading, writing, primary geography, and the fundamental rules of arithmetic. (Rev., s. 4241; 1887, c. 400, s. 10; 1893, c. 515, s. 2; 1911, c. 215, ss. 2, 3; 1913, c. 123, s. 4; 1929, c. 195, s. 6; 1941, c. 323, s. 1; C. S. 5847.)

This section applies to residents of Robeson who have come in since 1885. Goins v. Training School, 169 N. C. 736, 86 S. E. 629.

§ 116-86. Tax exemption. — All property, real and personal, acquired by this corporation, by purchase, donation, or otherwise, as long as it is used for educational purposes, shall be exempt from taxation, whether on the part of the state or county. (Rev., s. 4239; 1887, c. 400, s. 8; C. S. 5848.)

Art. 6. Vocational and Normal School for Indians in Certain Counties.

§ 116-87. Establishment of vocational and normal school for Indians.—The state board of education is hereby authorized and empowered to establish a vocational and normal school at any place it may deem most suitable for teaching and training the young Indian men and women not otherwise provided for. (1941, c. 370, s. 1.)

§ 116-88. Courses of instruction; preparatory department; removing or closing school.—In said vocational and normal school so created there shall be provided such courses of instruction in vocational education, teacher training and higher education as the state board of education and the state superintendent of public instruction may deem necessary and proper in order to furnish said Indians the necessary and proper educational facilities. A preparatory department may be established in connection with any such school, and the said state board of education shall have the power and authority to remove or close any such school established under the authority contained in this article. (1941, c. 370, s. 2.)

§ 116-89. Board of trustees; powers; terms and compensation; election of teachers.—The governor of the state of North Carolina shall have the power to appoint a board of six trustees for any school created under the provisions of this article, which board shall have the general management of such school and such other powers for the management thereof as are not vested in the state board of education or the state superintendent. In addition to the six members above provided for, the state superintendent of public instruction shall be ex officio a member of said board of trustees and chairman thereof.

Two members of the board of trustees shall be appointed for a term of two years, two for four years, and two for six years, and thereafter, as vacancies occur by the expiration of the term of office of each, his successor shall be appointed for a term of six years. Vacancies occurring by resignation or death, or otherwise, of any member of said board of trustees before the expiration of this term of office, shall be filled by the governor for the unexpired term. The original appointments shall be made by the governor in the month of May, one thousand nine hundred and forty-one. The members of the board of trustees shall receive no compensation for their services other than actual expenses while attending meetings of the board.

The board of trustees shall elect one of its members as secretary. Said board shall have the power, subject to the approval of the state superintendent of public instruction, to elect the teachers who shall teach in any such school. (1941, c. 370, s. 3.)

§ 116-90. Disbursement of funds for expenses.—All disbursements, including disbursements for salaries and other expenses, shall be disbursed and expended under the terms of the Executive Budget Act. (1941, c. 370, s. 4.)

§ 116-91. Election of superintendent; salary; duties.—The state board of education shall elect a superintendent of any school established under the provisions of this article, and fix his salary. His duties shall be outlined by the state board of education and he shall perform such other duties in the educational department of the state as the state superintendent of public instruction may direct. His salary and expenses shall be paid out of the annual appropriation hereinafter provided for upon the requisition of the state superintendent of public instruction. (1941, c. 370, s. 5.)

Cross Reference.—As to other provisions for schools for Indians in certain counties, see § 115-66.

Art. 7. Negro Agricultural and Technical College of North Carolina.

§ 116-92. Establishment and name.—A college of agricultural and mechanical arts is hereby established for the colored race to be located at some eligible site within this state. Such institution shall be denominated The Negro Agricultural and Technical College of North Carolina. (Rev., s. 4221; 1891, c. 549, ss. 1, 2; 1915, c. 267; C. S. 5826.)

Cross Reference.—For section authorizing the establishment of professional and graduate courses at the Negro Agricultural and Technical College, see § 116-100.

§ 116-93. Object of college.—The leading object of the institution shall be to teach practical agriculture and the mechanic arts and such branches of learning as relate thereto, not excluding academical and classical instruction. (Rev., s. 4222; 1891, c. 549, s. 3; C. S. 5827.)

§ 116-94. Board of trustees; appointments; vacancies; chairman.—The management and control of the college and the care and preservation of all its property shall be vested in a board of trustees, consisting of sixteen members, one of whom shall be the state superintendent of public instruction (as provided in § 116-100). The other fifteen members shall be divided into three classes, and five shall be appointed by the governor on or after January first, one thousand nine hundred and forty-three, and five on or after January first, one thousand nine hundred and forty-five, and five on or after January first, one thousand nine hundred and forty-seven, each and all to be appointed for terms of six years from January first of the year in which they are appointed, respectively. Members of the board so appointed shall serve until their successors are appointed and qualified. Appointments heretofore made by the governor are hereby ratified and confirmed. Any vacancies which, for any cause, may occur, shall be filled by

the governor for the unexpired term. The board shall annually elect one of their number to be chairman of the board of trustees, and may elect a vice-chairman. The board shall also appoint a secretary, who may or may not be a member of the board. (Rev., s. 4223; 1891, c. 549, s. 4; 1899, c. 389; s. 1; 1943, c. 132; C. S. 5828.)

Cross Reference.—For statute making the superintendent of public instruction an ex officio member of the board, see § 116-100.

Editor's Note.—The 1943 amendment rewrote the section. Prior to the amendment the board of trustees, consisting of 15 members with six-year terms, was elected by the general assembly. The amendment added provisions for election of vice-chairman and secretary.

§ 116-95. Meetings of board; compensation; executive board.—The number and times of the meeting of the board of trustees shall be fixed by the board, and the trustees shall not receive any pay or per diem, but only their traveling expenses and hotel fare, and that only for four times in each year. The board of trustees shall have power to elect an executive board of three of their own number, who shall have the immediate management of the institution when the full board is not in session. (Rev., s. 4224; 1899, c. 389, ss. 2, 3; C. S. 5829.)

§ 116-96. Powers of trustees.—The board of trustees shall have power to prescribe such rules for the management and preservation of good order and morals at the college as are usually made in such institutions; shall have power to appoint its president, instructors, and as many other officers or servants as to them shall appear necessary and proper, and shall fix their salaries, and shall have charge of the disbursement of the funds, and have general and entire supervision of the establishment and maintenance of the college, and the president and instructors in the college, by and with the consent of the board of trustees, shall have the power of conferring such certificates of proficiency or marks of merit and diplomas as are usually conferred by such colleges. (Rev., s. 4225; 1891, c. 549, s. 5; C. S. 5830.)

§ 116-97. Admission of pupils.—In addition to the powers hereinbefore granted, the board of trustees shall have power to make such rules and regulations with respect to the admission of pupils to the college for the various congressional districts of this state as they may deem equitable and right, having due regard to the colored population thereof. (Rev., s. 4226; 1891, c. 549, s. 7; C. S. 5831.)

§ 116-98. Power to receive property, and proportion of congressional donations.—The board of trustees is empowered to receive any donation of property which may be made to the college, and shall have power to invest or expend the same for the benefit of the college; and shall have power to accept on behalf of this college such proportion of the fund granted by the congress of the United States to the state of North Carolina for industrial and agricultural training as is apportioned to the colored race, in accordance with the act or acts of the congress in relation thereto. (Rev., s. 4227; 1891, c. 549, ss. 6, 12; C. S. 5832.)

Art. 8. North Carolina College for Negroes.

§ 116-99. Trustees of the North Carolina College for Negroes at Durham.—There shall be twelve (12) trustees for the North Carolina College for Negroes at Durham. Within thirty days from March 10, 1925, the Governor shall appoint seven (7) members of said board and within six months from March 10, 1925, the Governor shall appoint five (5) members of said board. The terms of office of such trustees shall be four years and until successors are appointed and qualified. At the time of making such appointments he shall designate the members of the present board who are to be succeeded by his appointees. All vacancies are to be filled by the Governor. The Governor shall transmit to the Senate at the next session of the General Assembly following his appointment the names of the persons appointed by him for confirmation. The Governor shall have the power to remove any member of the board of trustees whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9a, 13, 14.)

§ 116-100. Graduate courses for negroes; superintendent of Public Instruction as ex-officio member of boards of trustees.—The board of trustees of the North Carolina College for Negroes is hereby authorized and empowered to establish from time to time such graduate courses in the liberal arts field as the demand may warrant, and the funds of the said North Carolina College for Negroes justify. Such courses so established must be standard.

The board of trustees of the North Carolina College for Negroes is authorized and empowered to establish departments of law, pharmacy and library science at the above-named institution whenever there are applicants desirous of such courses. Said board of trustees of the North Carolina College for Negroes may add other professional courses from time to time as the need for the same is shown, and the funds of the state will justify.

The board of trustees of the Negro Agricultural and Technical College at Greensboro may add graduate and professional courses in agricultural and technical lines as the need for same is shown and the funds of the state will justify, and establish suitable departments therein.

In the event there are negroes resident in the state properly qualified who can certify that they have been duly admitted to any reputable graduate or professional college and said graduate or professional courses are not being offered at the North Carolina College for Negroes, then the board of trustees of the North Carolina College for Negroes when said certification has been presented to them by the president and faculty of the North Carolina College for Negroes, may pay tuition and other expenses for said student or students at such recognized college in such amount as may be deemed reasonably necessary to compensate said resident student for the additional expense of attending a graduate or professional school outside of North Carolina, and the budget commission may upon such presentation reimburse the North Carolina College for Negroes the money so advanced. It is further provided that the student applying for such admission must furnish proof that he or she has been duly admitted

to said recognized professional college. In the case of agricultural or technical subjects such students desiring graduate courses should apply to the Agricultural and Technical College at Greensboro, North Carolina. The general provisions covering students in the liberal arts field as stated in this section shall apply. In no event shall there be any duplication of courses in the two institutions.

Said boards of trustees are authorized, upon satisfactory completion of prescribed courses, to give appropriate degrees.

It is further stipulated that the superintendent of public instruction for North Carolina shall be a member ex officio of the boards of trustees of the North Carolina College for Negroes and Agricultural and Technical College at Greensboro, and shall advise with the boards of trustees of said Colleges upon the courses to be offered, and the certification of students to other colleges. In case of needless duplication of graduate or professional courses in either college, the superintendent of public instruction shall be charged with the duty of reporting the same to the board of trustees of either institution, and the same shall be remedied. In case of failure to remedy the same, he shall report such failure to the budget bureau which will have the power and authority in its judgment to withhold any part of the appropriation from the institution so offending until said duplication is discontinued.

The board of trustees of the North Carolina College for Negroes and the trustees of the agricultural and Technical College, in the event that the budget of the institutions will not permit this section to be carried out on account of lack of funds, shall present the situation to the assistant director of the budget, the governor of North Carolina and the council of state; and they are hereby empowered to provide such funds as may be necessary to carry out the purposes of the same. (1939, c. 65.)

Cross Reference.—As to other provisions concerning the Agricultural and Technical College, see §§ 116-92 et seq.

Art. 9. Negro State Teachers Colleges.

§ 116-101. Power of state board of education to establish.—The state board of education is hereby empowered to establish normal schools at any place it may deem most suitable, either in connection with one of the colored schools of high grade in the state, or otherwise, for teaching and training young men and women of the colored race, from the age of fifteen to twenty-five years, for teachers in the common schools of the state for the colored race. A preparatory department may be established in connection with the colored normal schools. And such board shall have the power to remove or close any of the existing state normal schools for the colored race. (Rev., s. 4180; Code, ss. 2651, 2652; 1881, cc. 91, 141, s. 5; 1879, c. 54, ss. 1, 2; 1876-7, c. 234, s. 2; 1901, c. 565, s. 1; C. S. 5850.)

§ 116-102. State board of education to control and manage Negro State Teachers Colleges.—The state board of education shall have supervision, and shall prescribe rules and regulations for the control, management, and enlargement of each of the following normal schools: the Elizabeth City State Teachers College, Elizabeth City; Fayetteville State Teachers College, Fayetteville; Winston-Salem Teachers College, Winston-Salem.

The state board of education shall make all needful rules and regulations concerning the expenditure of funds, the selection of principals, teachers, and employees. (1921, c. 61, s. 8; 1925, c. 306, s. 9; 1925 (Pr.), c. 170; 1931, c. 276, s. 1; 1939, cc. 178, 253; C. S. 5775.)

Editor's Note.—By the Public Laws of 1925 the words "and concerning the selection of members of the board of trustees" were stricken from the second paragraph of this section, to conform with section 116-103.

A provision of the Act of 1931 struck out the words "Cherokee Indian State normal school, Pembroke" formerly appearing at the end of the first paragraph of this section.

Public Laws 1939, ch. 178 changed the name of Fayetteville State Normal School to the Fayetteville State Teachers College.

Public Laws 1939, ch. 253, changed the name of the Elizabeth City State Normal School to the Elizabeth City State Teachers College.

§ 116-103. Trustees for Negro State Teachers Colleges.—The Governor shall appoint a board of nine trustees for each of the following institutions: The Elizabeth City State Teachers College, at Elizabeth City; The Fayetteville State Teachers College at Fayetteville; and the Winston-Salem Teachers College at Winston-Salem. Four trustees for each college shall be appointed by the Governor within thirty days after March 10, 1925; the other five members shall be appointed within six months after March 10, 1925. At the time of making such appointment the Governor shall name which of the present boards are to be succeeded by his appointees. The Governor shall fill all vacancies. He shall transmit to the Senate at the next session of the General Assembly following his appointment the names of persons appointed by him for confirmation. The terms of office of the members of each board shall be four years and until their successors are appointed and qualified. The Governor shall have the power to remove any member of any of the boards whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14.)

§ 116-104. Four-year courses; granting of degrees.—The State Board of Education is hereby authorized and empowered to establish in the Elizabeth City State Teachers College, the Fayetteville State Teachers College, and the Winston-Salem Teachers College, four-year courses in the field of elementary education to train elementary teachers qualified to obtain grammar grade and primary class A certificates, and to train elementary school principals for rural and city schools.

The degrees to be granted by the said institutions for a completion of the four-year courses of study shall be subject to §§ 115-322 to 115-324, which give the State Board of Education authority to regulate degrees. (1925 (Pr.), c. 170; 1939, cc. 178, 253.)

Art. 10. State School for the Blind and the Deaf in Raleigh.

§ 116-105. Incorporation and management. — The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of The State School for the Blind and the Deaf,

and shall be under the management of a board of directors and superintendent. (Rev., 4187; Code, s. 2227; 1881, c. 211, s. 1; 1917, c. 35, s. 1; C. S. 5872.)

Cited in Hass v. Hass, 195 N. C. 734, 739, 143 S. E. 541.

§ 116-106. Directors; appointment; terms; vacancies.—There shall be eleven (11) directors of the School for the Blind and Deaf at Raleigh, to be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint six directors and within six months from March 10, 1925, the Governor shall appoint five directors. At the time of making the appointment the Governor shall designate which of the present members of the board are to be succeeded by his nominees and appointees. The terms of the directors shall be four years from their appointment and until their successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of any of the board of directors whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (Rev., s. 4188; Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; 1925, c. 306, ss. 10, 13, 14; C. S. 5873.)

Editor's Note.—Two material changes were made by the Laws of 1925. The term of the directors was decreased from six to four years. There were formerly three classes, appointed at intervals of two years. All are now appointed in the same year.

§ 116-107. President, executive committee, and other officials; election, terms, and salaries.—The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such other officers, agents, and teachers as shall be deemed necessary. The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which may be beneficial to the good government of the institution, and to this end may make by-laws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department." (Rev., s. 4189; Code, s. 2229; 1881, c. 211, s. 3; 1917, c. 35, ss. 1, 2; C. S. 5874.)

§ 116-108. Meetings of the board and compensation of the members.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and shall also be paid the same per diem on account of attending meetings of the board as is provided for boards of other state institutions, from time to time, in the biennial appropriation acts. (Rev., s. 4190; Code, s. 2230; 1881, c. 211, s. 4; 1943, c. 608, s. 1; C. S. 5875.)

Editor's Note.—The 1943 amendment rewrote the section adding the provision for payment of per diem compensation. Section two of the amendment validated per diem payments made to the board in former years.

§ 116-109. Admission of pupils; how admission obtained.—The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for the colored all colored deaf-mutes and blind children, residents of this state, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that application shall be made and applicants received at stated times, which shall be at the commencement of some scholastic year.

In case of deaf-mutes the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born deaf?

At what age did he lose his hearing?

By what disease or accident did he become deaf?

Is the deafness total or partial?

Have any attempts been made to remove the deafness?

Is there any ability to articulate or read on the lips?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental imbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?

Has he had the whooping-cough?

Are there any other cases of deafness in the family?

Are there any cases of deafness among relatives or ancestors?

What is the name of the father?

What is the name of the mother?

What is the occupation of the father?

What is his postoffice address?

Is either of the parents dead?

Has a second connection been formed by marriage?

Was there any relationship between the parents previous to marriage?

In case of blind applicants the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born blind?

At what age did he become blind?

By what disease or accident did he become blind?

Is the blindness total or partial?

Have any attempts been made to remove the blindness?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental inbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?

Has he had the whooping-cough?

Are there any other cases of blindness in the family?

Are there any cases of blindness among relatives or ancestors?

What is the name of the father?

What is the name of the mother?

What is the occupation of the father?

What is his postoffice address?

Is either of the parents dead?

Has a second connection been formed by marriage?

Was there any relationship between the parents previous to marriage?

When the application is made, it shall be filed in the office of the superintendent, and on reception of applicant a record of such pupil shall be made and entered in a book to be kept for that purpose. (Rev., s. 4191; Code, s. 2231; 1881, c. 211, s. 5; 1917, c. 35, s. 1; C. S. 5876.)

§ 116-110. Admission of curable blind.—The directors of the institution for the blind, in the city of Raleigh, shall set apart space in said institution for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institution for the blind in Raleigh to admit into such institution, from time to time, such of the blind of the state as they may deem to be curable. (Rev., s. 4192; 1895, c. 461; C. S. 5877.)

§ 116-111. Admission of pupils from other states.—The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this state, and the person so admitted shall not acquire the condition of a resident of the state by virtue of such pupilage. (Rev., s. 4193; Code, s. 2232; 1881, c. 211, s. 6; C. S. 5878.)

§ 116-112. Board may confer degrees. — The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit. (Rev., s. 4194; Code, s. 2233; 1881, c. 211, s. 7; 1917, c. 35, s. 1; C. S. 5879.)

§ 116-113. Election of officers.—The board of directors shall, on the second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June first, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (Rev., s. 4195; Code, s. 2234; 1881, c. 211, s. 8; 1889, c. 539, 1893, c. 137; 1901, c. 707, s. 2; 1917, c. 35, s. 1; 1943, c. 425; C. S. 5880.)

Editor's Note.—The 1943 amendment struck out the words "and shall have experience as a teacher in the deaf, dumb, and blind school of North Carolina, or some similar institution, for the term of two or more years" formerly appearing in this section, and inserted in lieu thereof the following: and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position."

§ 116-114. State treasurer is ex officio treasurer of institution.—The state treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9; C. S. 5881.)

§ 116-115. Reports of board to governor.—The board shall make a report to the governor on the first of January next before the regular meeting of the general assembly, showing the condition of the institution in its various departments, and shall give any information the governor shall desire from time to time. (Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9; C. S. 5882.)

§ 116-116. Removal of officers.—The board shall have power to remove any officer, employee, or teacher for gross immorality, wilful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause. (Rev., s. 4197; Code, s. 2236; 1881, c. 211, s. 10; C. S. 5883.)

§ 116-117. Employees.—The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure. (Rev., s. 4198; Code, s. 2237; 1881, c. 211, s. 11; 1917, c. 35, s. 1; C. S. 5884.)

§ 116-118. When clothing, etc., for pupils paid for by county.—Where it shall appear to the satisfaction of the Superintendent of Public Welfare and the Chairman of the Board of County Commissioners that the parents of any deaf or blind child of the county, are then unable to provide such child with clothing and/or traveling expenses to and from the State School for the Blind and the Deaf, and the North Carolina School for the Deaf, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses provided for herein, then, upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the Board of County Commissioners of the county in which such child resides shall issue or cause to be issued, its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child; provided, that the amount, in no case, shall exceed forty-five dollars ($45.00) per annum for each child, in addition to such amounts as may be necessary to

defray the actual traveling expenses to and from said institution. For such amount so furnished, the parents, or other person upon whom such child is, or may be, legally dependent, and such child, shall be and remain liable for the payment thereof, together with 5% per annum interest thereon from the date of each payment by the county. At any time after any of such payments, in the discretion of the Board of Commissioners, or any succeeding board, a suit may be instituted in some court of competent jurisdiction in said county, or in any other county in the State according to the venue now or hereafter fixed by law for the recovery of the same, which suit shall be prosecuted by the person who may now or hereafter perform the duties of County Attorney, and the parents of such child shall be liable therefor jointly and severally, and all other persons who are made liable therefor herein shall be liable severally for such amounts and interest and the costs of suit. (Rev., s. 4199; Code, s. 2238; 1879, c. 332, s. 1; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; 1927, c. 86; 1929, c. 181; C. S. 5885.)

Editor's Note.—Prior to the amendment of 1927, this section required that it must appear to the satisfaction of the governor, upon the affidavit of two respectable citizens, that the parents of such child were unable to defray his expenses, and the governor was to draw upon the auditor for such expenses.

§ 116-119. Title to farm vested in directors.— The farm of one hundred acres, now held by the said school, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand. (Rev., s. 4201; 1901, c. 707, s. 3; C. S. 5886.)

Art. 11. North Carolina School for the Deaf at Morganton.

§ 116-120. Incorporation and location.—There shall be maintained a school for the white deaf children of the state which shall be a corporation under the corporate name of The North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina school for the deaf shall be classed and defined as an educational institution. (Rev., s. 4202; 1891, c. 399, s. 1; 1915, c. 14; C. S. 5888.)

§ 116-121. Directors; terms; vacancies. — The North Carolina School for the Deaf at Morganton shall be under the control and management of a board of directors consisting of seven (7) members. Within thirty days from March 10, 1925, the Governor shall appoint four directors, and within six months from March 10, 1925, the Governor shall appoint three directors. At the time of making such appointment the Governor shall designate which of the present board are to be succeeded by his appointees. The terms of the said trustees shall be four years from the date of their appointment and until successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (Rev., s. 4203; 1891, c. 399, s. 2; 1901, c. 210; 1925, c. 306, ss. 11, 13, 14; C. S. 5889.)

Editor's Note.—The changes effected in this section by the Laws of 1925 are the same as in section 116-106.

Filling Vacancy by Governor.—See State v. Bristol, 122 N. C. 245, 30 S. E. 1.

§ 116-122. Organization of board; other officials; salaries.—The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent, who shall be ex officio secretary of the board and whose term of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary. The compensation for officers, teachers, and agents shall be fixed by the board, and shall not be increased or reduced during their term of service. (Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14; C. S. 5890.)

§ 116-123. Superintendent. — The superintendent shall be a teacher of knowledge, skill, and ability in his profession and experience in the management and instruction of the deaf. He shall possess good executive ability and shall be the chief executive officer of the institution. He shall devote his whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendent. (Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14; C. S. 5891.)

§ 116-124. Pupils admitted; education. — The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the state not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years: Provided, that the board of directors may admit students under the age of eight years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who have been bona fide citizens of North Carolina for a period of two years shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the state and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in

sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (Rev., s. 4204; 1891, c. 399, ss. 7, 8; 1907, c. 929; 1915, c. 14; 1941, c. 123; C. S. 5892.)

Editor's Note.—The 1941 amendment added the provisio at the end of the first sentence.

§ 116-124.1. Free textbooks and state purchase and rental system.—The North Carolina School for the Deaf, at Morganton, North Carolina, shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the state of North Carolina in the same manner as any other public school in said state. (1943, c. 205.)

§ 116-125. Powers of board.—The board shall have power to make such by-laws, rules, and regulations, not inconsistent with the laws of the state, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of the state hospital at Morganton as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements. (Rev., s. 4205; 1891, c. 399, ss. 8, 9, 10; C. S. 5893.)

Art. 12. The Caswell Training School.

§ 116-126. Incorporation and general corporate powers.—The Caswell Training School, formerly established as the North Carolina School for the Feeble-minded, by chapter eighty-seven of the public laws of nineteen hundred and eleven, shall be and remain a corporation invested with all property and rights of property heretofore held under the former name, and under this name may acquire and hold all such property as may be devised, bequeathed, or conveyed to it, and may use all the authority, privileges, and possessions that said corporation exercised under the former title and name, and shall be subject to all legal liability outstanding against it under the former title and name. (1915, c. 266, s. 1; C. S. 5894.)

Cited in Moyle v. Hopkins, 222 N. C. 33, 21 S. E. (2d) 826.

§ 116-127. Objects of the school.—The purpose and aim of the Caswell training school is to segregate, care for, train, and educate, as their mentality will permit, the state's mental defectives; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency; to suggest and initiate methods for its control, reduction, and ultimate eradication from our people; and to maintain an extension bureau for instructing the public in the care of the mental defectives who remain in their homes and for the after-care of discharged inmates of the institution; and to create and maintain a psychological clinic for the study and observation of mental defectives charged with crime, and to give expert advice in all cases of mental defect. (1919, c. 224, s. 1; C. S. 5895.)

Cited in Moyle v. Hopkins, 222 N. C. 33, 21 S. E. (2d) 826.

§ 116-128. State treasurer to keep accounts and pay out moneys.—The state treasurer shall keep full accounts of said school and shall pay out all moneys upon the warrant of the superintendent thereof, countersigned by two members of the board of directors under such rules and regulations as the board of directors may establish. (1911, c. 87, s. 8; 1913, c. 191, s. 2; 1919, c. 295; C. S. 5897.)

§ 116-129. Persons admitted; county commissioners to approve.—There shall be received into the Caswell training school, subject to such rules and regulations as the board of directors may adopt, feeble-minded and mentally defective persons of any age when in the judgment of the officer of public welfare and the board of directors of said institution it is deemed advisable. All applications for admission must be approved by the local county welfare officer and the judge of the juvenile court or the clerk of the court of the county wherein said applicant resides. (1911, c. 87, s. 3; 1915, c. 266, s. 2; 1919, c. 224, s. 2; 1923, c. 34; C. S. 5898.)

Editor's Note.—Prior to the amendment of 1923, this section specified pupils and their ages, who could be admitted to this institution. The former section had also required that the person making an application for admission of pupils should first obtain written approval of the board of county commissioners of the pupil's legal residence. In lieu of this provision the last sentence of this section was substituted.

§ 116-130. Persons authorized to make application for minors.—The application for the admission of a child below the age of twenty-one years shall be made, first, by the father, if the father and mother are living together; second, by the one having custody of the child, if the father and mother are not living together; third, by a guardian duly appointed; fourth, by the superintendent of any county home, or by the person having the management of any orphanage, association, charity, society, children's home workers, ministers, teachers, or physicians, or other institutions where children are cared for. Under items third and fourth, consent of parents, if living, is not required. (1915, c. 266, s. 3; C. S. 5899.)

§ 116-131. Procedure for admission of adult.—1. Affidavit. In case of mentally defective persons who are twenty-one years or over, any responsible person residing in the county may file in the office of the clerk of the superior court of the county an affidavit stating that some person of the county is not being properly maintained or cared for by those having such person in charge; that such person is feeble-minded, and is over twenty-one and is in good bodily health, and is not helpless, is not afflicted with any chronic or contagious disease; that said person is a legal resident of the state and county where the application is filed, together with such other statements as may be necessary to show that he or she is a proper person to be admitted to such institution, and that his or her admission thereto would be in conformity to the rules and regulations established by the board of directors for the admission and care of such person.

2. Summons upon affidavit. Upon the filing of the affidavit in the office of the clerk of the superior court by the proper person, the clerk shall issue a summons to such person named in the application or petition, requiring him or her to be and appear before said court, or the judge there-

of, at some time to be fixed by the clerk, not more than ten days thereafter.

3. Action upon affidavit. The judge or clerk shall, as soon as convenient, pass upon said application or petition, and it shall be the duty of said court to examine such witnesses as may be necessary, among whom shall be at least one physician, to prove the truth or falsity of the statements in said application or petition.

4. Order of commitment. If the court finds that each and all of the allegations contained in said application or petition are true, and that said person is a proper person to be cared for in said institution, it shall be its duty to make an order committing the care and custody of said person to said institution.

5. Transcript to superintendent; costs paid by county. It shall be the duty of the clerk of said court to make a certified copy of said application or petition and the finding and judgment of said court, and transmit the same, together with a statement of such facts as can be ascertained concerning the personal and family history of such person, to the superintendent of the institution at Kinston, North Carolina. The costs of said proceedings shall be allowed and paid by the board of county commissioners of the county. (1915, c. 266, s. 4; C. S. 5900.)

§ 116-132. Decision by superintendent and notice to clerk.—Upon receipt of such order of commitment, it shall be the duty of the superintendent of the institution at once to consider the application and to determine whether or not said person shall be admitted to the institution, and to notify the clerk of the court of his decision, and if there is room for any more inmates, or as soon thereafter as there shall be room in the institution, to notify the clerk that such person will be received in the institution. With such notice the superintendent shall send a list of such clothing as shall be prescribed by the board of trustees of the institution, and a blank form of certificate of health and freedom of exposure to contagious disease at such time. In case the parents or custodian of such person shall be financially unable to furnish the clothing as required, the clerk shall procure the clothing at a cost not to exceed twenty dollars, and the payment for same shall be made out of the county treasury by the board of county commissioners upon the certificate of the clerk of the court. (1915, c. 266, s. 5; C. S. 5901.)

§ 116-133. Conveyance to and from school upon discharge.—Upon receiving notice that such person can be admitted to the institution, the clerk shall order the parents, custodian, or applicant to convey such person to the institution without expense to the institution or the county. In case such parents, custodian, or applicant is financially unable to bear such expense, the clerk shall cause the person to be conveyed to the institution in the same manner and in accordance with the same forms as are now provided by law for the transfer of patients to insane hospitals, so far as they are applicable. And when any child or person, who is or has been an inmate of the institution, is dismissed or discharged from said institution in accordance with the rules and regulations of said institution, the parent or guardian of such child or person shall come, or send some responsible person, to receive said child or person and convey same to his or her legal residence, without cost to the institution; and in case the parent or guardian of said child or person is wholly unable to bear such expense, then the commissioners of said county shall allow such expense. (1915, c. 266, s. 6; C. S. 5902.)

§ 116-134. Clothing and conveyance of children at cost of county.—In case the parents of a child below the age of twenty-one are wholly unable to bear the expense of furnishing the clothing of said child as required by the rules and regulations of the board of directors of said school, or of furnishing the money for transportation of such child to the school, it shall be the duty of the county from which the child is sent to bear such cost, in the manner provided for adults in the other sections of this article. (1915, c. 266, s. 7.)

§ 116-135. Expenditure of sums by superintendent of Caswell Training School for student work authorized. — The superintendent of Caswell Training School is hereby authorized and empowered in his discretion, when funds are available, to pay children of the school for work done at the Caswell Training School: Provided, that the amount of money so expended shall not exceed fifteen hundred dollars ($1,500.00) in any one fiscal year. (1939, c. 278.)

§ 116-136. Discharge of pupils.—Any pupil of said school may be discharged or returned to his or her parents or guardian when in the judgment of the directors it will not be beneficial to such pupil, or will not be for the best interests of said school, to retain the pupil therein. (1915, c. 266, s. 9; C. S. 5904.)

§ 116-137. Certain acts prohibited for protection of inmates.—It shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said school to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyance any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said school;

(d) For any person to receive, or to offer to receive, any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(e) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, men or women, committed to, or received into, said Caswell training school under the provisions of the law made and provided for the receiving and committing of persons to said Caswell training school; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and wilfully violate sub-sections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; that any person who shall knowingly and wilfully violate sub-sections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1937, c. 235.)

Art. 13. Colored Orphanage of North Carolina.

§ 116-138. Creation; powers.—The corporation created by chapter forty-seven, Private Laws of one thousand eight hundred and eighty-seven, be, and it is hereby, continued as a body corporate for a period of sixty years from March 8, 1927, under the name and style of "The Colored Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars, to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1.)

§ 116-139. Directors; selection, self-perpetuation, management of corporation.—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek and Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the Board of Directors of said "The Colored Orphanage of North Carolina." The Governor of North Carolina shall appoint five white citizens of Granville County as members of said Board of Directors, and the thirteen so named shall constitute the Board of Directors of said corporation. Said Board of Directors shall organize by the election of a president and secretary, shall make all necessary by-laws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2.)

§ 116-140. Board of trustees; appropriations; treasurer; board of audit.—The five members of said Board of Directors so appointed by the Governor shall also serve as a Board of Trustees of said "The Colored Orphanage of North Carolina." The said Board of Trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Colored Orphanage of North Carolina" shall be under the control of the Board of Trustees, and said appropriations shall be expended under their supervision and direction. The Board of Trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars per year for his services and members of the Board of Audit a salary not to exceed one hundred and fifty dollars per year. The Treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the Board of Trustees may require, the annual premium to be paid out of the funds of the said orphanage. (1927, c. 162, s. 3.)

§ 116-141. Training of orphans.—The said corporation shall receive, train and care for such colored orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4.)

§ 116-142. Control over orphans.—The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The Board of Directors shall make all necessary rules and regulations for the reception and discharge of children from said orphanage. (1927, c. 162, s. 5.)

Art. 14. General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. State-supported institutions required to charge tuition fees.—The trustees of the University of North Carolina, including the University of North Carolina, the State College of Agriculture and Engineering and the Woman's College of the University of North Carolina, and the trustees of the East Carolina Teachers' College, the Western Carolina Teachers' College, the Appalachian State Teachers' College, the Negro Agricultural and Technical College, the Winston-Salem Teachers' College, the Fayetteville State Teachers' College, the Elizabeth City State Teachers' College, the North Carolina College for Negroes and the Pembroke State College for Indians, be and they are hereby authorized and directed to fix the tuition fees for their several state supported institutions, each board of trustees acting separately for their respective institutions, in such amount or amounts as they may deem best, taking into consideration the nature of each department and institution and the cost of equipment and maintaining the same; and are further instructed to charge and collect from each student, at the beginning of each semester, tuition fees and an amount sufficient to pay room rent, servants' hire and other expenses for the term. Indigent cripples are exempt from the provisions of this article.

In the event that said students are unable to pay the cost of tuition, as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in state institutions of higher learning shall be required to pay tuition, and that free tuition be and the same is hereby abolished, except such students as are physically disabled, and are so

certified to be by the vocational rehabilitation division of the state board for vocational education, who shall be entitled to free tuition in any of the institutions named in this article. (1933, c. 320, s. 1; 1939, cc. 178, 253.)

§ 116-144. Higher fees from non-residents may be charged.—The provisions of this article shall not be construed to prohibit the several boards of trustees from charging non-resident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

Art. 15. Educational Advantages for Children of World War Veterans.

§ 116-145. Free tuition, room rent and board; certificate of post commander; statement from veterans administration.—Any child who has been a resident of North Carolina for two years, and whose father was killed in action or died from wounds or other causes while a member of the armed forces of the United States between April sixth, one thousand nine hundred seventeen, the date of the declaration of war, and July second, one thousand nine hundred twenty-one, the legal termination thereof, or any child whose father was a member of the armed forces of the United States of America during the aforesaid period and who has died as a direct result of injuries, wounds or other illness contracted during said period of service, shall be entitled to and granted a scholarship of free tuition, room and board and all necessary fees required of students and furnished by the state educational institution at which such student has matriculated. This scholarship shall not extend for a longer period than four academic years.

In addition to the scholarship of free tuition above provided, there shall also be granted to any child needing financial assistance who is embraced within the classification covered by this section, free room rent and board in any of the state's educational institutions which provide rooms and eating halls operated by the institution, and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected. All applicants desiring to share the benefits of this paragraph and who are qualified to meet the entrance requirements shall submit to the educational institution they desire to enter a certificate of financial need duly executed by the commanding officer of American Legion Post located within same county as applicant and by the clerk of the superior court of said county. If no Legion Post is located in said county, then the certificate may be signed by the commanding officer of the nearest American Legion Post.

Said applicant shall also furnish statement from United States veterans administration showing that the applicant comes within the class designated as war orphans and as herein described: Provided, that all the benefits provided for in this section shall also apply to any child whose father was a member of the armed forces of the United States of America during the aforesaid period and who is now living but due to illness contracted since July second, one thousand nine hundred and twenty-one, has been certified by the United States veterans administration as totally and permanently disabled but who draws no compensation from the United States government other than his insurance and hospitalization benefits. (1937, c. 242, s. 1; 1939, cc. 54, 165, s. 1; 1941, cc. 154, 239; 1943, c. 534, s. 1.)

Editor's Note.—The first 1939 amendment inserted in the first paragraph the provision relating to a father who died prior to 1925. The second 1939 amendment added that part of the first sentence of the second paragraph beginning with the words "and such other items."

Public Laws of 1941, chapter 154, struck out the words "prior to one thousand nine hundred twenty-five" which formerly appeared after the words "who has died" in the first sentence.

Public Laws 1941, chapter 239, added the proviso at the end of the section.

Section one of the 1943 amendment struck out the words "in any of the State's Educational Institutions" at the end of the first sentence and added in lieu thereof the words which now appear after the word "tuition."

§ 116-146. Free tuition to child drawing federal compensation on account of death or disability of father. — Any child in North Carolina, who is drawing compensation from the United States Government, on account of the death or disability of its father, which death or disability was incurred while a member of the armed forces of the United States Government during the World War, and who has not attained the age of twenty-one years, may be entitled to and granted a scholarship of free tuition in any of the State's educational institutions. (1931, c. 370.)

§ 116-147. Extension of benefits of article to certain children.—The benefits of the provisions of this article shall be extended to and may be availed of by any child whose father was a resident of the state of North Carolina at the time said father entered the armed forces of the United States and whose father was, prior to his death, or is at the time the benefits of this article are sought to be availed of, suffering from a service-connected disability of thirty per cent or more as rated by the United States veterans administration; provided, that such educational benefits to such children of partially disabled veterans shall be limited to not more than five children in any one school year; and provided further, that if more than five children of such partially disabled veterans apply for the benefits of this article in any one school year the state superintendent of public instruction shall designate the five children who shall receive such benefits. (1941, c. 302.)

§ 116-148. Extension of benefits of § 116-145 to certain children.—All of the benefits of the provisions of § 116-145 shall be extended to and made available for the children of veterans of the armed forces of the United States of America who serve between December seventh, one thousand nine hundred and forty-one, the date of the declaration of war, and the date of the legal termination of said war, wherever the disabilities of said veterans come within the limits of and the provisions of said section. (1937, c. 242, s. 2; 1939, c. 165, s. 2; 1943, c. 534, s. 2.)

Editor's Note.—The 1943 amendment rewrote this section.

Chapter 117. Electrification.

Art. 1. Rural Electrification Authority.

§ 117-1. Rural Electrification Authority created; appointment; terms of members. — An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such authority to consist of six members to be appointed by the governor of North Carolina; two appointed for the term of two years; two for a term of four years and two for a term of six years, and their successors shall be appointed for a term of four years. (1935, c. 288, s. 1.)

Editor's Note.—For an analysis of this chapter, see 13 N. C. Law Rev. 382, 383.

For article on Public Utilities—Rural Electrification Co-Operatives—Certificate of Convenience and Necessity, see 16 N. C. Law Rev. 46.

§ 117-2. Powers. — The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

(a) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.

(b) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.

(c) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.

(d) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this chapter, to be known as "electric membership corporations."

(e) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.

(f) To have authority to call upon the utilities commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the utilities commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.

(g) To have the power of eminent domain for the purpose of condemning rights of way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law.

(h) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.

(i) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.

(j) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.

(k) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.

(l) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2.)

§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.—The authority itself shall not be a rate making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the utilities commission of North Carolina, and the authority shall only have the right of suggestion and petition to the utilities commission of its opinion as to the proper rates and service charges and line extensions, and no rate recommended or suggested by the authority shall be effective until approved by the utilities commission: Provided, that if the utilities commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the utilities commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

§ 117-4. Organization meeting of authority; chairman and secretary.—Promptly after their appointment the authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in §§ 143-35 to 143-47. (1935, c. 288, s. 4.)

§ 117-5. Compensation and expenses. — All members of the authority, except the chairman and secretary, shall receive as compensation for their services the sum of seven dollars ($7.00) per day and actual expenses incurred while in the performance of their duties. Members of the authority shall not be allowed per diem and expenses for more than twelve meetings in any one year. (1935, c. 288, s. 5; 1939, c. 97.)

Editor's Note.—Prior to the 1939 amendment members of the authority, except the chairman and secretary, served without compensation but received actual expenses.

Art. 2. Electric Membership Corporations.

§ 117-6. Title of article. — This article, may be cited as the "Electric Membership Corporation Act." (1935, c. 291, s. 1.)

Local Modification.—Carteret, Craven, Greene, Hoke, Onslow, Pamlico and Pitt: 1941, c. 314.

Cited in Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543.

§ 117-7. Definitions. — The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article.

(b) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(c) "Acquire" shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.

(d) "Law" shall mean any act or statute, general, special or local of this State.

(e) "Federal agency" shall mean and include the United States of America, the president of the United States of America, the federal emergency administrator of public works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(f) "Board" shall mean the board of directors of a corporation formed under this article. (1935, c. 291, s. 2.)

§ 117-8. Formation in unserved communities; filing application with rural electrification authority.—When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

§ 117-9. Issuance of privilege for formation of such corporation.—Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

§ 117-10. Formation authorized. — Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

§ 117-11. Contents of certificate of incorporation.—The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of .....Electric Membership Corpora-

tion" (the blank space being filled in with the name of the corporation), and shall state:

(a) The name of the corporation, which name shall be such as to distinguish it from any other corporation.

(b) A reasonable description of the territory in which its operations are principally to be conducted.

(c) The location of its principal office and the post office address thereof.

(d) The maximum number of directors, not less than three.

(e) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.

(f) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.

(g) The terms and conditions upon which members of the corporation shall be admitted.

(h) The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.—The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the secretary of state, who shall forthwith prepare a certified copy or copies thereof and forward one to the clerk of the superior court in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7.)

§ 117-13. Board of directors; compensation; president and secretary. — Each corporation formed hereunder shall have a board of directors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote. The directors must be members and shall not be entitled to compensation for their services. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8.)

§ 117-14. Powers of board.—The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

(a) The power to adopt and amend by-laws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the by-laws. The by-laws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof.

(b) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.

(c) To execute instruments.

(d) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

Editor's Note.—The 1941 amendment struck out former paragraph (a) and inserted the present paragraph (a) in lieu thereof.

§ 117-15. Certificates of membership.—A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

§ 117-16. Corporate purpose. — The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the by-laws of such corporation. (1935, c. 291, s. 11.)

Persons who are not members of an electric membership corporation may not maintain an action challenging the validity of acts of the director of the corporation, and the fact that such persons are eligible and might hereafter become members and maintain an action under the principle announced in Gorrell v. Greensboro Water Supply Co., 124 N. C. 328, 32 S. E. 720, 70 Am. St. Rep. 598, 46 L. R. A. 513, does not affect this result, since they have no rights or interest in the management of the corporation until they are members. Bailey v. Carolina Power, etc., Co., 212 N. C. 768, 195 S. E. 64.

§ 117-17. General grant of powers.—Each corporation formed under this article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby

granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

§ 117-18. Specific grant of powers. — Subject only to the Constitution of the State, a corporation created under the provisions of this article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems.

(e) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.

(f) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any state highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right of way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final.

(g) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation, of the rates, fees or charges for service rendered by the corporation.

(i) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

(j) To contract debts, borrow money, and to issue or assume the payment of bonds.

(k) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.

(l) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.

(m) To extend, construct, operate and maintain power lines into adjacent states. (1935, c. 291, s. 13; 1941, c. 335.)

Editor's Note.—The 1941 amendment added the subsection at the end of this section.

§ 117-19. Declared public agency of state; taxes and assessments. — Whenever an electric membership corporation is formed in the manner herein provided, the same shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed. (1935, c. 291, s. 14)

§ 117-20. Encumbrance, sale, etc., of property. —No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property, which in the judgment of the board, is not necessary or useful in operating the corporation) unless authorized so to do (a) by the votes of at least a majority of its members, and (b) the consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained. (1935, c. 291, s. 15.)

§ 117-21. Issuance of bonds. — A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum per annum, payable semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16.)

§ 117-22. Covenants or agreements for security of bonds.—In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

§ 117-23. Purchase and cancellation of bonds.— A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be cancelled. (1935, c. 291, s. 18.)

§ 117-24. Dissolution. — Any corporation cre-

ated hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of....." (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(b) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1935, c. 291, s. 19.)

§ 117-25. Amendment of certificate of incorporation.—A corporation created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of..... Electric Membership Corporation" and state:

(a) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.

(b) The date of filing the certificate of incorporation in each public office where filed.

(c) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted. Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

§ 117-26. Application for grant or loan from governmental agency.—Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder (1935, c. 291, s. 21.)

§ 117-27. Article complete in itself and controlling. — This article is complete in itself and shall be controlling. The provisions of any other law, general, special, or local, except as provided in this article, shall not apply to a corporation formed under this article. (1935, c. 291, s. 23.)

Editor's Note.—Public Laws 1935, c. 291, was ratified May 4, 1935, and Public Laws 1941, c. 161, was ratified March 13, 1941.

For comment on this enactment, see 19 N. C. Law Rev. 517.

Art. 3. Miscellaneous Provisions.

§ 117-28. Foreign corporations; domestication; rights and privileges.—Any electric membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs or for the purpose of supplying electric service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 517.

Chapter 118. Firemen's Relief Fund.

Art. 1. Fund Derived from Fire Insurance Companies.

Art. 2. State Appropriation.

Art. 1. Fund Derived from Fire Insurance Companies.

§ 118-1. Fire insurance companies to report premiums collected.—Every fire insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars or more, and which enforces the fire laws to the satisfaction of the insurance commissioner, shall return to the insurance commissioner of the state of North Carolina a just and true account of all premiums collected and received from all fire insurance business done within the limits of such towns and cities during the year ending December thirty-first, or such portion thereof as they may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within sixty days from and after the thirty-first day of December of each year. (1907, c. 831, s. 1; 1919, c. 180; 1929, c. 286; C. S. 6063.)

Editor's Note.—Prior to the amendment of 1929, this section applied only to business done in an "incorporated" city or town. The amendatory act omitted the word just quoted.

§ 118-2. Tax on receipts for premiums.—Every fire insurance company, corporation, or association as aforesaid shall, within seventy-five days from December thirty-first of each year, deliver and pay to the state insurance commissioner the sum of fifty cents out of and from every one hundred dollars, and at that rate, upon the amount of all premiums written on fire and lightning policies covering property situated within the limits of such towns and cities during the year ending December thirty-first in each year, or for such portion of each year as said company, corporation, or association shall have done business in said towns and cities. (1907, c. 831, s. 2; C. S. 6064.)

§ 118-3. Insurance commissioner to investigate returns and collect tax.—Every such company, corporation, or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated within the limits of such towns and cities; and in case any fraud, misrepresentation, or mistake of any returns, as provided for in this article, be apparent, it shall be the duty of the insurance commissioner to investigate such returns and collect the amount which he shall find to be due. (1907, c. 831, s. 3; C. S. 6065.)

§ 118-4. Penalty for failure to report and pay tax.—Every fire insurance company, association, or corporation aforesaid which shall knowingly or wilfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars for the use and benefit of the fire department of such town or city, to be recovered in a civil action in the name of the town or city. (1907, c. 831, s. 4; C. S. 6066.)

§ 118-5. Insurance commissioner to pay fund to treasurer. — The insurance commissioner shall deduct the sum of five per cent from the money so collected from the insurance companies, corporations, or associations, as aforesaid, and pay the same over to the treasurer of the State Firemen's Association for general purposes, and the remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the several towns and cities in the State having or that may hereafter have organized fire departments as provided in this article, said insurance commissioner shall pay to the treasurer of each town or city to be held by him as a separate and distinct fund, and he shall immediately pay the same to the treasurer of the local board of trustees upon his election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, which board shall be composed of five members, residents of said city or town as hereinafter provided for, to be used by them for the purposes as named in § 118-7. (1907, c. 831, s. 5; 1925, c. 41; C. S. 6067.)

Editor's Note.—The provision as to the deduction and payment by the commissioner to the State Firemen's Association Treasurer, five percent of the moneys collected from the insurance companies, and the provision as to payment by the

treasurers of towns to the treasurers of the local boards of trustees of the rest of the moneys, were inserted by the amendment of 1925.

§ 118-6. Trustees appointed; organization. — In each town or city complying with and deriving benefits from the provisions of this article there shall be appointed annually, in January, a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be named by the members of the local fire department, two by the mayor and board of aldermen or other local governing body, and the remaining member by the state insurance commissioner, all to hold office for two years, or until their successors are appointed, and to serve without pay for their services. They shall immediately after appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond, in a sum equal to the amount of moneys in his hands to be approved by the insurance commissioner, for the faithful and proper discharge of the duties of his office. (1907, c. 831, s. 6; 1925, c. 41; C. S. 6068.)

Editor's Note.—The amendment of 1925 specified the amount of the bond which is required of the treasurer of the board of trustees.

§ 118-7. Disbursement of fund by trustees. — The board of trustees shall have entire control of the funds derived from the provisions of this article, and shall disburse the funds only for the following purposes:

1. To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.

2. To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or state, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

3. To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse or actually dependent upon charity.

4. To provide for any fireman or person dependent on any fireman from becoming a subject of charity due to other sickness or accident or condition not specified in this law; and to provide for the payment of any fireman's assessment in the firemen's fraternal insurance fund of the State of North Carolina, if the board of trustees find as a fact that said fireman is unable to pay the said assessment by reason of disability. (1907, c. 831, s. 6; 1919, c. 180; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; C. S. 6069.)

Local Modification.—High Point: 1941, c. 138; New Hanover: 1929, c. 328.

Editor's Note.—The laws of 1921 and 1925, reduced the number of years of service referred to in the third subdivision of this section from ten to five years; and the laws of 1923 added subdivision four.

§ 118-8. Trustees to keep account and file report; effect of failure.—The board of trustees shall keep a correct account of all moneys received and disbursed by them, and shall at the annual meeting of the North Carolina state firemen's association render an itemized statement of the same, for publication in the annual report, a copy of which report shall be made annually to the state insurance commissioner; and in case any board of trustees in any of the towns and cities benefited by this article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted to their care, or shall neglect or fail to report at the annual meeting of the state association, then the insurance commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the state firemen's association, and adjusted to the satisfaction of the state insurance commissioner. Should such payments be unadjusted for a period of fifteen months from the time when such payment would otherwise have been made, then the insurance commissioner shall pay over the said amount to the treasurer of the North Carolina State Firemen's Association and it shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 7; 1925, c. 41; C. S. 6070.)

Editor's Note.—Prior to the amendment of 1925 the corresponding provision in the last sentence that the amount be paid to the treasurer of the North Carolina State Firemen's Association to constitute a part of the firemen's relief fund, read as follows: "commissioner shall pay over the said payment to the North Carolina State Firemen's Association to be used by the association as a general relief fund for the purpose of assisting any local board of trustees where bona fide claims for benefits arising under purpose one and two of the preceding section shall have exceeded the income arising from the local one half per cent tax."

§ 118-9. Municipal clerk to certify list of fire companies; effect of failure.—The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the insurance commissioner his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the insurance commissioner may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the insurance commissioner on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall forfeit the payment next due to be paid to said board of trustees, and the insurance commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 8; 1925, cc. 41, 309, s. 1; C. S. 6071.)

Editor's Note.—The amendment of 1925, c. 41 added the words "Effect of Failure," to the caption of this section. Prior to this amendment the town or city failing to file the certificate required to be filed before October 31, was deemed to have been waived and relinquished its rights for that year to the appropriation provided in this chapter. In lieu of this provision the present provision was added to the end of the section, with a proviso that the failure of any department to have a representative sent to the annual meeting of the association shall not have the

effect of forfeiture, which proviso was subsequently stricken out by chapter 309 of the same year.

§ 118-10. Fire departments to be members of state association and send delegate to meeting. —For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a business-like manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association, and send at least one accredited delegate to the annual meeting of said association and comply with its constitution and by-laws. If the fire department of any city, town or village shall fail to send at least one delegate to the annual meeting of the State Firemen's Association and otherwise fails to comply with the constitution and by-laws of said association, said city, town or village shall forfeit its right to the next annual payment due from the funds mentioned in this article, and the Insurance Commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, however, that the failure of any department to have a delegate or representative present at the annual meeting of the association shall not have such effect if in the opinion of a majority of the executive committee of said association such delegate or representative had a valid excuse for his failure so to attend. (1907, c. 831, s. 9; 1919, c. 180; 1925, c. 41; 1925, c. 309, s. 2; C. S. 6072.)

Editor's Note.—The caption of this section was renewed to correspond to changes made, by the amendment of 1925. Prior to the amendment the section required that five per cent of the gross proceeds received by each town, etc., be turned over to the state firemen's association, and one fourth of this be paid to the colored fire association. None of these provisions appear any more. The provision as to sending delegates to the annual meeting of the association and the forfeiture incident to the failure to do so, with the proviso, were added by the amendment.

§ 118-11. No discrimination on account of color. — Inasmuch as there are in a number of the towns and cities of this state fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits. (1905, c. 831, s. 10; C. S. 6073.)

Editor's Note. — The last sentence of this section was added by the amendment of 1925.

Art. 2. State Appropriation.

§ 118-12. Application of fund.—The money paid into the hands of the treasurer of the North Carolina state firemen's association shall be known and remain as the "firemen's relief fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and by-laws of said association, and such provisions and determinations made pursuant to said constitution and by-laws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said association to enforce any claim or recover any benefit under this article or under the constitution and by-laws of said association; but if any officer or committee of said association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. (Rev., s. 4393; 1891, c. 468, s. 3; 1925, c. 41; C. S. 6058.)

Editor's Note.—The amendment of 1925 made the exhaustion of municipal firemen's fund a condition before a resort is had to the state firemen's relief fund provided under this section. State appropriations to the firemen's relief fund are made biennially in the maintenance appropriation act.

§ 118-13. Treasurer to file report and give bond. —The treasurer of the North Carolina State Firemen's Association shall make a detailed report to the State Treasurer of the yearly expenditures of the appropriation under this chapter on or before the end of the fiscal year, showing the total amount of money in his hands at the time of the filing of the report, and shall give a bond to the State of North Carolina with good and sufficient sureties to the satisfaction of the treasurer of the State of North Carolina in a sum not less than the amount of money on hand as shown by said report. (Rev., s. 4394; 1891, c. 468, s. 4; 1925, c. 41; C. S. 6059.)

Editor's Note.—The provision for a report of expenditures was added by the Act of 1925.

§ 118-14. Who shall participate in the fund. — The line of duty entitling one to participate in the fund shall be so construed as to mean actual fire duty only, and any actual duty connected with the fire department when directed to perform the same by an officer in charge. (Rev., s. 4395; 1891, c. 468, s. 5; 1925, c. 41; C. S. 6060.)

Editor's Note.—By the Act of 1925, the clause defining the time of actual fire duty as service from time of alarm until dismissal at roll-call, was omitted from the section.

§ 118-15. Who may become members.—Any organized fire company in North Carolina, holding itself ready for duty, may, upon compliance with the requirements of said constitution and by-laws, become a member of the North Carolina State Firemen's Association, and any firemen of good moral character in North Carolina, and belonging to an organized fire company, who will comply with the requirements of the constitution and by-laws of the North Carolina State Firemen's Association, may become a member of said association. (Rev., s. 4396; 1891, c. 468, s. 6; 1925, c. 41; C. S. 6061.)

Editor's Note.—No change was made in the substance of this section by the Act of 1925.

§ 118-16. Applied to members of regular fire company.—The provisions of §§ 118-12 to 118-16 shall apply to any fireman who is a member of a regularly organized fire company, and is a member in good standing of the North Carolina State

Firemen's Association. (Rev., s. 4397; 1891, c. 468, s. 7; 1925, c. 41; C. S. 6062.)

Cross Reference.—As to the volunteer firemen at the insane hospitals not sharing in the fund provided by this section, see § 122-35.

Editor's Note.—By the amendment of 1925, it was required that the fireman be a member in good standing of the State Firemen's Association.

§ 118-17. Treasurer to pay fund to Volunteer Firemen's Association.—The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one-sixth of the funds arising from the five per cent paid him by the Insurance Commissioner each year, to be used by said North Carolina State Volunteer Firemen's Association for general purposes. (1925, c. 41.)

Chapter 119. Gasoline and Oil Inspection and Regulation.

Art. 1. Lubricating Oils.

§ 119-1. Unlawful substitution.—It shall be unlawful for any person, firm or corporation to fill any order for lubricating oil, designated by a trademark or distinctive trade name for an automobile or other internal combustion engine with a spurious or substitute oil unless and until it is explained to the person giving the order that the oil offered is not the oil that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. (1927, c. 174, s. 1.)

§ 119-2. Brand or trade name of lubricating oil to be displayed.—It shall be unlawful for any person, firm or corporation to sell, offer for sale or delivery, or to cause or permit to be sold, offered for sale or delivery, any oil represented as lubricating oil for internal combustion engines

unless there shall be firmly attached to or painted at or near the point or outlet from which said oil represented as lubricating oil for internal combustion engines is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in at all times legible letters not less than one-half inch in height comprising the brand or trade name of said lubricating oil: Provided, that if any of said lubricating oil shall have no brand or trade name, the above required sign or label shall consist of the words in letters not less than three inches high, "Lubricating Oil no Brand." (1927, c. 174, s. 2.)

§ 119-3. Misrepresentation of brands for sale.— It shall be unlawful for any person, firm or corporation to display, at the place of sale, any sign, label or other designating mark which describes any lubricating oil for internal combustion engines not actually sold or offered for sale or delivered at the location at which the sign, label or other designating mark is displayed, or to display any label upon any container which label names or describes any lubricating oil for internal combustion engines not actually contained therein, but offered for sale or sold as such: Provided, this section shall not prevent the advertising of such products when no lubricating oils is offered for sale at such place of advertisement. (1927, c. 174, s. 3.)

§ 119-4. Misdemeanor. — Any person, firm or corporation violating any of the provisions of this article shall for each offense be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars ($50.00) or more than three hundred dollars ($300.00), or by imprisonment in the county jail for not less than twenty or more than ninety days, or both. (1927, c. 174, s. 4.)

§ 119-5. Person violating or allowing employee to violate article to forfeit $100. — Any person violating this article, or any person, firm or corporation whose servant, agent or other employee violates this article in the course of his employment shall forfeit to the manufacturer whose oil was ordered, or to the proprietor of the trade-mark or trade name by which the oil ordered was designated by the purchaser, as the case may be, one hundred dollars ($100.00) for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty against the person, firm or corporation from whom the penalty is claimed. (1927, c. 174, s. 5.)

§ 119-6. Inspection duties devolve upon revenue department.—The duties of inspection required by §§ 119-1 through 119-5 shall be performed by the commissioner of revenue. (1933, c. 214, s. 9.)

Art. 2. Liquid Fuels, Lubricating Oils, Greases, etc.

§ 119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.— It shall be unlawful for any person, firm, co-partnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

Cross Reference.—As to prohibition against sale of anti-freeze made from certain compounds, see § 66-66.

§ 119-8. Sale of fuels, etc., different from advertised name prohibited.—No person, firm, partnership, co-partnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trade mark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

Cross Reference.—As to requirement that brand name be displayed, see § 119-2.

Applied in Maxwell v. Shell Eastern Petroleum Products, 90 F. (2d) 39.

§ 119-9. Imitation of standard equipment prohibited.—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, c. 108, s. 3.)

§ 119-10. Juggling trade names, etc., prohibited. —It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trade mark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trade mark or name or other distinguishing mark. (1933, c. 108, s. 4.)

§ 119-11. Mixing different brands for sale under standard trade name prohibited. — It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trade mark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trade mark, trade name or symbol to any product or material. (1933, c. 108, s. 5.)

§ 119-12. Aiding and assisting in violation of article prohibited.—It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or co-partnership, corporation or corporations or any of their agents or employees, to aid or assist any other person in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other

like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trade mark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this article. (1933, c. 108, s. 6.)

§ 119-13. Violation made misdemeanor.—Every person, firm or firms, partnership or copartnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand ($1000.00) dollars and by imprisonment not to exceed twelve (12) months, or by either or both in the discretion of the trial judge. (1933, c. 108, s. 7.)

Art. 3. Gasoline and Oil Inspection.

§ 119-14. Title of article. — This article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

Cross Reference.—See § 105-441.

§ 119-15. "Gasoline" defined. — The term "gasoline" wherever used in this article shall be construed to mean a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines. (1937, c. 425, s. 2.)

§ 119-16. "Motor fuel" defined. — "Motor fuel" shall be construed to mean all products commonly or commercially known or sold as gasoline, including casing-head or absorption or natural gasoline, benzol, or naphtha, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines which, when subjected to distillation in accordance to the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials, Designation D-86), show not less than ten per centum recovered below three hundred forty-seven degrees Fahrenheit and not less than ninety-five per centum recovered below four hundred sixty-four degrees Fahrenheit. In addition to the above, any other volatile and inflammable liquid when sold or used to propel a motor vehicle on the highways shall be motor fuel. (1937, c. 425, s. 3.)

§ 119-17. Inspection of kerosene, gasoline and other petroleum products provided for.—All kerosene used for illuminating or heating purposes and all gasoline used or intended to be used for generating power in internal combustion engines or otherwise sold or offered for sale, and all kerosene, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion engines or which are sold or used for such purposes, and any and all substances or liquids which in themselves or by reasonable combination with others might be used for or as substitutes for motor fuel shall be subject to inspection, to the end that the public may be protected in the quality of petroleum products it buys, that the state's revenue may be protected, and that frauds, substitutions, adulterations and other reprehensible practices may be prevented. (1937, c. 425, s. 4.)

§ 119-18. Inspection fee; allotments for administration expenses.—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the commissioner of revenue a charge of one-fourth of one cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel. The inspection tax shall be due and payable at the same time that the gasoline road tax is due and payable under the provisions of §§ 105-434 to 105-436, and payment shall be made concurrently with payment of said gasoline road tax, unless the Commissioner of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the budget bureau, from the inspection fees collected under authority of the inspection laws of this state, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene, gasoline and other products of petroleum used as motor fuel. (1917, c. 166, s. 4; 1933, c. 544, s. 5; 1937, c. 425, s. 5; C. S. 4856.)

§ 119-19. Failure to report or pay tax; cancellation of license. — If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Commissioner of Revenue may forthwith cancel the license of such person issued under § 105-433, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Commissioner of Revenue. In the event that the license of any person shall be cancelled by the Commissioner of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this article, together with any and all penalties accruing under any of the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said person under § 105-433. (1933, c. 544, s. 10.)

§ 119-20. Penalty for failure to report or to pay taxes promptly. — When any person shall fail to file reports with the Commissioner of Revenue, as required by this article, or shall fail to pay to the Commissioner of Revenue the amount of inspection tax due to the State of North Carolina when the same shall be payable, a penalty of one hundred per cent (100%) shall be added to the amount of the tax due, and said penalty of one hundred per cent (100%) shall immediately accrue, and thereafter said tax and penalty shall bear interest at the rate of one per cent (1%) per month until the same is paid. (1933, c. 544, s. 11.)

§ 119-21. On failure to Report, Commissioner may determine tax. — Whenever any person shall neglect or refuse to make and file any report as required by this article, or shall file an incorrect or fraudulent report, the Commissioner of Revenue shall determine after an investigation the number of gallons of kerosene oil and motor fuel with respect to which the person has incurred liability under the tax laws of the State of North Carolina, and shall fix the amount of the taxes and penalties payable by the person under this article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the Commissioner of Revenue of the amount of tax due, and/or interest and/or penalties due to the State, shall constitute prima facie evidence of the claim of the State; and the burden of proof shall be upon the person to show that the assessment was incorrect and contrary to law; and the Commissioner of Revenue may institute action therefor in the Superior Court of Wake County, regardless of the residence of such person or the place where the default occurred. (1933, c. 544, s. 12.)

§ 119-22. "Person" defined. — The word "person" as used in §§ 119-19 to 119-21 is hereby defined and declared to include and embrace not only the person, firm or corporation liable for the inspection tax, but also all his or its agents, servants and employees. (1933, c. 544, s. 13:)

§ 119-23. Supervision of motor vehicle bureau; payment into state treasury; "gasoline and oil inspection fund".—Gasoline and oil inspection shall be one organization in activities, accounting and reporting under the department of revenue. All moneys received under the authority of the inspection laws of this state shall be paid into the state treasury and kept as a distinct fund, to be styled "The Gasoline and Oil Inspection Fund," and the amount remaining in such fund at June thirtieth and December thirty-first of each year shall be turned over to the general fund by the state treasurer. (1937, c. 425, s. 6; 1941, c. 36.)

§ 119-24. Report of operation and expenses to general assembly.—The commissioner of revenue shall include in his report to the general assembly an account of the operation and expenses under this article. (1937, c. 425, s. 7.)

§ 119-25. Inspectors, clerks and assistants. — The commissioner of revenue shall appoint and employ such number of gasoline and oil inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the inspection laws. All inspectors shall be bonded in the sum of one thousand dollars in the usual manner provided for the bonding of state employees, and the expense of such bonding shall be paid from the gasoline and oil inspection fund created by this article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars, or be imprisoned for not less than three months nor more than twelve months, or both in the discretion of the court. (1937, c. 425, s. 8.)

§ 119-26. Gasoline and oil inspection board created.—In order to more fully carry out the provisions of this article there is hereby created a gasoline and oil inspection board of five members, to be composed of the commissioner of revenue, the director of the gasoline and oil inspection division, and three members to be appointed by the governor, who shall serve at his will. The commissioner of revenue and the director of the gasoline and oil inspection division shall serve without additional compensation. Other members of the board shall each receive the sum of ten dollars for each day he attends a session of the board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the board which he attends. These expenses shall be paid from the gasoline and oil inspection fund created by this article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and for one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided however that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this state any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220.)

§ 119-27. Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.—In the event that the gasoline and oil inspection board shall adopt standards for grades of gasoline, at all times there shall be firmly attached to or painted on each dispensing pump or other dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina ..... grade. Any person, firm, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars and be imprisoned for not more than six months, or

either, in the discretion of the court, and the gasoline offered or exposed for sale shall be confiscated.

The gasoline and oil inspectors shall have the authority to immediately seize and seal, to prevent further sales, any dispensing pump or other dispensing device from which gasoline is offered or exposed for sale in violation of or without complying with the provisions of this article. Provided, however, that this section shall not be construed to permit the destruction of any gasoline which may be blended or re-refined or offered for sale as complying with the legal specifications of a lower grade except under order of the court in which an indictment is brought for violation of the provisions of this article. Provided, further, that gasoline that has been confiscated and sealed by the gasoline and oil inspectors for violation of the provisions of this article shall not be offered or exposed for sale until the director of the gasoline and oil inspection division has been fully satisfied that the gasoline offered or exposed for sale has been blended or re-refined or properly labelled to meet the requirements of this article and the owners of said gasoline have been notified in writing of this fact by said director and, provided, further, that the permitting of blending, re-refining or properly labelling of confiscated gasoline shall not be construed to in any manner affect any indictment which may be brought for violation of this section. (1937, c. 425, s. 11; 1939, c. 276, s. 1; 1941, c. 220.)

Editor's Note.—The 1939 amendment added the second paragraph.

§ 119-28. Regulations for sale of substitutes. — All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the commissioner of revenue for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said commissioner of revenue in writing. (1937, c. 425, s. 12.)

§ 119-29. Rules and regulations of board available to interested parties.—It shall be the duty of the commissioner of revenue to make available for all interested parties the rules and regulations adopted by the gasoline and oil inspection board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13.)

§ 119-30. Establishment of laboratory for analysis of inspected products. — The commissioner of revenue is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the gasoline and oil inspection division of the motor vehicle bureau for the analysis of inspected products. (1937, c. 425, s. 14.)

§ 119-31. Payment for samples taken for inspection.—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the commissioner of revenue showing that payment has been made as requested. (1937, c. 425, s. 15.)

§ 119-32. Powers and authority of inspectors. —The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection, and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the state, including the authority to arrest, with or without warrants, and take offenders before the several courts of the state for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the commissioner of revenue and/or the gasoline and oil inspection board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of one hundred gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this state, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16.)

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of the commissioner of revenue, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, in so far as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the national conference of weights and measures, and recommended by the United States bureau of standards, shall be observed by said inspectors in so far as it applies to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and

measures appointed and maintained by the various counties and cities of the state shall have the same power and authority given by this section to inspectors under the supervision of the commission of revenue. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the commissioner of revenue. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within ten days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for not less than three months, or both, in the discretion of the court. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned for not less than thirty days nor more than ninety days, or both, in the discretion of the court. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 425, s. 17.)

§ 119-34. Responsibility of retailers for quality of products. — The retail dealer shall be held responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the commissioner of revenue at the time of delivery, and in the presence of the distributor or his agent, shows that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18.)

§ 119-35. Adulteration of products offered for sale. — It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in any wise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 19.)

§ 119-36. Certified copies of official tests admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product, under the seal of the commissioner of revenue, shall be admissible as evidence of the fact therein stated in any of the courts of this state on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20.)

§ 119-37. Retail dealers required to keep copies of invoices and delivery tickets.—Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ 119-38. Prosecution of offenders. — All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ 119-39. Violation a misdemeanor. — Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the commissioner of revenue and/or the gasoline and oil inspection board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 23.)

§ 119-40. Manufacturers to notify commissioner of shipments.—Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the Commissioner of Revenue of their shipment, with the name and address of the person, company, or corporation to whom it is sent and the number of gallons, on the day the shipment is made. (1917, c. 166, s. 4; 1933, c. 214, s. 8; C. S. 4856.)

§ 119-41. Persons engaged in transporting, are subject to inspection laws.—The owner or operator of any motor vehicle using the highways of this state or the owner or operator of any boat using the waters of this state transporting into, out of or between points in this state any gasoline or liquid motor fuel taxable in this state

and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this state shall make application to the commissioner of revenue on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the commissioner of revenue shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this state except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. This section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24; 1939, c. 276, s. 2.)

Editor's Note.—The 1939 amendment added the next to last sentence.

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.—Every person hauling, transporting or conveying into, out of, or between points in this state any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this state over either the public highways or waterways of this state, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the commissioner of revenue, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the commissioner of revenue shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this state such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the state: Provided, however, that this article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply tank shall have a capacity of more than one hundred gallons: And, provided further, that this section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. (1937, c. 425, s. 25; 1939, c. 276, s. 3.)

Editor's Note.—Prior to the 1939 amendment the last proviso read "this section shall not apply to franchise carriers."

§ 119-43. Display required on containers used in making deliveries.—Every person delivering at wholesale or retail any gasoline in this state shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the commissioner of revenue and/or the gasoline and oil inspection board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquid is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire". (1937, c. 425, s. 26; 1939, c. 276, s. 4.)

Editor's Note.—The 1939 amendment struck out a proviso exempting franchise carriers.

§ 119-44. Registration of exclusive industrial users of naphthas and coal tar solvents.—All persons who are exclusive industrial users of naphtha and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the commissioner of revenue as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said commissioner and the filing of a surety bond in approved form not to exceed the

sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the commissioner of revenue, permit licensed distributors of motor fuel in this state to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of industrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided further, that the rules and regulations adopted by the commissioner of revenue for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or non-observance of such rules. (1937, c. 425, s. 27.)

§ 119-45. Certain laws adopted as part of article. —Sections 119-1 through 119-5 and §§ 119-7 through 119-13 are hereby made a part of this article. (1937, c. 425, s. 28.)

§ 119-46. Charges for analysis of samples. — The commissioner of revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the gasoline and oil inspection division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, state or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the state treasury to the credit of the gasoline and oil inspection fund. (1937, c. 425, s. 29.)

§ 119-47. Inspection of fuels used by state.— The gasoline and oil inspection division is hereby authorized, upon request of the proper state authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the state of North Carolina for the use of all departments and institutions. (1937, c. 153.)

Chapter 120. General Assembly.

Art. 1. Apportionment of Members.

§ 120-1. Senators. — Until another apportionment of the State shall be had in accordance with the terms of the Constitution and laws of North Carolina, the Senate shall be composed of fifty members, elected from districts constituted as follows:

First District—Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, and Perquimans Counties shall elect two senators.

Second District—Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, and Washington shall elect two senators.

Third District—Northampton, Vance, and Warren shall elect one senator.

Fourth District—Edgecombe and Halifax shall elect two senators.

Fifth District—Pitt shall elect one senator.

Sixth District—Franklin, Nash, and Wilson shall elect two senators.

Seventh District — Carteret, Craven, Greene, Jones, Lenoir, and Onslow shall elect two senators.

Eighth District — Johnston and Wayne shall elect two senators.

Ninth District—Duplin, New Hanover, Pender, and Sampson shall elect two senators.

Tenth District—Bladen, Brunswick, Columbus, and Cumberland shall elect two senators.

Eleventh District—Robeson shall elect one senator.

Twelfth District—Harnett, Hoke, Moore, and Randolph shall elect two senators.

Thirteenth District—Chatham, Lee, and Wake shall elect two senators.

Fourteenth District — Durham, Granville, and Person shall elect two senators.

Fifteenth District — Caswell and Rockingham shall elect one senator.

Sixteenth District—Alamance and Orange shall elect one senator.

Seventeenth District — Guilford shall elect one senator.

Eighteenth District — Davidson, Montgomery, Richmond, and Scotland shall elect two senators.

Nineteenth District—Anson, Stanly, and Union shall elect two senators.

Twentieth District—Mecklenburg shall elect one senator.

Twenty-first District — Cabarrus and Rowan shall elect two senators: At the time of holding primary election for nomination of State officers, as provided in Chapter one hundred sixty-three, the candidates of the several political parties for one of the senators from said twenty-first district shall be nominated by the respective electors of the several political parties of Rowan County, and the candidates for the other senator from said twenty-first district shall be nominated by the respective electors of the several political parties of Cabarrus County.

Twenty-second District—Forsyth shall elect one senator.

Twenty-third District—Stokes and Surry shall elect one senator.

Twenty-fourth District — Davie, Wilkes and Yadkin shall elect one senator.

Twenty-fifth District—Catawba, Iredell, and Lincoln shall elect two senators.

Twenty-sixth District — Gaston shall elect one senator.

Twenty-seventh District—Cleveland, McDowell, and Rutherford shall elect two senators.

Twenty-eighth District—Alexander, Burke, and Caldwell shall elect one senator.

Twenty-ninth District — Alleghany, Ashe, and Watauga shall elect one senator.

Thirtieth District—Avery, Madison, Mitchell, and Yancey shall elect one senator.

Thirty-first District—Buncombe shall elect one senator.

Thirty-second District — Haywood, Henderson, Jackson, Polk, and Transylvania shall elect two senators.

Thirty-third District—Cherokee, Clay, Graham, Macon, and Swain shall elect one senator. (Rev., s. 4398; Code, s. 2844; 1911, c. 150; 1921, c. 161; 1941, c. 225; C. S. 6087.)

Editor's Note.—The amendment of 1921 somewhat changed the apportionment of senators. To some districts additional counties were inserted, and from others certain counties were taken out, and in certain instances the number of senators to be elected by the given district was increased or decreased, as the case may be.

Public Laws 1941, c. 225, from which the above section was codified, specifically repealed this section of volume three of the Consolidated Statutes.

§ 120-2. House of Representatives.—Until the General Assembly of North Carolina shall make another apportionment as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties of the State in the following manner, to-wit:

The counties of Guilford and Mecklenburg shall elect four members each; the counties of Buncombe, Forsyth, and Wake shall elect three members each; the counties of Cabarrus, Cumberland, Durham, Gaston, Johnston, Pitt, Robeson, and Rowan shall elect two members each; the counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey shall elect one member each.

(Rev., s. 4399; Code, s. 2845; 1911, c. 151; 1921, c. 144; 1941, c. 112; C. S. 6088.)

Editor's Note.—By the amendment of 1921 the number of representatives allotted certain counties was decreased or increased, as the case may be.

Public Laws 1941, c. 112, from which the above section was codified, specifically repealed this section of the Consolidated Statutes and Public Laws 1921, c. 144.

§ 120-3. Payment in installments or upon per diem basis; extra sessions.—The pay of the members and officers for a regular session of the General Assembly, as provided in section twenty-eight of article two of the Constitution of North Carolina, may be paid in installments, or upon a per diem basis as asked for by the several members and officers of the General Assembly; provided, that in no instance shall installments or per diem amount to more than ten dollars per day for the members and eleven dollars sixty-seven cents for the two presiding officers, for the number of days the General Assembly has been in session, and that the total pay of the officers and members of the General Assembly at a regular session shall in no case exceed six hundred dollars for the members, and seven hundred dollars for the presiding officers of the two houses. And, provided further, that the pay for an extra session of the General Assembly shall be eight dollars per day for members and ten dollars per day for the two presiding officers, for a period not to exceed twenty days. (1929, c. 2, s. 1.)

§ 120-4. Pay to remain same in session of less than 60 days.—Nothing in the provisions of § 120-3 shall prevent members and presiding officers of the General Assembly from receiving the full compensation of six hundred dollars for the members and seven hundred dollars for the presiding officers of the two houses, for the term of the regular session of the General Assembly, whether the term remains in session for sixty days or a shorter period. (1929, c. 2, s. 2.)

Art. 2. Duty and Privilege of Members.

§ 120-5. Presiding officers may administer oaths.—The president of the senate is authorized to administer oaths for the qualification of senators and officers of the senate, and the speaker of the house of representatives is authorized to administer oaths for the qualification of all officers of the house and all members who shall appear after the election of speaker. (Rev., s. 4400; Code, s. 2855; 1883, c. 19; C. S. 6089.)

§ 120-6. Members to convene at appointed time and place.—Every person elected to represent any county or district in the general assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (Rev., s. 4401; Code, s. 2847; R. C., c. 52, s. 27; 1787, c. 277, s. 1; C. S. 6090.)

§ 120-7. Penalty for failure to discharge duty.—If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the general assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (Rev., s. 4402; Code, s. 2848; R. C., c. 52, s. 28; 1787, c. 277, s. 2; C. S. 6091.)

§ 120-8. Expulsion for corrupt practices in election.—If any person elected a member of the general assembly shall, by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the general assembly. (Rev., s. 4403; Code, s. 2846; R. C., c. 52, s. 24; 1801, c. 580, s. 2; C. S. 6092.)

§ 120-9. Freedom of speech; protection from arrest. — The members shall have freedom of speech and debate in the general assembly, and shall not be liable to impeachment or question, in any court or place out of the general assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the general assembly. (Rev., s. 4404; Code, s. 2849; R. C., c. 52, s. 29; 1787, c. 277, s. 3; C. S. 6093.)

Art. 3. Contests.

§ 120-10. Notice of contest. — No person shall be allowed to contest the seat of any member of the general assembly unless he shall have given to the member thirty days notice thereof in writing, prior to the meeting of the general assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation. (Rev., s. 4406; Code, s. 2850; 1893, c. 192; R. C., c. 52, s. 31; 1796, c. 466, s. 1; C. S. 6095.)

§ 120-11. Depositions taken; penalty and privilege of witnesses.—Any justice of the peace, or any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpœnas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpœna, he shall forfeit and pay to the party causing him to be summoned, forty dollars. And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his

conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election. (Rev., s. 4407; Code, s. 2851; R. C., c. 52, s. 32; 1800, c. 557, s. 1; 1868-9, c. 270, s. 12; C. S. 6096.)

Art. 4. Reports of Officers to General Assembly.

§ 120-12. Reports from state institutions and departments.—It shall be the duty of the chief officer of each department of the state and of the boards of directors of all institutions supported in whole or in part by appropriations from the state, to submit to the general assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the governor, to be transmitted by him with his message to the general assembly. (Rev., s. 4410; Code, s. 2865; 1800, c. 557, s. 2; C. S. 6099.)

§ 120-13. Reports of commissions.—The State Highway and Public Works Commission, the Superintendent of Public Instruction, the Department of Agriculture, the State Board of Health, and the State Board of Charities and Public Welfare, and such other Boards, Departments and Commissions as the Governor may direct shall each make a full report of the operation of their respective Departments or Commissions together with their recommendations for the future operation of their Departments or Commissions to the members of the General Assembly.

All such reports shall be distributed as heretofore provided for, not later than twenty days after the general election in November preceding the convening of the General Assembly.

Failure on the part of any of the above mentioned Commissions or Departments to distribute their reports to the members of the General Assembly within the time prescribed by this section shall be cause for impeachment and for removal from office. (1929, c. 248.)

Art. 5. Investigating Committees.

§ 120-14. Power of committees. — Any committee of investigation raised either by joint resolution or resolution of either house of the general assembly has full power to send for, persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise. (Rev., s. 4412; Code, s. 2853; 1868-9, c. 50, s. 1; C. S. 6100.)

Duration of Authority.—In the absence of express enactment otherwise, the existence of a legislative committee necessarily determines upon the adjournment of the body to which it belongs. Bank v. Worth, 117 N. C. 146, 147, 23 S. E. 160.

§ 120-15. Chairman may administer oaths.—The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths. (Rev., s. 4413; Code, s. 2856; 1869-70, c. 5, s. 3; C. S. 6101.)

§ 120-16. Pay of witnesses.—Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents for every mile traveling to and from his residence, and ferriage, to be recovered before any justice of the peace upon the certificate of the commissioner. (Rev., s. 4414, Code, s. 2860; R. C., c. 52, s. 33; 1800, c. 557, s. 2; C. S. 6102.)

§ 120-17. Appearance before committee.—Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the general assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary. (Rev., s. 4415; Code, s. 2858; 1868-9, c. 270, s. 10; C. S. 6103.)

§ 120-18. Appeal from denial of right to be heard.—If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he show good reason for his request the house shall order it to be granted. (Rev., s. 4416; Code, s. 2859; 1868-9, c. 270, s. 11; C. S. 6104.)

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees. — All officers, agents, agencies, and departments of the state are required to give to any committee of the general assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the general assembly or any of its committees or chairmen thereof. (Resolution 19, 1937, p. 927.)

Art. 6. Acts and Journals.

§ 120-20. When acts take effect. — Acts of the general assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (Rev., s. 4417; Code, s. 2862; R. C., c. 52, s. 35; 1799, c. 527; 1868-9, c. 270, s. 1; C. S. 6105.)

Editor's Note. — This section abrogates the doctrine of Sumner v. Barksdale, 1 N. C. 328, and Smith v. Smith, 1 N. C. 30, in which it was held that Acts of Assembly take effect from the beginning of the session in which they are passed.

Takes Effect from First Day of Session When so Provided. —An act of the General Assembly which provides that it shall be in force from and after its passage is in force and takes effect from the first day of the session at which it was passed. Hamlet v. Taylor, 50 N. C. 36.

§ 120-21. Notice given of private acts. — Any person who may desire the passage of a private law shall give notice of his intention to make application by advertisement in some newspaper of the state which circulates in the county where the applicant resides, or in which such private law will operate, or by advertisement at the door

of the courthouse and three other public places in such county for at least thirty days before the application; and when any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced before the second reading thereof. (Rev., s. 4418; Const., Art. II, s. 12; Code, s. 2861; R. C., c. 52, s. 34; 1796, c. 466, s. 2; 1835, c. 15; C. S. 6106.)

Cross Reference.—For constitutional requirement of such notice, see N. C. Const. Art. II, § 12.

Conclusive Presumption as to Notice.—The courts will conclusively presume, from the ratification of a legislative act authorizing a county to issue bonds, that the notice of thirty days required by section 12, Article II of the Constitution, has been given. Cox v. Commissioners, 146 N. C. 584, 60 S. E. 516.

If the legislative journal is silent as to the fact, the presumptions would be that the Legislature obeyed the Constitution. Gatlin v. Tarboro, 78 N. C. 119.

The courts will not go behind the ratification of an act of the Legislature to inquire as to whether notice required by Art. II, § 12, of the Constitution of North Carolina, and this section has been given and will conclusively presume that this requirement binding upon the conscience of the Legislature has been observed. State v. Holmes, 207 N. C. 293, 176 S. E. 746.

§ 120-22. Enrollment of acts. — All bills passed by the general assembly shall be enrolled for ratification under the supervision and direction of the secretary of state. All bills so enrolled shall be typewritten and carefully proof-read. The secretary of state is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the general assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars ($6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars ($5.00) per day for his services: Provided, the rules committees of the house of representatives and senate in joint session may increase or decrease the number of persons so employed. (Rev., s. 4422; 1903, c. 5; 1933, c. 173; C. S. 6108.)

Editor's Note.—Public Laws of 1933, c. 173, substituted the above section for the former reading. A comparison of the two sections is necessary to determine the changes.

Session Laws 1943, c. 15, s. 1, exempted from the provisions of this section Session Laws 1943, c. 33, which revised and consolidated the public and general statutes of the state of North Carolina.

§§ 120-23 to 120-25: Transferred to §§ 147-43.1 to 147-43.3 by virtue of Session Laws 1943, c. 543.

§ 120-26: Repealed by Session Laws 1943, c. 543.

§ 120-27. Journals; preparation and filing by clerks of houses.—It shall be the duty of the principal clerks of the two houses of the general assembly to hasten the preparation of their journals for the printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the secretary of state. (Rev., s. 5100; Code, ss. 3627, 3628; 1872-3, c. 45, ss. 2, 3; C. S. 7299.)

§ 120-28. Journals indexed by clerks. — The principal clerks of the two houses of the general assembly shall provide full and complete indexes for the journals of their respective houses. (Rev., s. 4421; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; C. S. 6112.)

§ 120-29. Journals deposited with secretary of state. — The principal clerks of the senate and house of representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the secretary of state the journals of the general assembly; and the secretary of state shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant. (Rev., s. 4420; Code, s. 2867; R. C., c. 52, s. 36; 1819, c. 1020; C. S. 6113.)

§ 120-30. Bills and legislative documents.—The bills and all other documents ordered to be printed by either branch of the general assembly shall be printed in octavo form without a title page. But the first page shall be printed as follows: At the head of the page there shall be four rules, one double, two single, and one parallel, extending across the page. Between said rules shall be printed, first, the name of the house where the bill originated, with the year and date of the session, the name of the introducer, and the name of the printer; after leaving a space the width of two-line pica, a synopsis, or caption of the bill, or report of the committee, or whatever it may be, shall be set up with pica capitals. After such heading, the said document shall follow immediately, commencing with a paragraph, allowing a space the width of small pica between the heading and commencement of the same. (Rev., s. 5102; Code, s. 3644; R. C., c. 93, s. 3; C. S. 7301.)

Art. 7. Employees.

§ 120-31. Legislative employees paid on certificate of presiding officers.—The auditor is authorized to audit the account of any employee of the senate or of the house of representatives, upon the certificate of the president of the senate and of the speaker of the house of representatives that such services have been rendered for which the account is presented, and that the amount as stated in said account is reasonable, just and proper. (Rev., s. 2735; Code, s. 2873; 1870-71, res., p. 508; C. S. 3848.)

§ 120-32. Principal clerk; term of office; duties.—The principal clerk of each house of the general assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed for the meeting of the general assembly, and on the first day thereof, and perform the duties of his office. (Rev., s. 4426; Code, s. 2870; R. C., c. 52, s. 37; 1846, c. 63; C. S. 6114.)

§ 120-33. Compensation of employees of the general assembly; mileage.—The principal clerks of each house and the chief enrolling clerk shall be allowed the sum of ten dollars per day during the session of the general assembly, and

mileage at the rate of ten cents per mile from their homes to Raleigh and return. The journal clerks, calendar clerks, chief engrossing clerks, reading clerks, sergeants-at-arms, and one assistant calendar clerk in each house shall be allowed the sum of eight dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Releigh and return. The secretary to the speaker of the house of representatives, the secretary to the lieutenant-governor, the clerks to the finance and appropriation committees of both houses, the assistants to the engrossing clerks, the assistant clerks to the principal clerks and the assistant sergeant-at-arms, of the general assembly, and the assistants appointed by the secretary of state to supervise the enrollment of bills and resolutions, shall receive the sum of six dollars per day, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The clerks to all committees which by the rules of either house of the general assembly are entitled to clerks, except as hereinabove provided, shall each receive five dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The chief pages of the house of representatives and the senate shall receive four dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive three dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All laborers of the first-class authorized by law or the rules of either the house of representatives or the senate shall receive three dollars and one-half per day during the session of the general assembly and all mileage at the rate of five cents per mile from their homes to Raleigh and return, and laborers of the second class the sum of three dollars per day and mileage at the rate of five cents per mile from their homes to Raleigh and return. The chaplain of each house shall receive four dollars and fifty cents per day. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 393.)

Editor's Note.—The first 1937 amendment added the clerks to the committees on appropriations and finance to the list named in the third sentence. It also inserted the words "except as herein above provided" in the fourth sentence. The second 1937 amendment repealed the 1933 amendment and re-enacted the 1929 amendment, except as to pay of such clerks, which was raised to $6.00 per day, and pay of ordinary pages which was raised from $2.50 to $3.00 per day. The 1943 amendment increased the salaries of the principal clerks and the chief enrolling clerk to $10.00; and the salaries of the journal clerks, calendar clerks, chief engrossing clerks, reading clerks, sergeants-at-arms, and one assistant calendar clerk in each house to $8.00. It also provided for paying the chaplain $4.50 per day.

§ 120-34. Classification of laborers.—The chairman of the committee on rules of the House of Representatives and the chairman of the committee on rules of the Senate are hereby authorized, empowered and directed to classify the laborers of the General Assembly and certify to the chief clerk of the House of Representatives and the chief clerk of the Senate the names of all laborers of the first class and all laborers of the second class, to the end that proper warrants may be issued in payment of services rendered in accordance with § 120-33 and the list when certified shall be the classification of such laborers and they shall be paid accordingly. (1925, c. 116.)

Editor's Note.—This section was re-enacted by Public Laws 1933, c. 6, without change.

§ 120-35. Principal clerks; extra compensation.—The principal clerks of the general assembly shall be allowed four hundred dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the general assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the secretary of state. (Rev., s. 2732; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; 1911, c. 116; 1919, c. 170; 1921, c. 160; C. S. 3855.)

§ 120-36. Compensation of principal clerks for services in organizing senate and house.—The principal clerks of the senate and house of representatives, together with such assistants as may be necessary in arranging the halls of the senate and house and completing the organization of the two branches of the general assembly before the days for convening thereof, and such services as are rendered after adjournment in the completion of the records, shall receive the same per diem as shall be allowed by law to the said clerks and their assistants during the session. The state auditor is directed to issue his warrants for such clerks and for such time as is certified to by the president of the senate and the speaker of the house, upon vouchers signed by them. (1923, c. 130; C. S. 3855(a).)

Art. 8. Preservation and Protection of Furniture and Fixtures.

§ 120-37. Principal clerks to take and publish inventory.—At the end of each and every session of the general assembly, the principal clerks of each house shall take an inventory of the furniture, desks, fixtures, chairs, and other property belonging to their respective houses, and publish said inventory in the appendix of their respective journals. (1921, c. 219, s. 1; C. S. 6116(a).)

§ 120-38. Duty and responsibility of Board of Public Buildings and Grounds.—The Board of Public Buildings and Grounds shall have charge and care of the said furniture and fixtures during the vacations of the general assembly, and it shall be its duty to see that said furniture remains in the offices and halls of the two houses from session to session, and it shall be responsible for the safe-keeping of said furniture and fixtures. (1921, c. 219, s. 2; C. S. 6116(b).)

§ 120-39. Removal of furniture and fixtures a misdemeanor.—It shall be a misdemeanor for any person or persons to remove any of said furniture and fixtures from the halls of the general assembly between sessions of the legislature for any purpose whatever. (1921, c. 219, s. 3; C. S. 6116(c).)

Art. 9. Lobbying.

§ 120-40. Lobbying defined; registration of lobbyists.—Every person, corporation or associa-

tion which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the general assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed, to be entered upon a legislative docket as hereafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. (1933, c. 11, s. 1.)

Editor's Note.—For a discussion of this and the following sections, see 11 N. C. Law Rev. 235.

§ 120-41. Legislative docket for registration. — The secretary of state shall prepare and keep the legislative docket for the uses provided in this article. In such docket shall be entered the name, occupation or business, and business address of the employer, the name, residence and occupation of the person employed, the date of employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the subject or subjects of legislation to which the employment relates. Such docket shall be a public record and open to the inspection of any citizen at any time during the regular business hours of the office of the secretary of state. (1933, c. 11, s. 2.)

§ 120-42. Contingent fees prohibited. — No person shall be employed as a legislative counsel or agent for a compensation dependent, in any manner, upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the general assembly, or of either branch thereof, or any committee thereof. (1933, c. 11, s. 3.)

§ 120-43. Written authority from employer to be filed.—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the secretary of state within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. (1933, c. 11, s. 4.)

§ 120-44. Detailed statement of expenses to be filed.—Within thirty days after the final adjournment of the general assembly every person, corporation or association, whose name appears upon the legislative docket of the session, shall file with the secretary of state a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with promoting or opposing in any manner the passage by the general assembly of any legislation coming within the terms of this article. Such statements shall be in such form as shall be prescribed by the secretary of state and shall be open to public inspection. (1933, c. 11, s. 5.)

§ 120-45. Going upon floor during session prohibited.—It shall be unlawful for any person, employed for a pecuniary consideration to act as legislative counsel or agent, as defined by this article, to go upon the floor of either house of the general assembly while the same is in session, except upon invitation of such house. (1933, c. 11, s. 6.)

§ 120-46. Application of article. — The provisions of this article shall not apply to any county, city, town or municipality, but shall apply to the executive officers of all other corporations who undertake, in such capacity, to perform services as legislative counsel or agent for such corporations, regardless of whether they receive additional compensation for such services. (1933, c. 11, s. 7.)

§ 120-47. Punishment for violation.—Any legislative counsel or agent, and any employer of such legislative counsel or agent, violating any provision of this article, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than one thousand dollars, or imprisoned not exceeding two years, or both. (1933, c. 11, s. 8.)

Chapter 121. State Department of Archives and History.

§ 121-1. Appointment; term of office; compensation.—The state department of archives and history shall consist of not more than seven persons, of whom four shall constitute a quorum. Five persons shall be appointed by the Governor on the first day of April, one thousand nine hundred and seven, who shall designate one member to serve for a term of two years, two members to serve for a term of four years, and two members to serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor to serve for a term of six years and until their successors are appointed and qualified. The other two members shall be appointed by the Governor on the first day of April, one thousand nine hundred and forty-one, one to serve for a term of four years and the other for a term of six years, and until their successors are ap-

pointed and qualified; and thereafter the successors of these two shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms the persons appointed to fill such vacancies shall be appointed only for the unexpired term. They shall serve without salary, but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds appropriated for the maintenance of the department. Provided, that such expenses shall not be allowed for more than four meetings annually nor for more than four days at each meeting. (Rev., s. 4539; 1903, c. 767, s. 2; 1907, c. 714, s. 1; 1941, c. 306; 1943, c. 237; C. S. 6141.)

Editor's Note.—The 1941 amendment increased the membership of the commission (now department) from five to seven and the number necessary to constitute a quorum from three to four.

The amendatory act provided: "One member to be appointed under this act shall serve for a term of four years, and the other member shall be appointed to serve for a term of six years, and until their successors are appointed and qualified; and thereafter their successors shall be appointed by the governor and shall serve for a term of six years and until their successors are appointed and qualified."

Prior to the 1943 amendment the state department of archives and history was known as the historical commission. The amendatory act provided that wherever the words "historical commission," "North Carolina historical commission," "state historical commission" or "commission" are used with reference to the historical commission in any section of the laws of North Carolina, they shall be interpreted to mean "state department of archives and history," and such title shall be substituted therefor.

§ 121-2. Duties of department. — It is the duty of the department to have collected from the files of old newspapers, court records, church records, private collections, and elsewhere, historical data pertaining to the history of North Carolina and the territory included therein from the earliest times; to have such material properly edited, published as other state printing, and distributed under the direction of the department; to care for the proper marking and preservation of battlefields, houses, and other places celebrated in the history of the state; to diffuse knowledge in reference to the history and resources of North Carolina; to encourage the study of North Carolina history in the schools of the state, and to stimulate and encourage historical investigation and research among the people of the state; to make a biennial report of its receipts and disbursements, its work and needs, to the governor, to be by him transmitted to the general assembly. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; 1925, c. 275, s. 11; 1943, c. 237; C. S. 6142.)

Editor's Note.—The 1943 amendment substituted "department" for "commission." See Editor's Note under § 121-1.

§ 121-3. Powers of department.—The department shall have power to adopt a seal for use in official business; to adopt rules for its own government not inconsistent with the provisions of this chapter; to fix a reasonable price for its publications and to devote the revenue arising from such sales to extending the work of the department; to employ a secretary; to control the expenditure of such funds as may be appropriated for its maintenance subject to the provisions of the Executive Budget Act: Provided, that at least one copy of its publications shall be furnished free of charge to any public school library or public library in North Carolina, state officers, and members of the general assembly making application for the same through its properly constituted authorities.

The department shall have power to accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the department. The funds, if given as an endowment, shall be invested in such securities as those in which the state sinking fund may be invested. All such gifts and bequests and all of the proceeds of such invested endowments shall be used by the department for carrying out the purposes for which the gift, bequest, or endowment was made. (1907, c. 714, s. 3; 1935, c. 40; 1943, c. 237; C. S. 6143.)

Cross Reference.—As to investment of state sinking fund, see § 142-34.

Editor's Note.—The amendment of 1935 added the last paragraph of this section.

The 1943 amendment substituted "department" for "commission." See Editor's Note under § 121-1.

§ 121-4. Preservation of documents; copies furnished. — Any state, county, town, or other public official in custody of public documents is hereby authorized and empowered in his discretion to turn over to the department for preservation any official books, records, documents, original papers, newspaper files, printed books or portraits, not in current use in his office, and the department shall provide for their permanent preservation, and when so surrendered copies therefrom shall be made and certified under the seal of the department upon application of any person, which certification shall have the same force and effect as if made by the officer originally in charge of them, and the department shall charge for such copies the same fees as such officer is by law allowed to charge, to be collected in advance. Provided, that any state archives, records, books, documents, original papers, newspaper files, printed books, or manuscripts which have no significance, importance, or value, may, upon the advice and recommendation of the custodian in charge of said archives, records, books, documents, original papers, newspaper files, printed books, and manuscripts, and upon the further advice and recommendation of the state department of archives and history, be authorized by the council of state of the state of North Carolina to be destroyed or otherwise disposed of; and, provided also, that any county, city, town, or any other governmental agency which may have in its possession or custody any public archives, records, books, documents, original papers, newspaper files, printed books, or manuscripts which have no significance, importance, or value, may, upon the advice and recommendation of the custodian in charge of said public archives, records, books, documents, original papers, newspaper files, printed books, and manuscripts, and upon the further advice and recommendation of the department, be authorized by the governing bodies of said county, city, town, or other governmental agency to be destroyed or otherwise disposed of. The department is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry the

provisions of this section into effect. (1907, c. 714, s. 5; 1939, c. 249; 1943, c. 237; C. S. 6145.)

Editor's Note.—The 1939 amendment added the part of this section beginning with the word "provided" in line seventeen.

The 1943 amendment made the change in title in accordance with Editor's Note under § 121-1.

§ 121-5. Custody of E. R. A. records; use of E. R. A. funds.—The Emergency Relief Administration records of North Carolina shall be turned over to the state department of archives and history to be arranged, classified, catalogued, preserved, administered, and made available for public investigations under the rules and regulations of the said department in accordance with §§ 121-3, 121-4 and 132-1 to 132-9.

For the purpose of carrying out the provisions of this section the Governor and Council of State shall allot the remaining funds granted to the State of North Carolina for the Emergency Relief Administration or any such funds hereafter accruing from claims, collections or otherwise, to the state department of archives and history, to be used in classifying, administering, preserving and making available to the public the said records in accordance with the purpose of the funds. The said funds to be disbursed in accordance with and under the terms of the Executive Budget Act.

Any balance remaining in the said funds after these records are arranged, classified, catalogued, and made available to the public by the state department of archives and history, shall revert to the State Board of Charities and Public Welfare. (1941, c. 252; 1943, c. 237.)

Editor's Note.—The 1943 amendment made the change in title in accordance with Editor's Note under § 121-1.

Chapter 122. Hospitals for the Insane.

Sec.

Art. 1. Organization and Management.

Sec.

Art. 2. Officers and Employees.

Art. 3. Admission of Patients.

Art. 1. Organization and Management.

§ 122-1. Incorporation and names.—The hospital for the insane, located near Morganton, shall be and remain a corporation under this name: The State Hospital at Morganton. The hospital for the insane, located near Raleigh, shall be and remain a corporation under this name: The State Hospital at Raleigh. The hospital for the insane, located near Goldsboro, shall be and remain a corporation under this name: The State Hospital at Goldsboro. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Rev., s. 4542; Code, ss. 2227, 2240; 1899, c. 1, s. 1; C. S. 6151.)

§ 122-2. Power to acquire and hold property.—The state hospital at Morganton, and the state hospital at Raleigh, and the state hospital at Goldsboro, may each acquire and hold, for the purpose of its institution, real and personal property, by devise, bequest, or by any manner of gift, purchase, or conveyance whatsoever. (Rev., s. 4543; 1899, c. 1, s. 2; C. S. 6152.)

§ 122-3. Division of territory and patients between Raleigh, Morganton and Goldsboro institutions.—The state hospital at Raleigh and the state hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of the white insane of the state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment of the colored insane, epileptics, feebleminded and inebriates of the state: Provided, authorities of the state hospital at Morganton, in their discretion, may admit and assign to any ward members of the eastern band of Cherokee Indians for hospitalization. The line heretofore agreed upon by the directors of the state hospital at Raleigh and the state hospital at Morganton shall be the line of division between the territories of said hospitals, and white insane persons settled in counties east of said line shall be admitted to the state hospital at Raleigh, and white insane persons settled in counties west of said line shall be admitted to the state hospital at Morganton; epileptics shall be admitted as now provided by law. White inebriates shall

be admitted to the state hospital at Raleigh. The superintendent of any of said state hospitals is hereby authorized, within his discretion, to receive in any of said institutions the alien wife of a citizen and resident of North Carolina who has resided in this state for as long as ten years and is the mother of a son who is serving or has served as a member of the armed forces of the United States. (1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; C. S. 6153(a).)

Editor's Note.—Public Laws of 1933, c. 342, places epileptic and feebleminded under the jurisdiction of the State Hospital at Goldsboro.

The first 1943 amendment added the last sentence and the second 1943 amendment added the proviso at the end of the first sentence.

§ 122-4. Same—Change of line.—A committee made up of three members selected by the board of directors hereinafter provided for and the governor may change said line from time to time whenever in their opinion such change may be desirable and proper. The committee, or the governor, may have patients transferred from or to the state hospital at Raleigh and the state hospital at Morganton when such transfer may be advantageous. (Rev., s. 4544; 1899, c. 1, ss. 3, 4; 1917, c. 150, s. 1; 1929, c. 265, s. 2; 1943, c. 136, s. 1; C. S. 6153(b).)

Editor's Note.—The 1943 amendment rewrote the first sentence, and omitted a former provision relating to division of state into eastern and western hospital districts.

§ 122-5. Cherokee Indians of Robeson county and Croatan Indians of other counties.—All the insane and inebriate Cherokee Indians of Robeson county, and all the insane and inebriate Croatan Indians of the other counties of the state, shall be cared for in the hospital for the insane at Raleigh in wards separate and apart from the white patients in said hospital, and all such Cherokee Indians of Robeson county and Croatan Indians of the other counties of the state shall be cared for and receive the same treatment as other patients in said hospital receive. (1919, c. 211; C. S. 6154.)

§ 122-6. Epileptics cared for at Raleigh.—Whenever it becomes necessary for any white person of this state, afflicted with the disease known as epilepsy, to be confined or to receive hospital treatment, such person shall be accommodated, maintained, cared for, and treated at the state hospital at Raleigh. Such epileptics shall be committed by the clerks of the superior courts of the several counties to the state hospital at Raleigh in the manner now provided by law for the commitment of insane persons to the several hospitals for the insane; and when such persons shall be committed it shall be the duty of the superintendent of the state hospital at Raleigh, and he is required, to receive such persons and care for, maintain, and treat them at the hospital at Raleigh, if the superintendent shall find such persons to be afflicted to such extent as properly to become a public charge: Provided, that any person so committed who is able to pay shall be charged actual cost of maintenance.

All epileptics confined, cared for, and maintained at the state hospital at Morganton shall be transferred to the state hospital at Raleigh. (1909, c. 910, ss. 1, 2; C. S. 6155.)

§ 122-7. Management of certain institutions by unified board of directors; appointment; quorum; term of office.—The following institutions of this state to-wit: The state hospital at Raleigh, the state hospital at Morganton, the state hospital at Goldsboro, and the Caswell training school at Kinston shall be under the management of one board of directors composed of sixteen members, fifteen of whom shall be appointed by the governor of North Carolina, no two of which fifteen shall be residents of the same county. In order that the western, central and eastern sections of the state shall have equal representation on said board, the governor shall name one woman and four men from each of said sections of the state on said board. The board of directors shall be divided into five classes of three directors each, the first class to serve for a period of one year, the second class to serve for a period of two years, the third class to serve for a period of three years, the fourth class to serve for a period of four years, the fifth class to serve for a period of five years, and at the expiration of their respective terms of office all appointments shall be for a term of five years, except such as are made to fill unexpired terms. The secretary of the North Carolina State board of health shall be an ex officio member of said board of directors. The governor shall transmit to the senate at the next session of the general assembly, for confirmation, the names of the persons appointed by him. Nine directors shall constitute a quorum, except when three are by law engaged to act for special purposes.

In case of a vacancy or vacancies in the board of directors for any cause, his or her successor or successors shall be appointed by the governor and the appointment shall be reported to the next succeeding session of the senate of the general assembly of North Carolina for confirmation.

Members of the board shall serve for terms as prescribed above, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the state to remove such person, and the governor shall not be required to give any reason for such removal. (1921, c. 183, s. 2; 1925, c. 306, s. 3; 1943, c. 136, s. 2; C. S. 6159(a).)

Editor's Note.—The 1925 amendment changed the manner of appointment and terms of the directors as they appeared in the original act.

The 1943 amendment rewrote this section to provide for a unified board of directors instead of separate boards for each institution.

Consent of Senate to Fill Unexpired as Well as Full Terms.—It was the design and purpose of the Legislature that the consent and approval of the Senate, as stated, be required for a valid appointment by the Governor to fill unexpired terms as well as full terms, and the sole power of appointment of the Governor is derived under section 147-12, par. 3, to fill vacancies when the Senate was not in session, and until it met and concurred in his appointment. Boynton v. Heartt, 158 N. C. 488, 74 S. E. 470, cited and distinguished; State Prison v. Day, 124 N. C. 362, 32 S. E. 748, overruled. State v. Croom, 167 N. C. 223, 83 S. E. 354.

§ 122-8. Powers and duties of unified board of directors.—Wherever in any of the sections of this chapter and in the sections under article twelve, chapter 116, the board of directors or board of trustees is referred to, it shall be construed that the unified board of directors of the said institutions shall have all the powers conferred and duties imposed heretofore upon the

separate boards of directors or board of trustees of the several institutions herein mentioned and said powers and duties shall be exercised and performed as to each of the institutions by the unified board of directors herein provided for; and the said board shall be responsible for the management of the said institutions and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, subject to the provisions of the executive budget act, and said board shall make an annual report to the governor, and oftener if called for by him, of the condition of each of the said institutions and shall make biennial reports to the governor, to be transmitted by him to the general assembly, of all moneys received and disbursed by each of the said institutions. Wherever the words "board of directors" or "board of trustees" are used in any of the laws of this state with reference to the institutions enumerated in § 122-7, the same shall mean the unified board of directors provided for in § 122-7. (1921, c. 183, s. 3; 1943, c. 136, s. 3; C. S. 6159(b).)

Editor's Note.—The 1943 amendment rewrote this section.

§ 122-9. Building committee; selection; duties.—It shall be the duty of the board of directors herein provided for to select and appoint from its number a building committee, who shall be specially charged with the duty of supervision of the buildings to be built or repaired from appropriations made to said institutions by the general assembly of this state. (1921, c. 183, s. 4; 1943, c. 136, s. 4; C. S. 6159(c).)

Editor's Note.—Prior to the amendment there was a building committee for each institution.

Architect Not State Employee.—An architect selected by the building committee under the authority conferred by this section, and who is to bear all the expenses incidental to carrying out his work, being paid on the basis of a percentage of the moneys expended, is an independent contractor and not a state employee. Underwood v. Com'r of Internal Revenue, 56 F. (2d) 67.

§ 122-10. A garden provided for the executive mansion.—The board of directors is authorized and directed to set apart two acres of land belonging to the state hospital at Raleigh to be used as a garden for the executive mansion. They are further authorized to have such garden cultivated, the actual expense of cultivation to be paid by the governor. (1917, c. 171; C. S. 6160.)

§ 122-11.1. Organization of board; officers.—directors shall convene annually at each of the institutions enumerated in § 122-7 at a time to be fixed by such board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (Rev., 4550; 1899, c. 1, s. 8; 1917, c. 150, s. 1; 1943, c. 136, s. 5; C. S. 6161.)

Editor's Note.—Prior to the 1943 amendment the former boards were required to meet in April and at such other times as they should appoint, also to make reports to the general assembly.

§ 122-11.1. Organization of board; officers.—The said board of directors is hereby authorized and given full power to meet and organize and from their number select a chairman and to elect a secretary who may or may not be a member of the board. (1943, c. 136, s. 6.)

§ 122-11.2. Superintendent of mental hygiene.—The board of directors is hereby authorized and given full power to employ a general superintendent of mental hygiene and prescribe his duties and fix his salary. The said superintendent shall be a person of demonstrated executive ability and a doctor of medicine who shall have had special education, training and experience in psychiatry and in the treatment of mental diseases, and he shall be a person of good character and otherwise qualified to discharge his duties. He shall be employed for a period of two years from and after the date of his selection, unless sooner removed therefrom by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no office except that he shall serve as secretary to the board of directors, if the board so orders.

The board of directors shall provide the said superintendent with such stenographic and clerical assistance as it may deem necessary. The salary of said superintendent and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions herein mentioned and on such pro-rata basis as the board of directors shall in their judgment fix and determine. Upon the request of the board of directors the state board of public buildings and grounds shall provide suitable office space in the city of Raleigh for said superintendent. (1943, c. 136, s. 7.)

§ 122-11.3. Business manager for institutions.—The board of directors is hereby authorized and given full power to employ a general business manager for the institutions enumerated in § 122-7, and to fix his salary. Subject to the supervision, direction and control of the board of directors, the said general business manager shall perform the duties set out in this section and all other duties which the board of directors may prescribe. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. Under the direction of said board, said general manager shall have full supervision over the fiscal management and over the management and control of the physical properties and equipment of the institutions enumerated in § 122-7. All personnel or employees of said institutions engaged in any aspect of the business management or supervision of the properties or equipment of any of said institutions shall be responsible to and subject to the supervision and direction of said general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The said general business manager shall be employed for a period of two years from and after the time of his selection, unless sooner removed by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

The board of directors shall provide the said general business manager with such stenographic

and clerical assistance as it may deem necessary. The salary of said business manager and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions hereinbefore mentioned and on such pro rata basis as the board of directors shall in its judgment fix and determine. Upon the request of the board of directors the state board of public buildings and grounds shall provide suitable office space in the city of Raleigh for said general business manager in conjunction with the office space provided for the general superintendent of mental hygiene hereinbefore provided for. (1943, c. 136, s. 7½.)

§ 122-11.4. Monthly reports to general superintendent of mental hygiene.—The superintendent of each of said institutions shall make monthly reports to the general superintendent of mental hygiene in such manner and detail as the board of directors may prescribe. (1943, c. 136, s. 8.)

§ 122-11.5. Executive committee for each institution.—The board of directors shall at their first meeting select from their number for each of said institutions an executive committee of at least three members. The duties of the executive committees shall be prescribed by the board. (1943, c. 136, s. 9.)

§ 122-11.6. Outpatient mental hygiene clinics.—For the purpose of advising with and counseling, and, if need be, of treating patients on furlough or parole from any of said institutions, and serving such other citizens of the State, in the need of psychiatric advice or guidance, as may be referred thereto by a physician or any local governmental welfare or health department, the board of directors shall be empowered to establish as soon as practicable a system of outpatient mental hygiene clinics under the supervision of the superintendent of mental hygiene. Said clinics shall be held at each of the institutions enumerated in § 122-7. The superintendents of each of said institutions shall designate one or more members of his staff to conduct or assist in conducting said clinics. Additional outpatient clinics may be held at the medical schools within the state and at community and public hospitals on such conditions as the board of directors and the medical schools and said hospitals may fix and determine. (1943, c. 136, s. 11.)

§ 122-11.7. Compensation of board of directors.—The members of the board of directors shall be paid the sum of seven dollars ($7.00) per day and actual expenses while engaged in the discharge of their official duties. (1943, c. 136, s. 12.)

§ 122-11.8. Title of board of directors.—The board of directors provided for in § 122-7 shall be known and designated as "North Carolina Hospitals Board of Control." (1943, c. 136, s. 13.)

§ 122-12. By-laws and regulations.—The board of directors shall make all necessary by-laws and regulations for the government of each of said institutions, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation. (Rev., s. 4551; 1899, c. 1, s. 14; 1917, c. 150, s. 1; 1943, c. 136, s. 10; C. S. 6162.)

Editor's Note.—By virtue of the 1943 amendment the first part of this section was rephrased.

This section declares the policy of the State with respect to the operation of the State Hospital for the Insane at Raleigh as well as for the operation of similar institutions. State v. Security Nat. Bank, 207 N. C. 697, 703, 178 S. E. 487.

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.—The board of directors are authorized to make such rules and regulations as in their discretion may seem best for the transfer of patients from one state hospital for the insane to another state hospital for the insane; and they are further authorized to transfer from one hospital for the insane to another hospital for the insane any funds appropriated for permanent improvement or maintenance if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; C. S. 6163.)

§ 122-14. Delivery of inmates to Federal agencies.—The directors and superintendents of the State Hospital at Raleigh and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States Government or to the representatives or agents of such Veterans Bureau or other department or bureau of said government, all insane inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts of acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States Government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1.)

Cited in State v. Security Nat. Bank, 207 N. C. 697, 702, 178 S. E. 487.

§ 122-15. Transfer of inmates to general wards.—The directors and superintendents of the State Hospital at Raleigh and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer from the wards in said hospitals set apart for the dangerous insane to the general wards any of the inmates or prisoners therein who, in the judgment of said directors and superintendents, have reached such a state of improvement in their mental condition as to justify such transfer. (1925, c. 51, s. 2.)

§ 122-16. Board may make ordinances; penalties for violation.—Authority is hereby conferred upon the board of directors of the state hospitals for the insane and upon the board of directors and superintendent of the North Carolina school for the deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different

places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the board of directors shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (Rev., ss. 3695, 4559; 1899, c. 1, s. 54; 1901, c. 627; 1915, c. 14, s. 2; 1917, c. 150, s. 1; C. S. 6164.)

§ 122-17. Executive committee appointed.—The board of directors shall, out of their number, appoint three members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the board of directors may delegate to them. (Rev., s. 4548; 1899, c. 1, s. 6; 1917, c. 150, s. 1; C. S. 6165.)

§ 122-18. State treasurer to act as treasurer; payment of funds.—The state treasurer shall be treasurer of said corporations. The state treasurer shall keep all accounts of the institutions, and shall pay out all moneys upon the warrant of the respective superintendents, counter-signed by two members of the board of directors, under such rules and regulations as the board of directors may establish. (Rev., s. 4553; 1899, c. 1, s. 11; 1917, c. 150, s. 1; C. S. 6166.)

Cross Reference.—As to state treasurer being ex officio treasurer of certain institutions, see § 147-72.

§ 122-19. Application of funds belonging to hospitals.—All moneys and proceeds of property given to any hospitals, and all moneys arising from the sale of any real estate which may be owned by such hospital shall be paid into the state treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations from the state treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the board of directors may determine. An account of the proceeds of all such income and its expenditure shall be carefully kept and published in the report to the general assembly. (Rev., s. 4552; 1899, c. 1, s. 34; C. S. 6167.)

§ 122-20. Board of charities and general assembly, visitors; superintendent reports, to whom.—The state board of charities and public welfare and the members of the general assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the state board of charities to visit the hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the general assembly, with such suggestions and remarks as they may think proper. (Rev., s. 4554; 1899, c. 1, s. 37; 1917, c. 150, s. 1; C. S. 6168.)

§ 122-21. Fiscal year.—The close of the fiscal year shall be the thirtieth day of November in each year, and all accounts and estimates shall be made with reference thereto. (Rev., s. 4558; 1899, c. 1, s. 38; C. S. 6169.)

§ 122-22. Court may remit penalties given under this chapter.—Whenever suit shall be brought against a sheriff or board of county commissioners for the recovery of a penalty prescribed for doing an act forbidden, or failure to do any act required by this chapter, the judge or justice of the peace before whom the action is tried may order so much of said penalty to be remitted as in his judgment should be remitted to meet the ends of justice, and he shall enter up judgment for the amount of the penalty, to be discharged by the payment of such a sum as he may think just, and the costs of the action. In fixing the amount to be remitted (if the judge or justice should think the remission of any part proper), he shall consider the costs and expenses that the plaintiff may have been put to, and he should also consider the conduct of the defendants; and there ought to be no remission when the act of the defendants is wanton or contumacious, or is grossly negligent. (Rev., s. 4557; 1899, c. 1, s. 57; C. S. 6170.)

§ 122-23. Assisting inmates to escape misdemeanor.—If any person shall assist any inmate of any state hospital to escape therefrom he shall be guilty of a misdemeanor. (Rev., s. 3694; 1899, c. 1, s. 53; C. S. 6171.)

Art. 2. Officers and Employees.

§ 122-24. Directors and superintendent not personally liable.—No director or superintendent of any state hospital shall be personally liable for any act or thing done under or in pursuance of any of the provisions of this chapter. (Rev., s. 4560; 1899, c. 1, s. 31; C. S. 6172.)

Liability of Directors, etc., for Wrongful Acts of Discharged Patient.—The directors and superintendent of a hospital for the insane acting under the provisions of section 122-67, in discharging or releasing a patient therefrom, cannot be held responsible in damages by the subsequent killing by such patient of another under a charge of negligence. Bollinger v. Rader, 151 N. C. 383, 66 S. E. 314.

§ 122-25. Superintendent; appointment, term of office, qualifications, and removal.—The board of directors shall appoint a superintendent of each of said institutions and prescribe his duties. He shall be a skilled physician, educated to his profession, of good moral character, of prompt business habits, and of kindly disposition. He shall hold office for six years from and after his appointment, unless sooner removed by said board, who may, for infidelity to his trust, gross immorality, or incompetency to discharge the duties of his office, fully proved and declared, and the proofs thereof recorded in the book of their proceedings, remove him and appoint another in his place. (Rev., s. 4561; 1899, c. 1, s. 69; 1917, c. 150, s. 1; C. S. 6173.)

§ 122-26. Powers of superintendent.—The superintendent of each hospital shall exercise exclusive direction and control over all the sub-

ordinate officers and employees engaged in the service and labors of his hospital, and he may discharge such as have been employed by himself or his predecessors, and shall report to the board of directors the misconduct of all subordinates. (Rev., s. 4562; 1899, c. 1, s. 13; 1917, c. 150, s. 1; C. S. 6174.)

§ 122-27. Superintendent to notify sheriff of escape.—Any superintendent may notify the sheriff within whose county any person sent from his hospital on probation, or escaped therefrom, may be found, and thereupon it shall be the duty of such sheriff forthwith to take such person and return him to such hospital at the expense of the county of the settlement of the patient. This section shall apply in cases of escape from Caswell training school. (Rev., s. 4563; 1899, c. 1, s. 27; 1927, c. 114; C. S. 6175.)

§ 122-28. Assistant physicians; appointment and removal.—Each superintendent shall appoint one or more assistant physicians, the number to be fixed by the board of directors. The superintendent shall have the power to prescribe the duties of each assistant physician, and may suspend him, or any employee, for thirty days, for insubordination, immorality, neglect of duty, or incompetence, and, by and with the advice of the executive committee of the board of directors, may remove such assistant physician, or employee, for like cause. Each assistant physician shall hold his office for two years, unless removed for cause, which shall be specified and the action of the superintendent and executive committee reported to the board of directors, which shall record the same on its minutes. (Rev., s. 4564; 1899, c. 1, s. 10; C. S. 6176.)

§ 122-29. Steward and matron; appointment and removal.—Each superintendent shall appoint a steward, and if he shall think proper to do so, a matron also, who shall hold their places for one year, unless sooner suspended or removed by the superintendent or board of directors for good cause, in which case their successors shall be appointed for the unexpired terms of those removed. The method of procedure for the suspension and removal of assistant physicians, contained in the preceding section, shall be followed in the suspension and removal of any steward or matron. (Rev., s. 4565; 1899, c. 1, s. 11; C. S. 6177.)

§ 122-30. Steward to give bond.—The steward, before entering upon the discharge of his duties, shall execute to the hospital a bond in the sum of two thousand five hundred dollars, with sureties, to be approved by the board of directors, conditioned for the faithful administration of his duties and the proper accounting for and disbursement of all money and property coming into his hands. (Rev., s. 4566; 1899, c. 1, s. 11; C. S. 6178.)

§ 122-31. Salaries of employees fixed by directors.—The board of directors shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said board. The salaries shall not be diminished during the term of the incumbents. The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit. (Rev., s. 4567; 1899, c. 1, s. 12; 1917, c. 150, s. 1; C. S. 6179.)

§ 122-32. Directors to keep record of proceedings; clerk.—The board of directors shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the general assembly. (Rev., s. 4568; 1899, c. 1, s. 36; 1917, c. 150, s. 1; C. S. 6180.)

§ 122-33. Superintendent may appoint employees as policemen, who may arrest without warrant.—The superintendent of each hospital, the superintendent of the North Carolina School for the deaf and dumb, and the superintendent of the Caswell training school, are each hereby empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the state law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (Rev., s. 4569; 1899, c. 1, s. 55; 1901, c. 627; 1921, c. 207; C. S. 6181.)

§ 122-34. Oath of special policemen.—Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the board of directors. The oath of office shall be as follows:

State of North Carolina, ... County.

I, ..., do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the state hospital at ....., according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this ..... day of ....., A. D. ..... (Rev., s. 4570; 1899, c. 1, s. 56; 1901, c. 627; C. S. 6182.)

§ 122-35. Volunteer firemen among employees rewarded.—The board of directors shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share

in the state firemen's relief fund. (Rev., s. 4571; 1899, c. 1, s. 59; 1917, c. 150, s. 1; C. S. 6183.)

Art. 3. Admission of Patients.

§ 122-36. Persons adjudged insane entitled to immediate admission. — Any resident of North Carolina who has been legally adjudged to be insane by the clerk of the court or other properly authorized person, in accordance with the provisions of this chapter shall be entitled to immediate admission into the state hospital at Morganton, the state hospital at Raleigh, or the state hospital at Goldsboro, in accordance with the principles of division as to race and residence prescribed in this chapter; and no resident of the state who has been legally adjudged insane and who has been presented to the superintendent of the proper state hospital for the insane as provided in this article shall be refused admission thereto; but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law. (1919, c. 326, ss. 1, 6; C. S. 6184.)

§ 122-37. Idiots not admitted.—No idiot shall be admitted to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind, with the exception that the state hospital at Goldsboro shall admit feebleminded negroes, under such rules and regulations as the hospital board and the superintendent may prescribe, in such numbers as the capacity and the appropriations to the hospital will permit. (Rev., s. 4572; 1899, c. 1, s. 18; 1933, c. 342, s. 2; C. S. 6185.)

Editor's Note.—Public Laws of 1933, c. 342, added the exception appearing at the end of this section.

§ 122-38. Priority given to indigent patients; payment required from others.—In the admission of patients to any state hospital, priority of admission shall be given to the indigent insane; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients upon the payment of proper compensation. If any inmate of any state hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the state hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death. (Rev., s. 4573; 1899, c. 1, s. 44; 1915, c. 254; 1917, c. 150, s. 1; C. S. 6186.)

The term "indigent insane," within the meaning of this section, includes all those who have no income over and above what is sufficient to support those who may be legally dependent on the estate. In re Hybart, 119 N. C. 359, 25 S. E. 963.

Free Admission of Person Able to Pay Expenses.—Under this section an insane person able to pay expenses at the state hospital is not entitled to free admission. Hospital v. Fountain, 128 N. C. 23, 38 S. E. 34.

Financial Status at Time of Admission Need Not Be Determined.—It is not required under this section that the directors of the hospital finally determine the status of a patient at the time of his admission, the financial status of the patient being subject to the vicissitudes of fortune. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487.

§ 122-39. Only bona fide residents admitted to hospitals.—No clerk of the court or justice of the peace shall commit to a hospital any person who is not a bona fide citizen and resident of this state; and no person who shall have removed into this state from another state while insane shall be deemed a resident or citizen of this state, and no length of residence in this state of a person who was insane at the time he moved into this state shall be sufficient to make that person or citizen or resident of North Carolina within the meaning of this chapter. If any clerk or justice of the peace shall knowingly commit to any hospital a person who is not a bona fide citizen and resident of the state, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.. (Rev., ss. 3591, 4587; 1899, c. 1, s. 18; C. S. 6187.)

§ 122-40. Findings as to residence in examination reported.—In every examination of an alleged insane person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged insane person is a resident of this state, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged insane person, and the clerk or justice of the peace shall be of the opinion that the insane person is a resident of this state, within the meaning of this chapter, he shall state that he was unable to ascertain the legal residence of the insane person, and shall commit him to the hospital of his district. (Rev., s. 4588; 1899, c. 1, s. 18; C. S. 6188.)

§ 122-41. Settlement of patient determined.—For the purposes of this chapter the settlement of every person admitted to a state hospital as insane shall be in the county where the actual place of his residence at his admission may be situated, when such settlement comes in question, but no person can have a settlement in any county in this state unless he is a bona fide citizen and resident of this state, and was so before mental disease became manifest. (Rev., s. 4574; 1899, c. 1, s. 28; C. S. 6189.)

§ 122-42. Affidavit of insanity to procure admission.—For admission into a state hospital the following proceedings shall be had: Some respectable citizen, residing in the county of the alleged insane person, shall make before and file with the clerk of the superior court of the county an affidavit in writing, which shall be substantially in the following form:

State of North Carolina, ...County.

The undersigned, residing in said county, makes oath that he has carefully examined ..... and believes him to be an insane person, and to be, in the opinion of the undersigned, a fit subject for admission into a hospital for the insane.

Dated .... day of ..... A. D. ....

....., Affiant.

Sworn and subscribed before me.

.....,

Clerk Superior Court.

(Rev., s. 4575; 1899, c. 1, s. 15; C. S. 6190.)

§ 122-43. Clerk to issue order for examination.—Whereupon, unless the person in whose care

or custody the insane person is will agree to bring him before the clerk without a warrant, or unless the clerk shall be of the opinion that it will be injurious to the insane person to be brought before him, the clerk shall issue a precept, directed to the sheriff or other lawful officer, substantially in the following form:

State of North Carolina,

To the Sheriff or Other Lawful Officer of .... County—Greeting:

Whereas information, on oath, has been laid before me that ..... is insane, you are hereby commanded to bring him before me within the next ten days, that necessary proceedings may be had thereon.

Given under my hand, ... day of ....., A. D. .....

.....,
Clerk Superior Court.

(Rev., s. 4576; 1899, c. 1, s. 15; C. S. 6191.)

§ 122-44. Incarceration of persons believed insane, pending judicial determination.—If the affidavit, required to be filed by § 122-42, states that such insane person's condition is such as to endanger either himself or others, or if the sheriff, or other person serving the warrant, believes that said insane person's condition is such as to endanger either himself or others, the clerk shall order such insane person to be incarcerated in the county jail until such person is judicially declared insane or sane. (1941, c. 179.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 487.

§ 122-45. Clerk and physician to make examination.—If the alleged insane person be confined in jail otherwise than for crime, the sheriff shall remove him from the jail upon the order from the clerk. Upon the bringing of the alleged insane person before the clerk by his friends, or upon the return of the precept with the body of the insane person, the clerk shall call to his assistance the county physician of the county, or some other licensed and reputable physician, resident of this state, and shall proceed to examine into the condition of mind of the alleged insane person. He shall take testimony of at least one licensed physician, resident of this state, and, if possible, a member of the family, or some friend or person acquainted with the alleged insane person, who has had opportunities to observe him after such insanity is said to have begun. (Rev., s. 4577; 1899, c. 1, s. 15; C. S. 6192.)

§ 122-46. Clerk may discharge person, require bond, or commit to hospital.—If the clerk, after his examination of the alleged insane person, and the hearing of the testimony as aforesaid, shall decide that such person is sane, he shall forthwith discharge him. If he shall decide that such person is insane, and some friend, as he may do, will not become bound with good security in an amount to be fixed by the clerk to restrain him from committing injuries, and to keep, support, and take care of him until the cause for confinement shall cease, he shall direct such insane person to be removed to the proper hospital as a patient, and to that end he shall transmit to the proper board of directors the examination of the witnesses, and the statement of such facts as he shall deem pertinent to the subject-matter. If the clerk (or justice under § 122-48) is satisfied, after the examination herein provided, that the person is insane or an inebriate within the definition of § 35-30, he shall make the following order and commitment to the proper state hospital in substantially the following form:

State of North Carolina .....County.

State of North Carolina,

To the State Hospital at ..... N. C.—Greeting:

Whereas it has been made satisfactorily to appear to me, ..., Clerk of the Superior Court of said county, after a proper examination of.... ....., a person having his legal settlement in this county, that he is insane, epileptic or addicted to the use of drugs or alcohol (draw a pen through terms not applying), that he is a bona fide citizen of the state, and that he has a legal settlement in said county and is a fit subject for care and treatment in the state hospital at ....., and that he, being at large, is injurious to himself and disadvantageous if not dangerous to the community:

These are, therefore, to command you to receive said ..... into the State Hospital at .. .... for care and treatment as provided for by the laws of this State.

Given under my hand and official seal, this.... day of ....., 19....

.....
Clerk Superior Court .... County.

If the proceedings are to be before a justice of the peace under § 122-48, the following certificate shall be appended to the commitment by said justice of the peace:

I have examined the testimony as herein set forth, and am satisfied that..... is a fit subject for treatment in the State Hospital, and I hereby approve the foregoing commitment to the State Hospital at....., N. C.

Given under my hand and official seal, this.... day of ....., 19.....

.....
Clerk Superior Court.

If the patient is a pauper, the following should be filled out and accompany the commitment:

State of North Carolina, ...County.

I, ..., Clerk of the Superior Court of the above county, do hereby certify that ..... is a poor person and has no estate or property except .....
.....
.....
.....
nor has any one such property who is liable for his maintenance under article 6 of chapter 35.

Given under my hand and official seal, this.... day of ....., 19 ....

.....
Clerk Superior Court.

If the patient is not a pauper, the following should be filled out and accompany the commitment of the patient:

State of North Carolina, ...County.

I, ..., Clerk of the Superior Court of said county, do hereby certify that ..... has property of his own and is financially able to pay for his maintenance, or has relatives who under §§ 35-30 to 35-36 are liable for his maintenance,

who have adequate property to pay for the same in the State Hospital at ....., N. C.

Given under my hand and official seal, this.... day of..... 19.....

.....
Clerk Superior Court.

The application for admission and commitment to a particular hospital shall be forwarded to such hospital, and immediately upon receipt of said application, if there shall be room for said patient in said hospital, the superintendent shall immediately notify the clerk of the court that the patient will be admitted at once. The receipt of said notice by said clerk of the court shall constitute his authority to convey said patient to said hospital for immediate admission: Provided, however, nothing herein shall prevent the superintendent of said hospital from sending immediately a representative of said hospital to convey said patient thereto. (Rev., s. 4578; 1899, c. 1, s. 15; 1915, c. 204, s. 1; 1923, c. 144, s. 1; C. S. 6193.)

Editor's Note.—That sentence of this section which authorized the clerk or justice to make an order of commitment, and the forms prescribing such order, and the last paragraph with respect to the admission of patients to the insane hospital, were added by the amendment of 1923.

Jury trial is not contemplated. In re Cook, 218 N. C. 384, 11 S. E. (2d) 142.

Appeal.—"Moreover, there is no provision for an appeal from the order of the clerk to the superior court in a proceeding under this article. Whether certiorari would be available is not presented." In re Cook, 218 N. C. 384, 386, 11 S. E. (2d) 142.

Cited in Borders v. Cline, 212 N. C. 472, 193 S. E. 826.

§ 122-47. Examination at home of patient.—If the clerk of the court shall be of the opinion that it will be injurious to the alleged insane person to be brought before him, the clerk shall proceed to the residence or habitation of said person and take the examination there, but the clerk shall give at least one day's notice to the alleged insane person of such examination. (Rev., s. 4579; 1899, c. 1, s. 15; 1943, c. 617; C. S. 6194.)

Editor's Note.—The 1943 amendment added the provision as to notice.

§ 122-48. When justice of the peace may make examination.—In case of emergency, when for any reason the clerk of the court cannot go or is absent from the county, then any justice of the peace is authorized to proceed in like manner by taking the testimony of the physician and other witnesses, as is before provided for in this chapter, and report the same to the clerk. If the clerk is satisfied that the alleged insane person is a fit subject for a hospital for the insane, he shall issue an order for his commitment. In cases of great emergency or inconvenience, the said justice may commit a patient to a hospital, and the superintendent is authorized to receive him, but the justice shall procure an order from the clerk to be forwarded to the superintendent within thirty days. (Rev., s. 4580; 1899, c. 1, s. 15; C. S. 6195.)

Cited in In re Cook, 218 N. C. 384, 11 S. E. (2d) 142.

§ 122-49. Questions to be answered and certified to superintendent.—The following questions, with their respective answers by at least one licensed physician, resident of this state, and such other competent witnesses as the clerk or justice shall determine, duly sworn and subscribed by them, and so certified by the clerk or justice, shall be transmitted with the other papers to the superintendent of the proper hospital, to be reported as soon as practicable to the board of directors. Pending the consideration of the application by the board of directors, the patient shall remain in the custody of the officer of such person as the clerk may designate until it can be ascertained if there is room for the patient at the hospital:

1. What is patient's name? A.....
2. When was patient born? A..... Present age .....
3. Where was patient born? A. .....
4. Is .... or .... married, single or divorced? A. .....
5. If married woman, give maiden name. A. .....
6. Name and birthplace of father. A.....
7. Maiden name and birthplace of mother. A. .....
8. Occupation of patient for past five years. A. .....
9. Present occupation. ..... If no occupation, how supported? A. .....
10. Education: Collegiate, common school, grammar, elementary, none. A. ..... Professional or technical .....
11. Were mother and father related? A.....
12. Was either parent or grandparent or any children of patient or other blood relation ever insane, epileptic, feeble-minded, inebriate, paralytic, physically deformed, tubercular, diabetic, etc.? Specify. A. .....
13. If any of them were ever in any institution, state where and when. A. .....
14. Was patient ever charged or convicted of any crime? If so, what and when? A.....
15. Is patient now charged with crime? If so, what? A. .....
16. Is patient now in jail? If so, how long? A. .....
17. Is patient now in county home? If so, how long? A. .....
18. When was the change first observed in the patient's appearance and conduct indicating insanity? A. .....
19. What were the principal mental changes and symptoms observed at that time? A.....
20. Did they develop rapidly or gradually? A. .....
21. What symptoms are present at the present time? A. .....
22. Has patient had previous attacks? If so, how many and was .... or .... treated in a hospital? If so, when and where? A. .....
23. What did the patient say or do in your presence indicating insanity? A.....
24. Has patient delusions or hallucinations? A. .....
25. Is patient destructive? If so, what has ... . or ..... destroyed? A. .....
26. Has patient ever attempted suicide? A....
27. Has patient ever threatened suicide? A...
28. Has patient ever attempted homicide? A. .....
29. Has patient ever threatened homicide? A. .....
30. Has patient injured or attempted to injure h...self or others? If so, whom, when and in what manner? A. .....

31. State any other facts relative to behavior of patient indicating insanity. A. .....
32. Is patient feeble-minded? A. .....
33. Is patient an idiot? A. .....
34. What is the present salary of the patient? A. .....
35. How many dependent on ..... or ..... for support? A. .....
36. What is the value of ..... or ..... property? A. .....
37. What is ..... or ..... annual income? A. .....
38. If a minor, state occupation of patient's father. A. .....
39. What is father's salary? A. .....
40. What is the value of his property? A.....
41. What is his annual income? A. .....
42. The following questions should be answered if patient is a drug addict, or inebriate:

(1) Is patient addicted to the use of alcohol, morphine, cocaine, heroin or any other drugs? If so, what drug? A. .....

(2) In what manner (hypodermically or mouth), and how much does patient take? A. .....

(3) How long has patient been an addict? A. .....

(4) Has patient ever been treated for inebriety? If so, where and when? A. .....

43. The following questions should be answered if patient is an epileptic:

(1) At what age did epilepsy first appear? A. .....

(2) How long since first attack? A. .....

(3) Do seizures occur day or night, or both times? A. .....

(4) How often do attacks occur? A. .....

(5) Are attacks accompanied by frothing at the mouth ..... involuntary passage of urine ..... of feces ..... or biting of tongue? A. .....

(6) Has patient been burned or otherwise injured during seizures? A. .....

(7) Are seizures grand or petit mal, or both? A. .....

(8) What mental changes have taken place in patient? A. .....

(9) Is the patient incapable of protecting..... self against ordinary dangers without an attendant? A. .....

44. Give the name of nearest relative or friend with whom superintendent can correspond relative to condition of patient. A. .....
Relationship and address .....

45. How could the above party be communicated with quickest in case of emergency? A. .. ..

46. In case the hospital can accept patient, at what point could patient be delivered to representative of hospital? A. .....
.....M. D.

.....
.....
Witnesses

State of North Carolina, ...County.

, Before ....., officer, ... duly authorized to administer an oath, this .... day of....., A. D. ..... came ..... M. D., and.... persons known to be credible and reliable witnesses, and made oath that the foregoing answers are true to the best of their knowledge and belief.

.....
.....

(Rev., s. 4589; 1899, c. 1, s. 19; 1923, c. 144, s. 2; C. S. 6196.)

§ 122-50. Clerk to keep record of examinations and discharges.—The clerk will keep a record of all examinations of persons alleged to be insane, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings when he shall have examined a person under the powers granted under this chapter, the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in article four of this chapter. (Rev., s. 4586; 1899, c. 1, s. 17; C. S. 6197.)

§ 122-51. Fees for examination.—The following fees shall be allowed to the officers who make the examination, and they shall be paid by the county in which the alleged insane person is settled: To the clerk or justice who makes the examination, two dollars, and if the clerk goes to the home of the insane person he shall be entitled, in addition to this sum, to five cents a mile each way. This shall cover his entire costs in taking the examination and making out the necessary papers.

The physician called, in the absence of the county physician, shall be entitled to two dollars with mileage. The county physician, being a salaried officer, is not allowed any fee for his services in this examination. The sheriff shall be entitled to such fees as are now allowed by law for the service of process of similar character. (Rev., ss. 4580, 4581; 1899, c. 1, s. 15; C. S. 6198.)

§ 122-52. Superintendent of hospital notified; attendant to convey patient.—Whenever any insane person shall be entitled to admission in any one of the hospitals of the state as prescribed by law, and the clerk of the superior court or other officer authorized by law to find such person insane has so found, it shall be the duty of the clerk or other officer forthwith to notify the superintendent of the proper hospital, giving the name, race, sex and age of patient; and it shall be the duty of such superintendent, unless said patient has been exposed to a contagious disease as hereinafter mentioned in this article, to send an attendant to bring such insane person to the hospital. Such attendant shall have all such rights as the sheriff or other officer has heretofore, and shall convey such insane person to the hospital. (1919, c. 326, s. 2; C. S. 6199.)

§ 122-53. Bill of expense sent to county commissioners.—Upon the arrival of such insane person at the hospital, the superintendent shall send to the board of commissioners of the county in which such insane person had a settlement a bill covering the costs of conveying such insane person to the hospital, including any fees that would now be allowed an officer, and it shall be the duty of the board of commissioners forthwith to re-

pay to such hospital the amount of such bill. (1915, c. 204, s. 2; 1919, c. 326, s. 3; C. S. 6200.)

§ 122-54. Failure of superintendent to send attendant; sheriff to act.—If the superintendent of any hospital for the insane in this state shall, for ten days after receiving a notice as prescribed in § 122-52, fail and neglect to send an attendant, as is prescribed by § 122-52, to bring such insane person to the hospital, it shall be the duty of the sheriff of the county from which the notice was sent to bring at the expense of the county such insane person to the state hospital, whereupon it shall be the duty of the said superintendent to receive said insane person and relieve said sheriff of his care. (1919, c. 326, s. 4; C. S. 6201.)

§ 122-55. Costs of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every insane person to any hospital from any county, or of removing him from the hospital to his county, or of the return to the county of his settlement, as sane, shall be paid by the treasurer of such county, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they shall bring an action and recover the amount paid from the said person, or from the other person liable for his support and maintenance. (Rev., s. 4555; 1899, c. 1, s. 32; C. S. 6202.)

Applied in Borders v. Cline, 212 N. C. 472, 193 S. E. 826.

§ 122-56. Preparation of patient for admission to hospital.—Every sheriff or other person bringing to a hospital a patient shall see that the patient is clean, free from contagious disease and vermin, and that he has clothing proper for the season of the year, and in all cases two full suits of underclothing. (Rev., s. 4556; 1899, c. 1, s. 24; C. S. 6203.)

§ 122-57. Commitment in case of sudden or violent insanity.—Whenever any citizen or resident of this state becomes suddenly or violently insane, in some county other than that of his settlement, the proper authorities, as hereinbefore provided, of any county in which he shall be, shall have authority to examine him, and if necessary commit him to the hospital to which he would be sent had he been committed from the county of his own settlement. (Rev., s. 4582; 1899, c. 1, s. 16; C. S. 6204.)

§ 122-58. Expense paid by county of settlement; penalty.—Immediately upon the commitment to a hospital of any such person, a transcript of the proceedings shall be sent to the clerk of the county in which he is settled, and that county shall pay over to that county from which he was committed all the cost of the examination and commitment, and if the board of commissioners of the county of the settlement shall fail to pay all proper expense of said proceedings within sixty days after the claim shall have been presented, they shall forfeit and pay to the county which committed the insane person the sum of two hundred and fifty dollars, to be recovered by the commissioners of that county in a civil action brought in the superior court of that county from which the patient was committed to the hospital, against the commissioners of the county. Rev., s. 4583; 1899, c. 1, s. 16; C. S. 6205.)

§ 122-59. Person conveying patient to hospital without authority.—No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his settlement, and he shall not be repaid by the county or hospital for the expenses incurred in carrying the patient to and from the hospital. (Rev., s. 4546; 1899, c. 1, s. 25; C. S. 6206.)

§ 122-60. How admission determined, when superintendent is in doubt.—Whenever any insane person shall be conveyed to any hospital, and the superintendent is in doubt as to the propriety of his admission, he may convene any three of the board of directors, who shall constitute a board for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of such board so decide, such person shall be received into said hospital; but a like board may at any time thereafter deliver such insane person to any friend who will become bound with good surety to restrain him from committing injuries, and to keep, maintain, and take care of him, in the same manner as he might have become bound under the authority of the clerk of the court. (Rev., s. 4590; 1899, c. 1, s. 21; 1917, c. 150, s. 1; C. S. 6207.)

§ 122-61. Admission refused, if patient exposed to contagious disease. — The superintendent of the hospital may refuse to receive into his institution a patient when he shall have reliable information that the patient has recently been exposed to infectious or contagious disease, and there is danger of contagion and infection being conveyed by the patient, or where the patient comes from a quarantined community. Whenever a patient is rejected because of any of these reasons the superintendent shall make a record of the application and as soon as, in his opinion, the danger shall have been removed, he shall notify the sheriff of the county, and admit the patient into his hospital. (Rev., s. 4591; 1899, c. 1, s. 26; C. S. 6208.)

§ 122-62. Commitment upon patient's own application.—Any person believing himself to be of unsound mind, or threatened with insanity, may voluntarily commit himself to the proper hospital. The application for commitment shall be in the form following:

State of North Carolina, County of .....

I, ..., a resident of ..... county. North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the state hospital at ..... for such a period of time as the board of directors and the superintendent may deem necessary. And I agree in all respects to conform to the rules and regulations of said institution during the period which shall be prescribed by the superintendent and board of directors. .....

Attest: .....

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his admission. The certificate of the clerk of the superior court need not accompany this application. The superintendent may, if he think it a proper application, receive the patient thus voluntarily committed, and treat him until the next meeting of the board of directors or of the executive committee, and shall report the application and admission to the first meeting of said board, and if said board approve such admission, the patient shall be considered as having been regularly committed, and shall in all respects be treated as such. But no report need be made to the clerk of the court of his county of settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided and no voluntary patient shall be entitled to a discharge until he shall have given the superintendent ten days notice of his desire to be discharged. (Rev., s. 4593; 1899, c. 1, s. 49; 1917, c. 150, s. 1; C. S. 6209.)

§ 122-63. Proceedings in case of insanity of citizen of another state.—If any person not a citizen or resident of this state, but a citizen and resident of another state of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of the state of which the insane person is a citizen of the facts and circumstances by letter (or telegraphic message if he think proper), and for a reasonable length of time the insane person shall be kept confined or restrained in said county, but shall not be committed to any state hospital, and if the state of his citizenship shall not provide for the removal from this state to his proper state of the insane person within a reasonable time, the county commissioners of the county in which he shall have been ascertained to be an insane person shall cause him to be conveyed to the state of which he is a citizen and delivered there to the sheriff of his county or to the superintendent of any state hospital. The cost of such proceedings and conveyance away from this state shall be borne by the county in which the person shall have been adjudged to be insane. (Rev., s. 4584; 1899, c. 1, s. 16; C. S. 6210.)

§ 122-64. Proceedings in case of insanity of alien.—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of this state of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the governor shall transmit such information and examination to the secretary of the state at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen. (Rev., s. 4585; 1899, c. 1, s. 16; C. S. 6211.)

§ 122-65. Insane person temporarily committed to jail.—When any person is found to be insane under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the community, and he cannot otherwise be properly restrained, he may be temporarily committed to the county jail until a more suitable provision can be made for his case. (Rev., s. 4594; 1899, c. 1, s. 45; C. S. 6212.)

Art. 4. Discharge of Patients.

§ 122-66. County commissioners may discharge insane person in county.—It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained insane person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such insane person ought to be discharged if in a hospital. (Rev., s. 4595; 1899, c. 1, s. 20; C. S. 6213.)

§ 122-67. Discharge of patient from hospital; sheriff's duty; expense paid.—Any three of the board of directors, upon the superintendent certifying the facts (a copy of which certificate shall be sent to the clerk of the superior court of the county of settlement), shall be a board to discharge or remove from their hospital any person admitted as insane, when such person has become or is found to be of sane mind, or when such person is incurable, and in the opinion of the superintendent his being at large will not be injurious to himself or dangerous to the community, or the board may permit such person to go to the county of his settlement on probation, when in the opinion of the superintendent it will not be injurious to himself or dangerous to the community; and the board may discharge or remove such person, upon other sufficient causes appearing to them; and whenever any such person, admitted as indigent may be so discharged or removed, except as sane, it shall be the duty of the sheriff of the county of his settlement to convey such person to his county at its expense, and any such person discharged as restored or probated shall receive from such hospital a sum of money sufficient to pay his transportation to the county of his settlement, which sum shall be repaid by said county, and, if necessary, the hospital shall provide the patient with a decent suit of clothes. When notified by the superintendent to come for and remove any insane person from the hospital, it shall be the duty of the sheriff of the county in which the insane person has a settlement forthwith to convey the insane person from the hospital to the county of his settlement. The cost of such removal shall be advanced by the sheriff and repaid to him by the county of insane person's settlement; and if any sheriff, after having been notified by the superintendent to remove any insane person, as aforesaid, shall fail to do so within fifteen days from the time of the receipt of the letter of notice, he shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties given in this chapter; and if the commissioners of any county shall fail to repay to the hos-

pital the money disbursed in paying for the necessary clothes and traveling expenses of any person discharged as cured from said hospital, within sixty days after the presentation of a claim therefor, the commissioners shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties in this chapter. (Rev., s. 4596; 1899, c. 1, s. 22; 1917, c. 150, s. 1; C. S. 6214.)

Cross Reference.—As to liability of directors for torts committed by discharged inmate, see annotation under § 122-24.

Discharge as Evidence of Sanity in Will Case.—Upon the issue of testamentary capacity an instruction that "a will duly probated in accordance with the formalities of law is presumed to be valid" is not objectionable, there being no presumption of mental incapacity by reason of commitment in an asylum when it has been shown that the testator had been discharged as restored or cured by a certificate issued in accordance with the provisions of this section. In re Crabtree, 200 N. C. 4, 156 S. E. 98.

§ 122-68. Superintendent may discharge patient temporarily.—Each superintendent may, for the space of thirty days, or until the next meeting of the board of three directors provided for in the preceding section, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. A report of all such probations shall be rendered to the said board of three directors at their first ensuing meeting. (Rev., s. 4597; 1899, c. 1, s. 23; C. S. 6215.)

§ 122-69. Bonds for safe-keeping of insane persons; enforcement. — All bonds executed for restraining insane persons from committing injuries, and for their safe-keeping, support and care, shall be payable to the state of North Carolina, in the sum of five hundred dollars at least, and shall be transmitted to the clerk of the superior court of the county wherein said insane person is settled, for safe-keeping, and may be put in suit by any person injured by said insane person by reason of his insane condition; and shall be put in suit by the solicitor for the judicial district in which the county of said insane person's residence is situated, for any other breach thereof, wherein the damage received shall be for the use of said insane person. (Rev., s. 4598; 1899, c. 1, s. 29; C. S. 6216.)

§ 122-70. Form of bond for safe-keeping of insane.—The form of bond mentioned in the preceding section shall be as follows:

State of North Carolina, County of .....

Know all men by these presents, that we, A.. .... B ....., principal, and C ..... D. ....., and E ..... F ....., sureties, are held and firmly bound unto the State of North Carolina in the sum of ..... dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals, this ..... day of ....., 19....

The condition of the above obligation is this:

Whereas, the said A ..... B ....., with the view of hindering G ..... H ....., an insane person resident in the county aforesaid, from being sent to ..... insane hospital (or to effect his release from the said hospital, as the case may be), hath undertaken to restrain him from committing injuries and to keep, maintain, support, and take care of the said G ..... H .....

Now, if the said A ..... B ..... shall faithfully comply with the conditions of this obligation, then the same shall be void, otherwise it shall be in full force.

A ..... B ..... (Seal)
C ..... D ..... (Seal)
E ..... F ..... (Seal)

(Rev., s. 4599; 1899, c. 1, s. 30; C. S. 6217.)

§ 122-71. Patient returned, if condition of bond not complied with.—Whenever it shall be made to appear to the clerk of the superior court of the county of settlement of an insane person released on bond that the conditions of the bond are not faithfully complied with, said insane person shall be sent back to the proper hospital by him, unless some other responsible and discreet friend will undertake to fulfill the duties of said obligation; and whenever said insane person shall be sent back, he shall not be delivered on any new bond of the defaulting obligor. (Rev., s. 4592; 1899, c. 1, s. 33; C. S. 6218.)

Art. 5. Private Hospitals for the Insane.

§ 122-72. Established under license and subject to control of board of charities.—It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of insane persons, idiots, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the state board of charities and public welfare, and such hospitals, homes, or schools shall at all times be subject to the visitation of the said board or any member thereof, and each hospital, home, or school shall make to the board a semiannual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home, or school. Each hospital, home, or school shall file with the board a copy of its by-laws, rules, and regulations, and rates of charges. The books of each hospital, home, or school shall at all times be open to the inspection of the board or any member thereof. The state board of charities and public welfare is hereby given the authority to supervise and regulate all private hospitals, homes, and schools established hereafter in this state for the treatment of the above classes of people, and the board shall have power to prescribe all such rules and regulations as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of their board to visit and supervise any private hospital, home, or school hereafter established under this article. The state board of charities may bring an action in the superior court of Wake county to vacate and annul any license granted by the board, when it shall appear to the satisfaction of the board that the managers of any private hospital, home, or school have been guilty of gross neglect, cruelty, or immorality. (Rev., s. 4600; 1899, c. 1, s. 60; C. S. 6219.)

Demurrer.—Where an action is brought by the State Board of Charities and Public Welfare under this section to vacate and annul a license it had issued for the maintenance and operation of a private hospital for the

insane, on the ground of immorality and cruelty of its principal owner or manager, in which the manager is joined, a demurrer of the individual is properly sustained. Board of Public Welfare v. Hospital, 196 N. C. 752, 147 S. E. 288.

Evidence.—Where there is allegation and evidence, in an action to annul and revoke the license of a private hospital for the insane, that immorality had been practiced among its employees by the manager and principal owner, and also cruel treatment had been used towards the patients by him, with separate issues as to each class of offense submitted to the jury, and the jury renders a partial verdict by leaving unanswered the issue as to gross immorality, the action of the court in directing a mistrial and refusing to sign judgment for defendant is not erroneous. Board of Public Welfare v. Hospital, 196 N. C. 752, 147 S. E. 288.

§ 122-73. Counties and towns may establish hospitals.—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such insane persons as cannot be admitted into a state hospital, and of idiots and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the state board of charities and public welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals. (Rev., s. 4601; 1899, c. 1, s. 61; C. S. 6220.)

§ 122-74. Private hospitals part of public charities.—All hospitals, homes, or schools for the care and treatment of insane persons, idiots, and feeble-minded persons and inebriates, formed in compliance with the two preceding sections and duly licensed by the board of public charities as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the state of North Carolina. (Rev., s. 4602; 1903, c. 329, s. 1; C. S. 6221.)

§ 122-75. Insane persons placed in private hospital.—Whenever any person shall be found to be insane in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such insane person, and, moreover, to support and maintain such insane person in any named hospital without the state, or any private hospital within the state, and such insane person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a state hospital (or in case such insane person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such insane person, with the clerk of the court or justice of the peace who made the examination, shall deem it proper, then it may be lawful for the clerk or justice, together with said physicians, to recommend in writing that such insane person shall be placed in the hospital so chosen, as a patient thereof. (Rev., s. 4603; 1899, c. 1, s. 39; C. S. 6222.)

§ 122-76. Justice of the peace to report to clerk.—It shall be the duty of the justice, when he shall act, to report the proceedings in such cases to the clerk of the superior court of the county in which such insane person may reside or be domiciled. (Rev., s. 4604; 1899, c. 1, s. 41; C. S. 6223.)

§ 122-77. Clerk to report proceedings to judge.—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such insane person may reside or be domiciled, and if he approve them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk. (Rev., s. 4605; 1899, c. 1, s. 42; C. S. 6224.)

§ 122-78. Certified copy and approval of judge sufficient authority.—A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such insane person appointed by the judge to remove him to the hospital designated. (Rev., s. 4606; 1899, c. 1, s. 43; C. S. 6225.)

§ 122-79. Examination and commitment to private hospital.—When it is deemed advisable that any person, a citizen of the state of North Carolina, or a citizen of another state or country temporarily sojourning in North Carolina, should be detained in any private hospital within the state, two persons, one of whom must be a physician, not connected with any private hospital, shall make affidavit before a justice of the peace or a clerk of the superior court of this state that they have carefully examined the alleged insane person; that they believe him to be a fit subject for commitment to a hospital for the insane, and that his detention and treatment will be for his advantage and benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding the insane person. The clerk of the court may, if he sees fit, issue warrants and have the alleged insane person before him in manner prescribed in article three of this chapter for the examination and admission to state hospitals, and he may, if he see fit, order any insane person brought before him to be taken to a private hospital within the state instead of one of the state hospitals, and his warrant shall be sufficient authority for holding such insane person in such private hospital. Idiots, feeble-minded persons, and inebriates may be committed to and held in private hospitals or homes in this state in the manner hereinbefore prescribed for insane persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment. (Rev., s. 4607; 1903, c. 329, s. 2; C. S. 6226.)

§ 122-80. Patients transferred from state hospital to private hospital.—When it is deemed desirable that any inmate of any state hospital be transferred to any licensed private hospital within the state, the executive committee may so order, and a certified copy of the commitment on file at the state hospital and the order of the executive committee shall be sufficient warrant for holding the insane person, idiot, or inebriate by the officers of the private hospital. (Rev., s. 4608; 1903, c. 329, s. 3; C. S. 6227.)

§ 122-81. Guardian of insane person to pay ex-

penses out of estate.—It shall be the duty of any person having legal custody of the estate of an insane person, idiot, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (Rev., s. 4610; 1899, c. 1, s. 40; 1903, c. 329, s. 4; C. S. 6228.)

§ 122-82. Fees and charges for examinations.—The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the state hospitals. (Rev., s. 4611; 1903, c. 329, s. 5; C. S. 6229.)

Art. 6. Dangerous Insane.

§ 122-83. Insane persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while insane, and all persons who, being charged with crime, are adjudged to be insane at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and cannot plead, to the state hospital at Raleigh, if the alleged criminal is white, or to the state hospital at Goldsboro if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson county, to the state hospital at Raleigh, as provided for insane Indians from Robeson county, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said boards of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (Rev., s. 4617; 1899, c. 1, s. 63; 1923, c. 165, ss. 2, 3; 1927, c. 228; C. S. 6236.)

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of insanity, committed to hospital. When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent. (Rev., s. 4618; 1899, c. 1, s. 65; 1923, c. 165, s. 4; C. S. 6237.)

Editor's Note.—The amendment of 1923 so amended this section as to conform it to the change affected by amendment of the preceding section, by making a reference to the hospitals designated in that section.

Constitutionality — Strict Construction. — This section is within the Legislature's constitutional authority, but, being a restraint upon the liberty of the prisoner within the constitutional guarantee for his protection, should be strictly construed in his favor. State v. Craig, 176 N. C. 740, 97 S. E. 400.

High Degree Crimes Contemplated by Section.—This section specifies a high degree of crime, such as murder, rape, and the like, indicating a class of criminals who may be dangerous to the public or individuals, if left at ward, and by the addition thereto of the words, "or other crimes," did not include the offense of resisting an officer when arrested, especially, the resistance was only by words, in the nature of a threat that the officer could not take him alive. State v. Craig, 176 N. C. 740, 97 S. E. 400.

Section Penal in Character.—This section is penal in its character. State v. Craig, 176 N. C. 740, 97 S. E. 400.

Release on Habeas Corpus.—A person illegally detained in a hospital for the dangerous insane cannot be released on habeas corpus if he is insane at the time of the return of the writ. In re Boyett, 136 N. C. 415, 48 S. E. 789.

Court May Bring Prisoner Back from Asylum to Examine Him.—See State v. Pritchett, 106 N. C. 667, 11 S. E. 357.

Finding by the court implies a discretion on the part of the trial judge. State v. Godwin, 216 N. C. 49, 3 S. E. (2d) 347.

Knowledge of Section by Jury in Murder Prosecution.—A defendant charged with a capital felony, whose defense is the lack of the capacity to commit the crime of murder in the first degree, is not entitled to have the jury know the provisions of this section and § 122-86. State v. Bracy, 215 N. C. 248, 1 S. E. (2d) 891.

§ 122-85. Convicts becoming insane committed to hospital.—All convicts becoming insane after commitment to the state prison, and the fact being certified as now required by law in the case of other insane persons, shall be admitted to the hospital designated in § 122-83. In case of the expiration of the sentence of any convict, insane person, while such person is confined to the said hospital, such person shall be kept until re-

stored to his right mind or such time as he may be considered harmless and incurable. (Rev., s. 4619; 1899, c. 1, s. 66; 1923, c. 165, s. 5; C. S. 6238.)

Editor's Note.—By the amendment of 1923 insane convicts are to be committed to the hospitals designated in section 122-83.

§ 122-86. Persons acquitted of crime on account of insanity; how discharged from hospital.—No person acquitted of a capital felony on the ground of insanity, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (Rev., s. 4620; 1899, c. 1, s. 67; 1923, c. 165, s. 6; C. S. 6239.)

Cited in State v. Bracy, 215 N. C. 248, 1 S. E. (2d) 891.

§ 122-87. Proceedings in case of recovery of patient charged with crime.—Whenever a person confined in any hospital for the insane, and against whom an indictment for crime is pending, has recovered or been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's settlement will repay the sheriff for his expenses and services. (Rev., s. 4621; 1899, c. 1, s. 64; 1923, c. 165, s. 7; C. S. 6240.)

§ 122-88. Ex-convicts with homicidal mania committed to hospital—Whenever any person who has been confined in the state prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal mania, and shall be duly adjudged insane, in accordance with the provisions of article three of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged insane may, in his discretion, commit such person to the state hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; 1923, c. 165, s. 8; C. S. 6241.)

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the state hospitals designated in this act for the insane to receive all such insane persons as shall be committed to said institutions in accordance with the provisions of this law, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; 1923, c. 165, s. 9; C. S. 6242.)

§ 122-90. Inferior courts without jurisdiction to commit.—No court inferior to the superior court of this state shall have authority to send or commit any insane person to any state hospital for the criminal insane, as provided in this article. (1939, c. 66.)

Chapter 123. Impeachment.

Sec.

Art. 1. The Court.

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Art. 1. The Court.

§ 123-1. Senate is court of impeachment; quorum.—The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to constitute a quorum. (Rev., s. 4623; Const., Art. IV, s. 3; Code, ss. 2923, 2924; 1868-9, c. 168, s. 1; C. S. 6244.)

§ 123-2. Chief justice presides in impeachment of governor.—When the governor of the state, or lieutenant-governor, upon whom the powers and duties of the office of governor have devolved, is impeached, the chief justice of the supreme court shall preside; and in a case requiring the chief justice to preside, notice shall be given him, by order of the senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the chief justice shall preside over the senate during the consideration of said articles upon the trial of the person impeached. But the chief justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the senate with its assent. (Rev., s. 4624; Const., Art. IV, s. 4; Code, s. 2927; 1868-9, c. 168, s. 6; C. S. 6245.)

§ 123-3. Power of the senate as a court.—The senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts, or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice. (Rev., s. 4626; Code, s. 2926; 1868-9, c. 168, s. 4; C. S. 6246.)

§ 123-4. Power of presiding officer.—The presiding officer of the senate shall have power—

1. To direct all necessary preparations in the senate chamber.
2. To make and issue by himself or by the clerk of the senate all orders, mandates, writs, and precepts authorized by law or by the senate.
3. To direct all the forms of procedure during the trial not otherwise specially provided for.
4. To decide in the first instance, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays. (Rev., s. 4627; Code, s. 2927; 1868-9, c. 168, s. 5; C. S. 6247.)

§ 123-5. Causes for impeachment.—Every officer in this state shall be liable to impeachment for—

1. Corruption or other misconduct in his official capacity.
2. Habitual drunkenness.
3. Intoxication while engaged in the exercise of his office.
4. Drunkenness in any public place.
5. Mental and physical incompetence to discharge the duties of his office.
6. Any criminal matter, the conviction whereof would tend to bring his office into public contempt. (Rev., s. 4628; Code, s. 2937; 1868-9, c. 168, s. 16; C. S. 6248.)

A judge of probate is not subject to impeachment under this section. People v. Heaton, 77 N. C. 18.

Art. 2. Procedure in Impeachment.

§ 123-6. Articles of impeachment preferred.—All impeachments must be delivered by the house of representatives to the presiding officer of the senate, who shall thereupon cause proclamation to be made in the following words:

"All persons are commanded to keep silence, on pain of imprisonment, while the house of representatives is exhibiting to the senate of North Carolina articles of impeachment against....."

After which the articles shall be exhibited, and then the presiding officer of the senate shall inform the house of representatives that the senate will take proper order on the subject of impeachment, of which due notice shall be given to the house of representatives. (Rev., s. 4630; Code, s. 2925; 1868-9, c. 168, ss. 2, 3; C. S. 6249.)

§ 123-7. When president of senate impeached, another officer chosen.—If the president of the senate be impeached, notice thereof shall immediately be given to the senate by the house of representatives, in order that another president may be chosen. (Rev., s. 4631; Code, s. 2935; 1868-9, c. 168, s. 14; C. S. 6250.)

§ 123-8. Notice given to the accused.—The senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person impeached to appear and answer the articles exhibited, either in person or by attorney. He shall be entitled to a copy of the impeachment and have a reasonable time to answer the same. (Rev., s. 4632; Code, s. 2928; 1868-9, c. 168, s. 7; C. S. 6251.)

§ 123-9. Accused entitled to counsel.—The person accused is entitled on the trial of impeachment to the aid of counsel. (Rev., s. 4629; Code, s. 2929; 1868-9, c. 168, s. 8; C. S. 6252.)

§ 123-10. Time of hearing fixed.—When issue is joined in the trial of an impeachment the court shall fix a time and place for the trial thereof. (Rev., s. 4633; Code, s. 2930; 1868-9, c. 168, s. 9; C. S. 6253.)

§ 123-11. Oath administered to members.—At the time and place appointed, and before the commencement of the trial, the presiding officer of the senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation truly and impartially to try and determine the charge in question, under the constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation. (Rev., s. 4625; Code, s. 2931; 1868-9, c. 168, s. 10; C. S. 6254.)

Art. 3. Effect of Impeachment.

§ 123-12. Accused suspended during trial.—Every officer impeached shall be suspended from the exercise of his office until his acquittal. (Rev., s. 4634; Code, s. 2934; 1868-9, c. 168, s. 13; C. S. 6255.)

§ 123-13. Manner of conviction; judgment; indictment.—No person shall be convicted on an impeachment without the concurrence of two-thirds of the senators present. Upon a conviction of the person impeached, judgment may be given that he be removed from office, or that he be dis-

qualified to hold any office of honor, trust, or profit under this state, or both. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law. (Rev., s. 4635; Code, ss. 2932, 2933, 2936; 1868-9, c. 168, ss. 11, 12, 15; see Const., Art. IV, ss. 3, 4; C. S. 6256.)

Chapter 124. Internal Improvements.

§ 124-1. Governor and council to control internal improvements.—The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. (1925, c. 157, s. 1.)

§ 124-2. State deemed shareholder in corporation accepting appropriation.—When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2.)

§ 124-3. Report of railroad, canal, etc.; contents.—The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, when required to do so by the Governor, make or cause to be made to the Governor and Council of State a written report of its affairs. This report shall show:

1. Number of shares owned by the State.
2. Number of shares owned otherwise.
3. Face value of such shares.
4. Market value of each of such shares.
5. Amount of bonded debt, and for what purpose contracted.
6. Amount of other debt, and how incurred.
7. If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
8. Amount of gross receipts for past year, and from what sources derived.
9. An itemized account of expenditures for past year.
10. Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.
11. Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
12. Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

Any person failing to report as required by this section shall be guilty of a misdemeanor and be fined or imprisoned at the discretion of the court. (1925, c. 157, s. 3.)

§ 124-4. Report to general assembly; contents.—The Governor and Council of State shall biennially report to the General Assembly:

1. The condition of all railroads, canals, or other works of internal improvement in which the State has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the State.
2. The amount, condition, and character of the State's interest in other railroads, roads, canals, or other works of internal improvement in which the State has taken stock, to which she has loaned money, or whose bonds she holds as security.
3. The condition of such roads or other corporate bodies, in detail, as are referred to in the previous section, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the State's interest in the same as may to them seem warranted by the status of the roads or corporations.
4. The names of all persons failing or refusing to report as is required by law. (1925, c. 157, s. 4.)

§ 124-5. Approval of encumbrance on state's interest in corporations. — No corporation or company in which the State has or owns any stock or any interest shall sell, lease, mortgage, or otherwise encumber its franchise, right of way, or other property, except by and with the approval and consent of the Governor and Council of State. (1925, c. 157, s. 5.)

Cross Reference.—As to conveyances of property held by state institutions, agencies, etc., see §§ 143-147 to 143-150.

§ 124-6. Appointment of proxies, etc. — The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and

the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion. (1925, c. 157, s. 6.)

§ 124-7. Power of investigation of corporations.—The Governor and Council of State shall have the power to investigate the affairs of any corporation or association described in § 124-3 and may require the Attorney-General or the Utilities Commission to assist in making such investigation under the rules and regulations prescribed in chapter sixty-two. (1925, c. 157, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

Chapter 125. Libraries.

Art. 1. State Library.

Art. 2. Document Library.

Art. 3. Library Commission.

Art. 1. State Library.

§ 125-1. Location. — The state library shall occupy the rooms set apart for it in the state administration building. (Rev., s. 5068; 1885, c. 121, s. 7; 1913, c. 99, s. 1; C. S. 6573.)

§ 125-2. Trustees; duties and powers. — The governor, superintendent of public instruction, and secretary of state, and their respective successors in office, are appointed trustees of the state and document libraries. The board of trustees shall make rules and regulations by which the librarian shall be governed for the protection and preservation of the books and library; and may make such distribution of the books, reports, and publications belonging to the state as in the judgment of the board is advisable and proper. (Rev., s. 5069; Code, s. 3612; 1871-2, c. 169, s. 3; 1903, cc. 104, 133; C. S. 6574.)

§ 125-3. Librarian's seal; certified copies of documents as evidence.—It shall be the duty of the secretary of state to furnish the state librarian with a seal of office. The state librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in his office. When the certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matters therein contained, and as such shall receive full faith and credit. (Rev., s. 5070; 1905, c. 537; C. S. 6575.)

§ 125-4. Governor to designate documents to be preserved; books bound and labeled.—The governor shall designate such portions of the documents, journals, and acts of congress of the United States as he may deem proper to be preserved in the library; may designate which of them are to to be bound, of such pamphlets, acts, and journals of the general assembly, and works of periodical literature, laws of other states, and documents of the general assembly that may be added to the library; and the librarian shall have them bound. And all the books belonging to the library, or which may be added thereto, shall be labeled in gilt letters with the words "State Library." (Rev., s. 5074; Code, s. 3614; R. C., c. 92, s. 4; 1840, c. 46, s. 6; 1842, c. 68, s. 3; C. S. 6579.)

§ 125-5. Penalty for injury to books.—Any person who shall damage, deface, or mutilate any book which he may be allowed to withdraw from the library, or who shall return any book so damaged, defaced, or mutilated while in his possession, shall forfeit and pay the full amount of the damage, which amount shall be determined by the librarian, but in no case to exceed double the value of the book; and the penalties and forfeitures accruing under this section shall be sued for and recovered by the librarian in the name of the state, before any justice of the peace, and shall be added to the fund for the increase of the library. (Rev., s. 5075; Code, s. 3615; R. C., c. 92, s. 5; 1842, c. 68, s. 1; C. S. 6580.)

§ 125-6. Committee to purchase books.—The state librarian, superintendent of public instruction, together with three other persons to be selected by the trustees, shall constitute a committee to purchase books for the state library, and they are to serve without compensation in the matter of selecting and buying books. (Rev., s. 5076; 1901, c. 503, s. 3; C. S. 6581.)

§ 125-7. Librarian; election and bond.—A librarian shall be elected quadrennially by the trustees of the state library, and shall give bond with security in such sum as the trustees may determine, payable to the state of North Carolina, conditioned for the safe-keeping of the books and the faithful discharge of his duties, and he shall hold his place till his successor shall be appointed and qualified. (Rev., s. 5077; Code s. 3604; 1870-1, c. 70, s. 1; 1883, c. 216, s. 1; 1895 c. 351; 1903, c. 727; C. S. 6582.)

§ 125-8. Assistant librarian.—The state librarian is authorized to employ an assistant in his office. (Rev., s. 5078; 1901, c. 503, s. 1; C. S. 6583.)

§ 125-9. Librarian to receipt for laws of other states.—The state librarian is directed to keep a record of the published laws, reports, documents, etc., received from other states and territories by exchange for like documents from this state; to receipt for the same and to distribute them to the different departments to which they belong immediately on receipt. All states and territories exchanging such documents with this state are requested to forward all documents direct to the state librarian. (Rev., s. 5079; 1889, c. 535; C. S. 6584.)

§ 125-10. Separate reading-room for colored people.—The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the library for the purpose of reading books or periodicals. (Rev., s. 5080; 1901, c. 503, s. 2; C. S. 6585.)

§ 125-11. Open hours for library.—The library shall be kept open during the day for such time as the trustees may prescribe; and from seven to nine o'clock each evening, if the necessary expense of keeping the same open be voluntarily paid by the citizens of the city of Raleigh. (Rev., s. 5082; Code, s. 3605; 1870-1, c. 70, s. 2; 1881, c. 352; 1889, pub. res., p. 530; C. S. 6585.)

§ 125-12. Members of state boards and commissions to use books.—Any member of a State board or commission residing in Raleigh shall be allowed the privilege of borrowing from the State Library, material, books or other publications, except reference books, and enjoy the same privileges in respect thereto as is allowed State officials. (1925, c. 115.)

Art. 2. Document Library.

§ 125-13. Location. — The document library shall occupy rooms in the state library. (Rev., s. 5087; 1887, c. 258, s. 1; C. S. 6592.)

§ 125-14. Librarian.—The librarian of the state library shall be the custodian of the document library. (Rev., s. 5088; 1887, c. 258, s. 3; C. S. 6593.)

§ 125-15. Assistant librarian.—The librarian is authorized to employ an assistant in the document library during the sessions of the general assembly at a cost not exceeding one dollar per day. (Rev., s. 5089; 1891, pub. res., p. 652; C. S. 6594.)

§ 125-16. Librarian to procure books.—It shall be the duty of the librarian to procure two copies each of the laws and journals of the general assembly, which shall be furnished to him by the secretary of the state, and to arrange them on shelves in chronological order for the use of the two houses of the general assembly respectively. (Rev., s. 5090; 1887, c. 258, s. 2; C. S. 6595.)

§ 125-17. Library open, when.—The librarian shall keep the document library open during the sessions of the general assembly, in order that members may have access to records, and for use of committees of either house. At all other times the doors shall be kept securely locked, but the librarian shall, upon application, admit persons who wish to examine any of the books and records therein. (Rev., s. 5091; 1891, pub. res., p. 652; C. S. 6596.)

Art. 3. Library Commission.

§ 125-18. Commission established; members appointed.—There is hereby created a library commission to be known as the Library Commission of North Carolina, which shall consist of the superintendent of public instruction, the state librarian, two other persons who shall be appointed by the North Carolina library association, and one other person who shall be appointed by the governor, all of whom shall serve without compensation. After the ninth day of March, one thousand nine hundred and nine, the governor shall appoint at once one person to serve one year and the North Carolina library association one person to serve two years and one person to serve three years; and as these terms expire, annually thereafter one person shall be appointed for three years by the governor and by the North Carolina library association, according to the vacancy to be filled. The library commission may accept resignations and fill vacancies for unexpired terms. The term of office of the members of the commission shall begin April first. (1909, c. 873, s. 1; C. S. 6597.)

§ 125-19. Election of officers.—The commission shall annually elect its own officers, who shall perform all the duties usually pertaining to such offices. (1909, c. 873, s. 2; C. S. 6598.)

§ 125-20. Duties of commission; secretary employed.—The commission shall give assistance, advice, and counsel to all libraries in the state, to all communities which may propose to establish libraries, and to all persons interested, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance, and other details of library management as may be practicable. The commission may aid in organizing new libraries or in improving those already organized, and may establish and maintain traveling or other libraries, as may be practicable. The commission shall employ a secretary, not a member of the commission, who shall be a person trained

in modern library methods, and who shall receive such compensation as the commission may decide, and who shall perform the usual duties of a secretary and such other duties as may be assigned by the commission, and who shall serve at the will of the commission. (1909, c. 873, s. 3; C. S. 6599.)

§ 125-21. Public libraries to report to commission.—Every public library in the state shall make an annual report to the commission, in such form as may be prescribed by the commission. The term "public library" shall, for the purpose of this article, include free public libraries, subscription libraries, school, college, and university libraries, young men's christian association, legal association, medical association, supreme court, and state libraries. (1909, c. 873, s. 4; C. S. 6600.)

§ 125-22. Commission to report to governor.—The commission shall make a biennial report to the governor, covering its work up to January first preceding each session of the general assembly. Five hundred copies of this report shall be published as other state official reports are published. (1909, c. 873, s. 5; C. S. 6601.)

§ 125-23. Expenses of commission paid.—No member of the commission shall ever receive any compensation for service as a member, but the actual traveling expenses of members in attendance at meetings of the commission or in visiting or establishing libraries and other incidental and necessary expenses connected with the work of the commission may be paid. (1909, c. 873, s. 6; C. S. 6602.)

§ 125-24. Offices provided.—The board of public buildings and grounds may allow suitable offices and equipment in the capitol, the state library, or other state buildings, for the use of the library commission. (1909, c. 873, s. 8; C. S. 6604.)

§ 125-25. Commission authorized to accept and administer funds from federal government and other agencies.—The North Carolina library commission is hereby authorized and empowered to receive, accept and administer any money or moneys appropriated or granted to it, separate and apart from the general library commission fund, for providing and equalizing public library service in North Carolina:

(1) By federal government, and

(2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the governing board of the library commission of North Carolina, which body shall frame by-laws, rules and regulations for the allocation and administration of this fund.

This fund shall be used to increase, improve, stimulate and equalize library service to the people of the whole state, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other factors as may affect the state program of library service.

Any gift or grant from the federal government or other sources shall become a part of said fund, to be used as part of the state fund, or may be invested in such securities in which the state sinking fund may be invested as in the discretion of the governing board of the library commission of North Carolina may be deemed advisable, the income to be used for the promotion of libraries as aforesaid. (1937, c. 206.)

§ 125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.—1. It is hereby declared the policy of the state to promote the establishment and development of public library service throughout all sections of the state.

2. For promoting, aiding and equalizing public library service in North Carolina the sum of one hundred thousand ($100,000.00) dollars, annually, shall be and is hereby appropriated out of the monies within the state treasury, not otherwise appropriated, which fund shall be known as the public library service fund.

3. The fund herein provided shall be administered by the governing board of the North Carolina library commission, which body shall frame by-laws, rules and regulations for the allocation and administration of said fund. The fund shall be used to improve, stimulate, increase and equalize public library service to the people of the whole state, and shall be used for no other purpose, except as herein provided, and shall be allocated among the counties of the state taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the state program of public library service.

4. For the necessary expenses of administration, allocation and supervision a sum not to exceed five per cent (5%) of the annual appropriation may annually be used by the North Carolina library commission.

5. The fund appropriated under this section shall be separate and apart from the appropriation to the general library commission fund, which fund shall not be affected by this section or appropriation hereunder.

6. The powers herein granted shall be in addition to and not in subrogation of, or repeal of, any power or authority now or heretofore granted to the North Carolina library commission. (1941, c. 93.)

Chapter 126. Merit System Council.

§ 126-1. Appointment of members of merit system council; qualifications; terms; compensation.—The governor of North Carolina is hereby authorized to appoint a merit system council, which shall be composed of five members, all of whom shall be public spirited citizens of this state of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the unemployment compensation commission, the state board of health, the state board of charities and public welfare, and the state commission for the blind. No council member hall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the merit system council shall be paid seven dollars ($7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the council but shall receive no other salary. (1941, c. 378, s. 1.)

§ 126-2. Appointment of supervisor of merit examinations; rules and regulations; examinations.—The merit system council appointed under the provisions of this chapter is authorized to appoint a supervisor of merit examinations, who shall, in no instance, be a member of the council, and who shall, after his appointment, in coöperation with the council, the director of the budget of the state of North Carolina, the state agencies affected by this chapter, and the Federal Social Security Board or other federal agency charged with the administration of the Federal Social Security Laws, prepare rules and regulations, job specifications, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2.)

§ 126-3. Organization of council; meetings; representation of state agencies; duties and pay of supervisor.—The said council shall meet as soon as practicable and organize by electing one of its members as chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the said council and shall be guardian of all papers pertaining to the business of said council. Meetings of the council shall be held as often as necessary and practicable upon the call of the chairman. The state agencies shall have the right to be represented at all meetings of the council but such representation shall be without voting power. The supervisor of merit examinations, above provided for, shall keep a record of all examinations held, and shall perform such other duties as the council shall prescribe, for which he shall be paid compensation to be fixed by the director of the budget. (1941, c. 378, s. 3.)

§ 126-4. Competitive examinations for all positions; moral character of applicants.—All applicants for positions in the agencies or departments affected by this chapter shall be subjected to an examination by the merit system council which shall be competitive and free to all persons meeting requirements prescribed by said council, subject to reasonable and proper limitations as to age, health, and moral character, which said examinations shall be practical in their character and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge proficiently the duties of the position to which they seek appointment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning his or her political or religious opinions or affiliations. The said council shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all

applicants for positions in the agencies and departments affected by this chapter, to the end that all persons certified by said council as eligible for employment in said agencies or departments shall be persons of good character as well as possessing necessary mental and physical qualifications. (1941, c. 378, s. 4.)

§ 126-5. Present employees previously examined.—All employees presently employed in the agencies or departments affected by this chapter and who have heretofore taken and passed merit examinations under the merit rating system now in effect, shall not be required to take further examinations as herein provided. (1941, c. 378, s. 5.)

§ 126-6. Persons previously examined and on eligible list.—All persons who have successfully passed merit examinations under the merit rating system now in effect and are shown on the register as eligible for employment shall not be required to take further examinations as provided herein and shall have their names placed on the new registers of those eligible for employment to be established under this chapter. (1941, c. 378, s. 5½.)

§ 126-7. Notice of time and place of examinations.—Notice of the time and place of every examination shall be given by the merit system council by publication once a week for two weeks immediately preceding such examination, in some newspaper having a general circulation in the state of North Carolina, and such notice shall be posted in a conspicuous place in the office of the supervisor of merit examinations, in the city of Raleigh for at least two weeks next preceding such examination. (1941, c. 378, s. 6.)

§ 126-8. Register of applicants passing examinations; method of making appointments.—Said council shall prepare and keep as a permanent record of the council a register of all persons successfully passing such examinations, accurately reflecting the grades made by such applicants. Whenever any appointment is to be made to any of said agencies or departments, the council shall certify from said registered list of successful applicants three names for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the council, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing, which objection is sustained by the supervisor with the approval of the council. (1941, c. 378, s. 7.)

§ 126-9. Admission to examinations without regard to minimum qualifications; probationary employee.—An employee who is certified by the agency as having given satisfactory service continuously for six calendar months preceding January first, one thousand nine hundred and forty or any other date or dates as may be required by the federal agencies supervising the expenditures of federal funds through the state agencies affected by this chapter may be admitted to the examination for the position held by him on March 15, 1941, without regard to minimum qualifications of training and experience. Upon certification of the supervisor that he has attained a passing grade in the examination held in accordance with the provisions of this chapter he may be appointed as a probationary employee. The probationary period of such an employee shall date from the certification of the supervisor that he has attained a passing grade. (1941, c. 378, s. 8.)

§ 126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.—All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of six months. The probationary period shall be an essential part of the examination process, and shall be utilized for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Permanent appointment of a probationary employee shall begin with the date ending the probationary period, provided that the personnel officer of the agency concerned has received from the employee's supervisor a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. The statement shall contain an appraisal of the value of the employee's services and shall include a service rating upon a form prescribed by the supervisor of merit examinations. It shall be the responsibility of the personnel officer to obtain such statement with recommendations four weeks prior to the end of the probationary period. The personnel officer, on the basis of such statement and recommendations, shall make recommendations to the appointing authority, and if it is determined that the services of the employee have been unsatisfactory, the personnel officer shall notify the employee in writing at least fifteen days in advance of the date his services are to be terminated. An employee whose appointment is to be made permanent shall also be notified. The personnel officer shall notify the merit system supervisor of the action taken regarding the services of the employee. (1941, c. 378, s. 9.)

§ 126-11. Filling vacancies; promotions. — As far as is practicable and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. Preference in promotion may be given to employees within the agencies, and all inter-agency promotions must be approved by the appointing authorities concerned. A candidate for promotion must be certified by the supervisor to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he shall be required by the supervisor to qualify for the new position by promotional competitive or noncompetitive examination administered by the supervisor. (1941, c. 378, s. 10.)

§ 126-12. Dismissal or suspension of employees; separations.—The appointing authority, fifteen days after notice in writing to an employee stating specific reasons therefor, may dismiss any employee who is negligent or inefficient in his duties, or unfit to perform his duties and/or who

is found to be guilty of gross misconduct; or who is convicted of any crime involving moral turpitude. When such conviction is final the employee shall have no recourse to appeal to the council. The appointing authority may, after written notice, suspend any employee without pay for delinquency or misconduct, for a period not to exceed thirty calendar days in any one calendar year. The appointing authority may separate any employee, without prejudice, because of lack of funds or curtailment of work. No permanent employee, however, shall be separated while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the same agency. The order of separations due to reduction of force shall be based upon service ratings and seniority, under a formula to be formally established by the supervisor and approved by the council, and all such separations shall be reported to the supervisor. (1941, c. 378, s. 11.)

§ 126-13. Appeal from dismissal, suspension, or demotion.—A permanent employee who is dismissed, suspended, or demoted shall have the right to appeal to the council not later than thirty days after the effective date of the dismissal, suspension, or demotion. Such appeal shall be in writing and shall be transmitted to the supervisor who shall arrange a formal hearing before the council within ten days after receipt of the appeal. The supervisor shall furnish the personnel officer of the agency concerned with a copy of the appeal in advance of the hearing. Both the employee and his immediate supervisor shall be notified reasonably in advance of the hearing and shall have the right to present witnesses and give evidence before the council. The council, within three days after the hearing, shall make its recommendations in writing to the appointing authority for consideration by the agency. After consideration of the council's recommendations, the agency shall make its decision which shall be final and which shall be duly recorded in the permanent records of the agency. The personnel officer shall, in writing, promptly notify the employee of the agency's decision. (1941, c. 378, s. 12.)

§ 126-14. Authority of merit system council.—The merit system council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in coöperation with the state board of health and the state board of charities and public welfare, for the administration of a system of personnel standards on a merit rating system with a uniform schedule of compensation for all employees of the county welfare departments and the county, city, and district health departments. (1941, c. 378, s. 13.)

§ 126-15. Application of chapter.—Wherever the provisions of any law of the United State, or of any rule, order or regulation of any federal agency or authority, providing or administering federal funds for use in North Carolina, either directly or indirectly or as a grant-in-aid, or to be matched or otherwise, impose other or higher, civil service or merit standards or different classifications than are required by the provisions of this chapter, then the provisions of such laws, classifications, rules or regulations of the United States or any federal agency may be adopted by the council as rules and regulations of the council and shall govern the class of employment and employees affected thereby, anything in this chapter to the contrary notwithstanding. (1941, c. 378, s. 14.)

§ 126-16. Effect on certain existing laws.—Nothing in this chapter shall be construed as repealing any of the provisions of §§ 143-35 to 143-45, 143-47, relating to the division of personnel under the budget bureau, nor as relieving the assistant director of the budget of the duties and responsibilities there prescribed for him. (1941, c. 378, s. 15.)

§ 126-17. Purpose of chapter clarified.—It is the intent and purpose of this chapter to permit and require the agencies and departments affected hereby to comply with the rules and regulations of the Federal Social Security Board and such other federal agencies as may be charged with the administration of the Social Security Act, and the rules governing the expenditure of federal and state social security funds in the administration of said laws. (1941, c. 378, s. 16.)

Chapter 127. Militia.

Art. 1. Classification of Militia.

§ 127-1. Composition of militia.—The militia of the state shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United

States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into three classes: the national guard, the naval militia, and the unorganized militia. (1917, c. 200, s. 1; C. S. 6701.)

§ 127-2. Composition of national guard.—The national guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. (1917, c. 200, s. 2; C. S. 6792.)

§ 127-3. Composition of naval militia.—The naval militia shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (Marine corps branch), provided the service is continuous. (1917, c. 200, s. 3; C. S. 6793.)

§ 127-4. Composition of unorganized militia.—The unorganized militia shall consist of all other able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age, and, except as otherwise provided by law, not more than forty-five years of age. (1917, c. 200, s. 4; C. S. 6794.)

§ 127-5. Exemption from military duty. — The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, custom-house clerks, persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals, and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from military duty without regard to age, and all persons who, because of religious belief, shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the president shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the president shall declare to be noncombatant. (1917, c. 200, s. 5; C. S. 6795.)

§ 127-6. White and colored enrolled separately.—The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while pemitted to be organized, colored troops shall be under command of white officers. (1917, c. 200, s. 6; C. S. 6796.)

§ 127-7. Maintenance of other troops.—In time of peace the state shall maintain only such troops as may be authorized by the president of the United States; but nothing contained in this chapter shall be construed as limiting the rights of the state in the use of the national guard within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of state police or constabulary. (1917, c. 200, s. 8; C. S. 6797.)

§ 127-8. Corps entitled to retain privileges.—Any corps of artillery, cavalry, or infantry existing in the state on the passage of the act of congress of May eighth, one thousand seven hundred and ninety-two, which by the laws, customs, or usages of the state has been in continuous existence since the passage of such act, under its provisions and under the provisions of section two hundred and thirty-two and sections one thousand six hundred and twenty-five to one thousand six hundred and sixty, both inclusive, of title sixteen of the revised statutes of one thousand eight hundred and seventy-three and the act of congress of January twenty-first, one thousand nine hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the president may direct, and shall be subject to the orders of officers under whom they shall be serving. (1917, c. 200, s. 87; C. S. 6798.)

Art. 2. General Administrative Officers.

§ 127-9. Governor as commander-in-chief.—The governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasions. (1917, c. 200, s. 11; C. S. 6799.)

Cross Reference.—As to commander-in-chief of the militia, see Art. III, sec. 8 and Art. XII, sec. 3 of the constitution.

§ 127-10. Commander-in-chief to prescribe regulations.—The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto. (1917, c. 200, s. 36; C. S. 6800.)

§ 127-11. Division of military staff.—The military staff shall be divided into two kinds: the personal staff of the governor and the administrative staff. The governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the secretary of war for the national guard and the secretary of the navy for the naval militia. (1917, c. 200, s. 12; C. S. 6801.)

§ 127-12. Adjutant general.—The governor shall appoint an adjutant general, who shall have had

not less than five years commissioned service in the national guard, naval militia, regular army, United States navy or marine corps, organized reserve corps of the United States; who while holding such office may be a member of the active national guard or naval militia, or organized reserve corps of the United States. (1917, c. 200, s. 14; 1925, c. 54; 1939, c. 14; C. S. 6802.)

Editor's Note.—The 1939 amendment made this section applicable to the organized reserve corps of the United States.

§ 127-13. Salary of adjutant general.—The salary of the adjutant general shall be six thousand dollars per annum. The adjutant general shall reside at the state capital during his term of office. (Rev., s. 2750; Code, ss. 3275, 3730; 1899, c. 390, ss. 2, 3; 1879, c. 240, s. 10; 1883, c. 283, s. 2; 1907, c. 803, s. 1; 1911, c. 110, s. 1; 1915, c. 118; Ex. Sess. 1921, c. 53; 1933, c. 282, s. 6; 1935, c. 293; 1937, c. 415; 1943, c. 499, s. 2½; C. S. 3877.)

Editor's Note.—The 1937 amendment increased the salary from four thousand five hundred to five thousand dollars. The 1943 amendment increased the salary from five thousand to six thousand dollars.

§ 127-14. Adjutant general's department.—There shall be an adjutant general's department. The adjutant general shall be the head of the department and as such subordinate only to the governor in matters pertaining thereto. He shall make such returns and reports to the secretary of war and secretary of the navy or to such officers as the secretary of war and secretary of the navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make an annual report to the governor on or before the thirty-first day of December of each year, including a detailed statement of all expenditures made for military purposes during that year. He shall also make a biennial report to the general assembly. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the state. The adjutant general shall perform such other duties not herein specified as may be required by the military laws and regulations or by the governor. The adjutant general shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The adjutant general may have an assistant and such clerks and employees as may be prescribed by the governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. (1917, c. 200, s. 13; 1927, c. 217, s. 4; C. S. 6803.)

§ 127-15. Property and disbursing officer for the United States.—The governor of the state shall appoint, designate, or detail, subject to the approval of the secretary of war, an officer of the national guard of the state, who shall be regarded as property and disbursing officer for the United States. In consideration of his services, for the care, responsibility, and issue of federal property, the property and disbursing officer for the United States shall receive from the state such salary as the governor may authorize to be just and proper; the salary to constitute a charge upon the appropriations made to the adjutant general's department. When ordered into actual service and receiving the pay of his rank for such service, from either state or federal funds, he shall not be entitled to, or receive, any salary from the state for the period of time for which he shall receive the pay of his rank. (1917, c. 200, s. 24; C. S. 6804.)

§ 127-16. Property and disbursing officer for North Carolina.—The Disbursing Officer for the National Guard shall be an employee of the Adjutant General's Department and he shall be required to give a good and sufficient bond to the State, the amount thereof, to be determined by the Governor, for the faithful performance of his duties and for the safe keeping and proper disposition of such funds and property entrusted to his care. He shall receipt for and account for all funds and property allotted to his custody from the appropriation for military purposes, by the State, and shall make such returns and reports through the Adjutant General concerning same as may be required by the Governor or state laws. All or any disbursement of such moneys will be made by the disbursing officer, only upon the approval of the Adjutant General, upon such forms and under such regulations as may be prescribed by proper authority. Blank forms, books, stationary, and other necessary equipment, for use of the disbursing officer will be furnished through or by the Adjutant General's Department. Funds from the appropriation for military purposes will be paid to the disbursing officer by the State Treasurer upon requisition of the Adjutant General on the State Treasurer in accordance with the state laws, or regulations thereunder as prescribed by the State for the expenditure of appropriations made to the State Departments. (1917, c. 200, s. 25; 1929, c. 317, s. 1; C. S. 6805.)

§ 127-17. Inspector General.—It is the duty of the inspector general to inspect organizations and departments pertaining to the National Guard; he shall also inspect and audit the accounts of officers accountable or responsible for public funds, and perform such other duties as the Governor shall from time to time direct. The inspector general shall make reports to the Governor at such times and in such a manner as the Governor shall specify. (1917, c. 200, s. 26; C. S. 6806.)

§ 127-18. Advisory board.—There shall be an advisory board composed of the brigade commander, the commanding officer of each regiment, and the commanding officer of each separate battalion, which shall meet once each year at such time as ordered by the Governor, and at such other times and places as may be ordered by the Governor. This board shall make such recommendations to the Governor as it may deem for the best interests of the National Guard. The adjutant general and the United States property and disbursing officer shall fur-

nish such information as may be requested by the board. (1917, c. 200, s. 27; 1921, c. 120, s. 1; C. S. 6807.)

Art. 3. National Guard.

§ 127-19. Organization of national guard units.—Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the secretary of war. (1917, c. 200, s. 7; C. S. 6808.)

§ 127-20. Location of units.—The governor shall determine and fix the location of the units and headquarters of the national guard within the state; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of congress approved June third, one thousand nine hundred and sixteen, as amended, shall be disbanded without the consent of the president, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the president. (1917, c. 200, s. 9; 1921, c. 120, s. 2; C. S. 6809.)

§ 127-21. Reserve battalions for recruit training.—Under such rules and regulations as may be prescribed by the president, reserve battalions for infantry, cavalry, field artillery, and coast artillery may be organized by the commander-in-chief when organizations of the national guard have been called into the service of the United States in time of war. The organization of such reserve battalions shall be effected in the manner prescribed in section seventy-nine of the act of congress approved June third, one thousand nine hundred and sixteen, or subsequent federal enactments. (1917, c. 200, s. 10; C. S. 6810.)

§ 127-22. Officers appointed and commissioned.—All officers of the national guard shall be appointed and commissioned by the governor as follows, viz:

1. The appointment and promotion of all officers shall be by seniority as far as the same is practicable and to the best interests of the service within the organization or department, and in accordance with the regulations of the war department.

2. Original appointments of second lieutenants in the line or staff shall be made from the enlisted men when practicable within the organization. Candidates for such appointment shall make written application, accompanied by their military record, to the commanding officer through intermediate commanders for comment by endorsements in accordance with federal laws and war department regulations pertaining thereto. The commanding officer shall forward the application of the three best qualified and most promising candidates with his endorsement to the adjutant general's office for consideration by the governor. (1917, c. 200, s. 15; 1921, c. 120, s. 3; C. S. 6811.)

§ 127-23. Commissions for commandants and student officers at educational institutions.—Whenever any university, college, academy or other educational institution, regularly incorporated under and by virtue of the laws of the State of North Carolina, wherein military science and instruction are made a part of the courses of study and are regularly taught in said institution, and wherein there is detailed by the War Department at Washington, D. C., an officer from the United States army as professor of military science and tactics, which is designated as an Essentially Military School by the War Department of Washington, D. C., and which has been made a unit of the Senior or Junior Reserve Officers' Training Corps by the War Department at Washington, D. C., the Governor of North Carolina, on the application of the said university, college, academy or other educational institution, signed by the chancellor, president, superintendent or other presiding officer, under the seal of the said institution, is hereby authorized and directed to commission as staff officers of the North Carolina Reserve Militia, the officers of the said university, college, academy or other educational institution, as follows: The chancellor, president, superintendent or other presiding officer, as colonel; the vice-president, principal or other officer second in authority, as lieutenant-colonel; the commandant, or officer in charge of the discipline, as major; and the male professors, members of the faculty, as captains. The persons to whom commissions are issued under this section shall have no connection with the National Guard or other military forces of the State, nor shall they, or any of them, exercise any military authority other than in the discharge of their duties in their respective institutions. The Governor may annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the Adjutant General, one on the recommendation of the State Superintendent of Public Instruction, and one on the recommendation of the Secretary of the State Board of Health, with a view to their proficiency in the several departments indicated, and the said committee shall during the school year, and while the said institutions are in session, visit all of the said educational institutions and make a thorough inspection of their military departments, their discipline, courses of study and educational departments, and their sanitary condition, and report to the Governor the result of said inspection. (1919, c. 265, ss. 1, 2, 3; 1929, c. 61, s. 1; C. S. 6812.)

§ 127-24. Appointment of staff officers.—No person shall be appointed a staff officer, including officers of the pay, inspection, subsistence, and medical departments, unless he shall have had previous military experience, nor who shall fail to qualify as to fitness for military service under such regulations as the secretary of war shall prescribe; such officers shall hold their positions until they have reached the age of sixty-four years, unless separated from the service prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for the purpose. Vacancies among such officers shall be filled by appointment from the officers of the militia. (1917, c. 200, s. 16; C. S. 6813.)

§ 127-25. Qualifications of national guard offi-

cers.—Persons hereinafter commissioned as officers of the national guard shall not be recognized as such under any of the provisions of this chapter unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in this article, for officers: Officers or enlisted men of the national guard, officers active or retired, reserve officers, and former officers of the army, navy, and marine corps, enlisted men and former enlisted men of the army, navy or marine corps, who have received an honorable discharge therefrom, graduates of the United States military and naval academies and graduates of schools, colleges, universities, and officers' training camps where they have received military instruction under the supervision of an officer of the regular army who certified their fitness for appointment as commissioned officers, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. (1917, c. 200, s. 17; 1921, c. 120, s. 4; C. S. 6814.)

§ 127-26. Test as to fitness for officers.—No person shall hereafter be appointed an officer of the national guard unless he first shall have successfully passed such test as to his physical, moral, and professional fitness as the president shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of three commissioned officers appointed by the secretary of war from the regular army or the national guard, or both. (1917, c. 200, s. 18; C. S. 6815.)

§ 127-27. Precedence of relative rank among officers of same grade in active national guard.—Between officers of the same grade in the active national guard, precedence, or relative rank, is determined in the following manner:

"(a) According to the date of rank, which is the date of rank stated in his commission.—

"(b) When dates of rank are the same, according to length of active commissioned service, continuous or otherwise, in the National Guard of the United States and in the Army of the United States, not counting as service time spent on any supernumerary or retired list, or in the national guard reserve or officers' reserve corps in an inactive status.

"(c) When dates of rank and length of active commissioned military service are the same, first according to age, the older taking precedence; second, by lot." (1917, c. 200, s. 19; 1921, c 120, s. 5; 1927, c. 227, s. 1; C. S. 6816.)

Editor's Note.—This section was enacted in 1917, it was repealed and reenacted in 1921, and again in 1927. The changes were no doubt made with the intention of making the rules for promotion clear. The changes in each instance are such that a comparison of the acts will be necessary to note all.

§ 127-28. Oath of national guard officers.—Commissioned officers of the national guard shall take and subscribe to the following oath of office: "I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of.... ..... in the national guard of the United States and of the state of North Carolina, upon which I am about to enter: so help me, God." (1917, c. 200, s. 20; C. S. 6817.)

§ 127-29. Elimination and disposition of officers.—At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board of three commissioned officers senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such officer, he shall be discharged. Commissions of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of such guard rendered surplus by disbandment of their organization may, upon their own request, be transferred to an inactive status. (1917, c. 200, s. 28; C. S. 6818.)

§ 127-30. Retirement of officers.—When an officer reaches the age of sixty-four years he shall be retired. (1917, c. 200, s. 29; C. S. 6819.)

§ 127-31. Enlistments in national guard.—Original enlistments in the national guard shall be for a period of three years and subsequent enlistments for a period of one year each, or for such periods as may be prescribed by the secretary of war: Provided, that persons who have served in the army for not less than six months, and have been honorably discharged therefrom, may, within two years after June four, one thousand nine hundred and twenty, enlist in the national guard for one year, and reënlist for like period: Provided, that qualifications for enlistment shall be the same as those prescribed for admission to the regular army. (1917, c. 200, s. 30; 1921, c. 120, s. 6; C. S. 6820.)

§ 127-32. Enlistment contract.—Enlisted men shall not be recognized as members of the national guard until they shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted, this ..... day of ....., 19...., as a soldier in the national guard of the United States and of the state of North Carolina, for the period of three, [or one] years in service, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and to the state of North Carolina, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and of the governor of the state of North Carolina, and of the officers appointed over me according to law and the rules and articles of war." (1917, c. 200, s. 31; 1921, c. 120, s. 7; C. S. 6821.)

§ 127-33. Discharge of enlisted men.—An enlisted man discharged from service in the national guard shall receive a discharge in writing in such

form and with such classification as is or shall be prescribed for the regular army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by proper authority. (1917, c. 200, s. 32; C. S. 6822.)

§ 127-34. Membership continued in the national guard.—When drafted into federal service and discharged from the army, members shall resume their membership in the national guard, and shall continue to serve in the national guard until the dates upon which their enlistments entered into prior to their draft would have expired if uninterrupted. (1921, c. 120, s. 8; C. S. 6822 (a).)

§ 127-35. Discipline of national guard.—The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the regular army, and the training shall be carried out so as to conform to the provisions of an act of congress approved June third, one thousand nine hundred and sixteen, and subsequent federal enactments. (1917, c. 200, s. 33; C. S. 6823.)

§ 127-36. Uniform and equipment of national guard.—The national guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is or shall be provided for the regular army. (1917, c. 200, s. 37; C. S. 6824.)

§ 127-37. Authority to wear service medals.—The officers and enlisted men of the North Carolina national guard are hereby authorized to wear, as a part of the official uniform service medals to be selected as herein prescribed.

The adjutant general of the state of North Carolina is hereby authorized and directed to appoint a committee from the officer personnel of the North Carolina national guard to be composed of three regimental commanders, and two other officers of the national guard, to act as a committee to select suitable state service medals to be worn by the officers and enlisted men of the North Carolina national guard as a part of the regulation uniform. (1939, c. 344.)

§ 127-38. Courts-martial for national guard.—Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. (1917, c. 200, s. 55; C. S. 6825.)

§ 127-39. General courts-martial. — General courts-martial of the national guard not in the service of the United States may be convened by orders of the president, or of the governor of the state, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S. 6826.)

§ 127-40. Special courts-martial.—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States; and such special courts-martial shall have the same powers of punishment as the general courts-martial, except that fines imposed by such courts shall not exceed one hundred dollars. (1917, c. 200, s. 57; C. S. 6827.)

§ 127-41. Summary courts-martial.—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and the court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense; may sentence noncommissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States. (1917, c. 200, s. 58; C. S. 6828.)

§ 127-42. Powers of courts-martial. — All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed, and shall have power to direct that upon the nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences of confinement shall not exceed one day for each dollar of fine authorized. (1917, c. 200, s. 59; C. S. 6829.)

§ 127-43. Procedure of courts-martial.—In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpœnas and subpœnas duces tecum, and to enforce by attachment attendance of witnesses and the producton of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before

civil courts. He shall also have power to punish for contempt occurring in the presence of the court. (1917, c. 200, s. 60; C. S. 6830.)

§ 127-44. Manual of courts-martial.—Trials and proceedings by all courts and boards shall be in accordance with the plan and procedure laid down in the manual of courts-martial, courts of inquiry, and retiring boards, and other procedures under military law, as may from time to time be prescribed by the secretary of war. (1917, c. 200, s. 64; C. S. 6831.)

§ 127-45. Sentences, where executed.—All sentences to confinement imposed by any military court of this state shall be executed in such prisons as the court may designate. (1917, c. 200, s. 61; C. S. 6832.)

§ 127-46. Execution of process and sentences.—All processes and sentences of any of the military courts of this state shall be executed by any sheriff, deputy sheriff, constable, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the state to another, when the same is authorized and directed by the adjutant general of the state, shall be paid from the military fund of the state upon a warrant approved by the adjutant general. (1917, c. 200, s. 62; C. S. 6833.)

§ 127-47. Commitments.—When any sentence to fine or imprisonment shall be imposed by any military court of this state, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this state. (1917, c. 200, s. 63; C. S. 6834.)

§ 127-48. Sentence of dismissal.—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C. S. 6835.)

Art. 4. Naval Militia.

§ 127-49. Organization and equipment.—The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the secretary of the navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the secretary of the navy. (1917, c. 200, s. 66; C. S. 6836.)

§ 127-50. Officers appointed to naval militia.—Officers of the United States navy and marine corps may, with the approval of the secretary of the navy, be elected or appointed and commissioned as officers of the naval militia. (1917, c. 200, s. 67; C. S. 6837.)

§ 127-51. Officers assigned to duty.—Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only. (1917, c. 200, s. 68; C. S. 6838.)

§ 127-52. Discipline in naval militia.—The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the state, or on any vessel on which such forces are training, whether within or without the state, or wherever, either within or without the state, naval militia forces of the state shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. (1917, c. 200, s. 69; C. S. 6839.)

§ 127-53. Disbursing and accounting officer.—The governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the secretary of the navy, to perform such duties as the secretary of the navy may prescribe. The governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units. (1917, c. 200, s. 70; C. S. 6840.)

§ 127-54. Rendition of accounts.—Accounting officers shall render accounts as prescribed by the governor or by the secretary of the navy, and shall be required to give good and sufficient bond to the state and to the United States, in such sums as the governor or the secretary of the navy may direct, and conditioned upon the faithful accounting for all public property and for the safekeeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed. (1917, c. 200, s. 71; C. S. 6841.)

§ 127-55. Disbandment of naval militia.—No part of the naval militia which is entitled to compensation under the provisions of an act of congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the president. (1917, c. 200, s. 86; C. S. 6842.)

§ 127-56. Courts-martial for naval militia.—Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts. (1917, c. 200, s. 72; C. S. 6843.)

§ 127-57. General courts-martial. — General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the governor. (1917, c. 200, s. 73; C. S. 6844.)

§ 127-58. Summary courts-martial.—Summary courts-martial may be ordered by the governor, or by the commanding officers of a naval militia battalion or brigade. (1917, c. 200, s. 74; C. S. 6845.)

§ 127-59. Deck courts.—Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the state or on any vessel on which said forces may be serving. (1917, c. 209, s. 75; C. S. 6846.)

§ 127-60. Jurisdiction and procedure of courts-martial and deck courts.—The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts-martial provided for in the navy of the United States; and the proceedings of the courts-martial of the naval militia shall follow the forms and modes of procedure prescribed for such courts in the navy of the United States. (1917, c. 200, s. 76; C. S. 6847.)

§ 127-61. Place of holding courts.—Every precept or order for the convening of any such court may authorize the court to sit at any place or places within the territorial limits of the state as the convening authority may designate, and may further provide that any such court may be convened and sit on board any such naval or other vessel, wherever the same from time to time happens to be, or at such place or places ashore, outside the territorial limits referred to above, as in the judgment of the said convening authority may be convenient or desirable for the purposes of such courts-martial. (1917, c. 200, s. 77; C. S. 6848.)

§ 127-62. Powers of general courts-martial.—General courts-martial shall have power to impose fines not exceeding two hundred dollars, to sentence to forfeiture of pay and allowances, to a reprimand, to dismissal or dishonorable discharge from the service, to reduction in rank or rating; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 78; C. S. 6849.)

§ 127-63. Powers of summary courts-martial.—Summary courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred dollars. (1917, c. 200, s. 79; C. S. 6850.)

§ 127-64. Powers of deck courts.—Deck courts may impose fines not exceeding fifty dollars for any single offense; may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than dishonorable discharge, or a fine in addition to any one of the other sentences specified. (1917, c. 200, s. 80; C. S. 6851.)

§ 127-65. Process of courts-martial.—Presidents of general courts-martial, senior members of summary courts-martial, and deck court officers of the naval militia shall have the power to issue warrants to arrest accused persons, and to bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer, all as authorized for similar proceedings for courts-martial in the navy of the United States. He shall also have power to punish for contempt occurring in the presence of the court. All processes, warrants, and sentences of such courts shall be executed by any sheriff or deputy sheriff or any constable or police officer of any township, county, city, or town, who shall be authorized by law to execute or serve any civil or criminal process. (1917, c. 200, s. 83; C. S. 6852.)

§ 127-66. Sentence to confinement in lieu of fines.—All courts-martial of the naval militia, including deck courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed, and shall have the power to direct that upon nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences to confinement shall not exceed one day for each dollar of fine authorized. When naval militia forces are embarked on any vessel, the confinement in whole or in part may be had in prisons provided on said ship. (1917, c. 200, s. 81; C. S. 6853.)

§ 127-67. Dismissal or dishonorable discharge.—No sentence of dismissal or dishonorable discharge from the naval militia shall, except when the naval militia shall have been called into the service of the United States, be executed without the approval of the governor. (1917, c. 200, s. 82; C. S. 6854.)

§ 127-68. Collection of fines.—The amount of any fine imposed under sentence of the courts heretofore named on any member of the naval militia may be collected from him, or may be deducted from any amount due said member as accrued pay. (1917 c. 200, s. 84; C. S. 6855.)

§ 127-69. Courts of inquiry.—Courts of inquiry in the naval militia shall be instituted, constituted, and conducted in the same manner and shall have like powers and duties as similar courts in the navy of the United States, except that they shall be ordered by the governor. (1917, c. 200, s. 85; C. S. 6856.)

Art. 5. Regulations as to Active Service.

§ 127-70. National guard and naval militia first ordered out.—In all cases the national guard and naval militia as provided for in this chapter shall be first ordered into service. (1917, c. 200, s. 44; C. S. 6857.)

§ 127-71. Regulations enforced on actual service.—Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the articles of war, and articles for the government of the navy, governing the army and navy of the United States, and the regulations prescribed for the army and navy of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such articles of war and articles for the government of the navy are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war and articles for the government of the navy or regulations or laws governing the United States army and navy or the customs and usages thereof; but no punishment under such rules and articles which will extend to the taking of life shall in any case be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the governor to exist, and then only after approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the governor for that purpose. (1917, c. 200, s. 45; C. S. 6858.)

§ 127-72. Regulations governing unorganized militia.—Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia. (1917, c. 200, s. 35; C. S. 6859.)

Art. 6. Unorganized Militia.

§ 127-73. Unorganized militia ordered out for service.—The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the national guard reserve, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall first order out for service the national guard or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their state designations shall not be given to new organizations. (1917, c. 200, s. 46; C. S. 6860.)

§ 127-74. Manner of ordering out unorganized militia.—The governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard or naval militia, or organize them into separate brigades, regiments, battalions, companies, separate corps, batteries, troops, or divisions, as may be best for the service. (1917, c. 200, s. 47; C. S. 6861.)

§ 127-75. Draft of unorganized militia.—If the unorganized militia is ordered out by draft, the governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same. (1917, c. 200, s. 48; C. S. 6862.)

§ 127-76. Punishment for failure to appear.—Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine. (1917, c. 200, s. 49; C. S. 6863.)

§ 127-77. Promotion of marksmanship. — The adjutant general is authorized to detail a commissioned officer of the North Carolina national guard or member of the unorganized militia to promote rifle marksmanship among the unorganized militia of the state. Such officer or member of the unorganized militia so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under such rules and regulations as the adjutant general shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the national Rifle Association. Provided, that such duties and efforts shall in no wise interfere or conflict with clubs of schools or in no wise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of army instructors.

The adjutant general may reimburse the officer, or member of the unorganized militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the amount appropriated for such purpose by the General Assembly. (1937, c. 449.)

Art. 7. Pay of Militia.

§ 127-78. Rations and pay on service.—The militia of the state, both officers and enlisted men, when called into the service of the state, shall be rationed and receive the same pay as when called into the service of the United States. When called in aid of the civil authorities, enlisted men shall receive in addition to such pay the sum of one ($1.00) dollar per day. (Rev., s. 4856; Code, s. 3248; R. C., c. 70, s. 84; 1813, c. 850, s. 5; 1907, c. 316; 1917, c. 200, s. 50; 1935, c. 452; C. S. 6864.)

Cross Reference.—As to National Guardsmen coming within the Workmen's Compensation Act when on duty, see note to § 127-102.

Editor's Note.—By the amendment of 1935 the fee was increased from sixty cents to one dollar per day.

§ 127-79. Rate of pay for service.—The governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of

such officer and enlisted man shall be paid out of the appropriations made to the adjutant general's department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular army or navy; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed actual expenses and four dollars per diem for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the state as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; 1935, c. 451; C. S. 6865.)

Editor's Note. — The next to the last sentence of this section was inserted by the amendment of 1935.

§ 127-80. Paid by the state.—When the militia or any portion thereof shall be called into service to execute the law, suppress riots or insurrections, and to repel invasions, the pay, subsistence, transportation, and other necessary expenses incident thereto shall be paid by the state treasurer, upon the approval of the governor and warrant of the auditor. (1917, c. 200, s. 52; C. S. 6866.)

Editor's Note.—In the case of Worth v. Commissioners, 118 N. C. 112, 24 S. E. 778 it was held in construing the prior law that the state should pay the cost of a militia when it is called out by the governor to aid a sheriff in executing a writ of possession; Clark and Montgomery J. dissenting on the grounds that the county should pay the expense as it was for the county, and the rest of the state should not have to pay for the privilege of serving the county. In the earlier case of Commissioners v. Commissioners, 75 N. C. 240 it was said that a county could not recover back money voluntarily paid for the upkeep of a militia while in its service, although there was no debt, and the county could not have been forced to pay.

§ 127-81. Pay of general and field officers.—General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C. S. 6867.)

§ 127-82. Pay and care of soldiers injured in service.—A member of the national guard and naval militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while in line of duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual necessary expenses for care and medicine and medical attendance, to be paid out of the contingency and emergency fund, or such other fund as may be designated by law. (1917, c. 200, s. 54; C. S. 6868.)

Art. 8. Privilege of Organized Militia.

§ 127-83. Leaves of absence for state officers and employees.—All officers and employees of the state who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the president of the United States. (1917, c. 200, s. 88; 1937, c. 224, s. 1; C. S. 6869.)

Editor's Note.—The 1937 amendment made this section applicable to the officers reserve corps, the enlisted reserve corps and the naval reserves.

§ 127-84. Contributing members.—Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership, which certificate shall exempt the holder from jury duty. (1917, c. 200, s. 90; C. S. 6871.)

Cross References.—For section exempting active members of the National Guard, Naval Militia, Officers Reserve Corps, Enlisted Reserve Corps, and Naval Reserve from jury duty, see § 9-19. As to provisions of the section not being applicable to personnel and units of state guard, see § 127-111, subsection 6.

§ 127-85. Organizations may own property; actions.—Organizations of the national guard and naval militia shall have the right to own and keep real and personal property, which shall belong to and be under the control of the members of the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the state having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (1917, c. 200, s. 92; C. S. 6872.)

Cross Reference.—As to provisions of this section not being applicable to personnel and units of state guard, see § 127-111, subsection 6.

§ 127-86. When families of soldiers supported by county.—When any citizen of the state is absent on duty as a member of the national guard or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1917, c. 200, s. 93; C. S. 6873.)

Art. 9. Care of Military Property.

§ 127-87. Custody of military property.—All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody,

except as above specified. (1917, c. 200, s. 38; C. S. 6874.)

§ 127-88. Property deposited in arsenal.—All the public arms of every description which may not be distributed among the militia according to law shall be deposited and kept in the public arsenal established at Raleigh. (1917, c. 200, s. 39; C. S. 6875.)

§ 127-89. Arsenal provided.—The board of public buildings and grounds shall provide a suitable building for an arsenal for the storage of military and other property. (1917, c. 200, s. 96; C. S. 6876.)

§ 127-90. Property kept in good order.—Every noncommissioned officer and private belonging to any company equipped with public arms shall keep and preserve his arms and accoutrements in good order and in a soldierly manner; and for every neglect to do so may be punished as a court-martial may direct. (1917, c. 200, s. 40; C. S. 6877.)

§ 127-91. Horses and vehicles used only for military purposes.—Horses, motor trucks, and other vehicles issued by the secretary of war to the national guard shall be used solely for military purposes. Necessary expense in maintaining such horses, trucks, or vehicles, not provided for by the federal government to include stables, storage, and other incidental expenses, shall be a proper charge against funds appropriated for the national guard: Provided, such expense shall be specifically authorized by the governor and certified to by the adjutant general. (1917, c. 200, s. 41; 1921, c. 120, s. 9; C. S. 6878.)

§ 127-92. Transfer of property.—All officers accountable or responsible for public funds, property, or books, before being relieved from the duty shall turn over the same according to the regulations prescribed by the governor. (1917, c. 200, s. 42; C. S. 6879.)

§ 127-93. Replacement of lost or damaged property.—Whenever any military property issued to the militia of the state shall have been lost, damaged, or destroyed, and upon report of a disinterested survey officer of the regular army, navy or the militia it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable and responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and state funds at any time accruing may be stopped and applied to the payment of any such indebtedness until the same is discharged. In addition thereto any officer accountable or responsible for military property shall be liable on his bond to the state and the property and disbursing officer or accounting officer for any lost, damaged, or destroyed property for which he is accountable or responsible. (1917, c. 200, s. 43; C. S. 6880.)

§ 127-94. Injuring military property.—If any person shall wantonly or wilfully injure or destroy any arms, equipment, or other military property of the state, and refuse to make good such injury or loss, or shall sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than one hundred dollars or imprisoned not more than six months, or both. (Rev., s. 3536; Code, s. 3274; 1876-7, c. 272, s. 19; C. S. 6881.)

§ 127-95. Member of national guard failing to return property.—If any member of the North Carolina national guard shall wilfully fail to return any property of the state or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3537; C. S. 6882.)

§ 127-96. Selling accoutrements.—If any person shall sell, dispose of, pawn or pledge, destroy or injure, or wilfully retain after demand made, any public property issued for the purpose of arming or equipping the National Guard or militia of the state, he shall be guilty of a misdemeanor. (Rev., s. 3541; Code, s. 3274; 1893, c. 374, s. 30; C. S. 6883.)

§ 127-97. Selling public arms.—If any person to whom shall be confided public arms or accoutrements shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor. (Rev., s. 3542; Code, s. 3556; R. C., c. 89, s. 8; 1831, c. 45, s. 5; C. S. 6884.)

§ 127-98. Refusing to deliver public arms on demand.—Every commissioned officer of the militia, whenever and wherever he shall see or learn that any of the arms or accoutrements or other military property belonging to the state is in the possession of any person other than in whose hands they may be placed for safekeeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer he shall be guilty in like manner, and punished in like manner as for selling or embezzling public arms. (Rev., s. 3540; Code, s. 3558; R. C., c. 89, s. 10; 1831, c. 45, s. 7; C. S. 6885.)

§ 127-99. Expenses of shipping and handling military property.—The freight charges and expenses of packing and handling military property and equipment for shipping to and from the state arsenal shall be paid from funds appropriated to the Adjutant General's department. (1917, c. 200, s. 95; C. S. 6886.)

Art. 10. Support of Militia.

§ 127-100. Requisition for federal funds.—The governor shall make requisition upon the secretary of war for such state allotment from federal funds as may be necessary for the support of the militia. (1917, c. 200, s. 23; 1921, c. 120, s. 10; C. S. 6887.)

§ 127-101. County appropriations.—The county commissioners may appropriate such sums of money to the various organizations of the national guard or naval militia in their counties and at such times as the board may deem proper. (1917, c. 200, s. 91; C. S. 6888.)

§ 127-102. Allowances made to different organizations.—There shall be allowed each year actual

expenses to the following Field Officers for the maintenance of their respective Headquarters, including rent, light, heat, postage, stationery, printing, and other necessary expenses and to the Commanding Officers of Companies, Batteries, Troops, and Detachments, and to Staff Officers, all in accordance with rules and regulations prescribed by the Adjutant General, as follows: To Brigade and Regimental Commanders, not to exceed two hundred and twenty-five dollars ($225); to Commanding Officers of separate Battalions, Squadrons, or similar organizations, not to exceed one hundred and twenty-five dollars ($125); to Commanding Officers of Battalions, Squadrons, or similar organizations being a part of the regiment, not to exceed one hundred dollars ($100); to the Commanding Officers of Companies, Batteries, Troops, Detachments and similar units, not to exceed two hundred dollars ($200); to Lieutenants serving with units, not to exceed one hundred dollars ($100); to Regimental Adjutants, Plans and Training Officers, and Adjutants of separate Battalions, Squadrons, and similar organizations, not to exceed one hundred dollars ($100).

There shall be allowed annually to each Company, Battery, Troop, and similar organizations federally recognized under regulations prescribed by the War Department in its Tables of Organization for the National Guard, not to exceed the sum of six hundred dollars ($600), to be applied to the payment of armory rent, heat, light, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the Adjutant General.

There shall be allowed annually to the supply sergeant of each Company, Battery, and Troop, and to a petty officer of each division of Naval Militia, Aeronautic Section, and to supply sergeants of similar units, the sum of one hundred dollars. There shall be paid monthly to stable sergeants the sum of fifteen dollars, and to horseshoers ten dollars, of units entitled to and actually having animals to care for.

Each enlisted man belonging to an organization of the National Guard shall receive fifty cents as compensation for each armory drill, not exceeding sixty (60) drills per annum, ordered for his organization, where he is officially present and in which he participates, the said compensation to be paid in the same manner and under such laws and regulations as now or hereafter may be prescribed by the United States Government or by the War Department therefor for pay for National Guard enlisted men: And provided further, that the appropriation made by the State of North Carolina for the support of the National Guard is sufficient, after the payment of other necessary expenses of maintaining said guard, to make such payment.

All payments are to be made by the State disbursing officer in semi-annual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and has pursued such course of instruction as may from time to time be required.

The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations. (1917, c. 200, s. 97; 1919, c. 311; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; C. S. 6889.)

Cross Reference.—As to provisions of this section not being applicable to personnel and units of state guard, see § 127-111, subsection 6.

Enlisted Man within Workmen's Compensation Act.—By this and § 127-78 the State has provided for payment in a certain manner to privates who have enlisted in the North Carolina National Guard, and a private therein who has taken the prescribed oath is an employee of the State within the meaning of the Workmen's Compensation Act, and where he has sustained an injury arising out of and in the course of the performance of his duties as an enlisted man he is entitled to the compensation prescribed by the statute. Baker v. State, 200 N. C. 232, 156 S. E. 917.

Art. 11. General Provisions.

§ 127-103. Reports of officers.—All officers of the national guard and the naval militia shall make such returns and reports to the governor, secretary of war, secretary of the navy, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed. (1917, c. 200, s. 21; C. S. 6890.)

§ 127-104. Officer to give notice of absence.—When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications. (1917, c. 200, s. 22; C. S. 6891.)

§ 127-105. Articles of war applicable in time of peace.—The national guard and naval militia, when not in the service of the United States, shall, except as to punishments, be governed respectively by the United States army regulations and articles of war, and the navy regulations and articles for the government of the navy. (1917, c. 200, s. 34; C. S. 6892.)

§ 127-106. Commanding officer may prevent trespass and disorder.—The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place devoted to such duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may pre-

scribe. And he may in his discretion abate as common nuisance all such sales. (1917, c. 200, s. 94; C. S. 6893.)

§ 127-107. Organizing company without authority.—If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the state, or shall exercise or attempt to exercise the power or authority of a military officer in this state, without holding a commission from the governor, he shall be guilty of a misdemeanor. (Rev., s. 3538; 1893, c. 374, s. 38; C. S. 6894.)

§ 127-108. Placing name on muster roll wrongfully.—If any officer of the militia of the state shall knowingly or wilfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor. (Rev., s. 3539; 1893, c. 374, s. 33; C. S. 6895.)

§ 127-109. Protection of the uniform.—It shall be unlawful for any person not an officer or enlisted man in the United States army, navy, or marine corps to wear the duly prescribed uniform of the United States army, navy, or marine corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States army, navy, or marine corps: Provided, that the foregoing provisions shall not be construed so as to prevent officers or enlisted men of the national guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the national guard; nor to prevent members of the organization known as the Boy Scouts of America, or the naval militia, or such other organizations as the secretary of war may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States army, navy, or marine corps, regular or volunteer, and whose most recent service was terminated by an honorable discharge, mustered out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such regular or volunteer sevice; nor to prevent any person who has been honorably discharged from the United States army, navy, or marine corps, regular or volunteers, from wearing his uniform from the place of his discharge to his home within three months after his discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers and enlisted men, or both, of the United States army, navy or marine corps, regular or volunteers, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a state university, state college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of a duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States army, navy, or marine corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States army, navy, or marine corps, in any playhouse or theater, or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States army, navy, or marine corps: Provided further, that the uniform worn by officers or enlisted men of the national guard, or by the members of the military societies, or the instructors and members of the cadet corps referred to in the preceding proviso, shall include some distinctive mark or insignia to be prescribed by the secretary of war to distinguish such uniforms from the uniforms of the United States army, navy, or marine corps; and provided further, that the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the United States army, navy, or marine corps, or any insignia of rank similar thereto. Any person who offends against the provisions of this section, shall on conviction, be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. (1921, c. 120, s. 12; C. S. 6895(a).)

§ 127-110. Upkeep of camps.—There shall be paid from the appropriations from the national guard such amounts as may be necessary for the maintenance, upkeep, and improvement of the state camp or camps: Provided, such expenditures shall be approved and authorized by the governor. (1921, c. 120, s. 13; C. S. 6895(b).)

Art. 12. State Guard.

§ 127-111. Authority to organize and maintain state guard of North Carolina.

1. Whenever the president of the United States shall order or call all or any part of the national guard of the state into active federal service, the governor is authorized, subject to such regulations as the secretary of war may prescribe, to organize such part of the unorganized militia as a state force, for discipline and training, into companies, battalions, or regiments, as may be deemed necessary for the defense of the state; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be

hereafter provided by the state laws for the national guard; to train such force in accordance with training regulations issued by the war department. Such military force to be subject to the call or order of the governor to execute the law, suppress riots or insurrections, or to repel invasion, as is now or may hereafter be provided by law for the national guard and for the unorganized militia. Units of the state guard will be disbanded upon return of the national guard to state control, or as soon thereafter as practical.

2. Such military force shall be designated as the "North Carolina state guard" and shall be composed of men of the unorganized militia as shall volunteer for service therein, or as shall be drafted as provided by law. Membership in the North Carolina state guard shall be open to men of not less than eighteen and not more than fifty years of age. They shall be additional to and distinct from the national guard organized under existing law. They shall not be required to serve outside the boundaries of this state.

3. The governor is hereby authorized to prescribe the rules and regulations governing the appointment of officers, the enlistment of men, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the secretary of war such arms and equipment as may be in possession of and can be spared by the war department, and to extend thereto the facilities of available armories and their equipment and such state premises and property as may be available for the purpose of drill and instruction.

4. Such force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his membership in any such unit or organization be exempted from military service under any federal law.

5. The governor is hereby authorized to appropriate to the benefit of the state guard any and all unexpended monies found by the governor to be unnecessary for use of the national guard in the appropriation made to the national guard by the general assembly, for the present or for subsequent fiscal years and, if necessary, to make allotment of monies from the contingent and emergency fund with the concurrence of the council of state. Upon the disbandment of the state guard any monies or balance to the credit of the units of this organization shall be paid into the state treasury for the benefit of the national guard, and all property, clothing, and equipment belonging to the state shall be transferred to the account of the national guard for disposition in accordance with the best interests of the state and as deemed advisable by the governor. Upon the disbandment of any one or more units of the state guard on a date prior to the disbandment of the entire organization, the governor is authorized to have transferred any state property or balance of funds of said disbanded units to any new unit or units organized to fill such vacancies, or otherwise as the governor may direct.

6. The North Carolina state guard shall be subject to the military laws of the state not inconsistent with or contrary to the provisions contained in this article with the following exceptions:

The provisions of §§ 9-19, 127-84, 127-85 and 127-102, as amended, shall not be applicable to the personnel and units of the state guard.

7. (a) There shall be allowed annually to each unit or company of the state guard such funds as may be necessary to be applied to the payment of armory rent, heat, light, stationery, printing, and other expenses. The allowance to each unit annually will not exceed $600.00.

(b) All payments are to be made by the adjutant general in accordance with state laws in semi-annual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named.

(c) The commanding officer of all organizations participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of their respective organizations in such manner and on such forms as may be prescribed by the adjutant general. Failure on the part of any officer to submit promptly, when due, the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations. (1941, c. 43; 1943, c. 166.)

Editor's Note.—The 1943 amendment inserted the second sentence of paragraph 2.

Chapter 128. Offices and Public Officers.

Art. 1. General Provisions.

Art. 2. Removal of Unfit Officers.

Art. 1. General Provisions.

§ 128-1. No person shall hold more than one office.—No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly; Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes. (Rev., s. 2364; Const., Art. XIV, s. 7; C. S. 3200.)

Cross References.

As to constitutional inhibition against double office holding, see N. C. Const., Art. XIV, s. 7. As to right of citizens and tax-payers of a county to bring an action in the nature of quo warranto to try the right of a person to hold two offices in such county at the same time, see annotation under § 1-515.

I. EDITOR'S NOTE.

Editor's Note.—The celebrated case of Hoke v. Henderson, 15 N. C. 1, 2, was decided in the December Term, 1833. In that case the court held that a public office constitutes a species of private property based upon a contract between the officer and the State, and while the Legislature has the power, as the mere incident of a general law, to abolish offices as useless, it can not retain the office and deprive the officer of his property therein. Thus the status of a public office was established as a vested right. This decision and approximately forty cases following it form a part of our legal history, and are justly famous in the judicial annals of North Carolina, hence it is unnecessary to refer directly to each individual case in this note. Around the principle thus enunciated raged one of the fiercest battles of legal arguments within the experience of the bar of this State.

The struggle began with the decision of Hoke v. Henderson, supra, and extended over a period of more than seventy years, flaring up with particular heat in 1870, 1898 and 1903. It was finally in 1903 that the court by a three to two decision overruled Hoke v. Henderson, supra, in Mial v. Ellington, 134 N. C. 131, 46 S. E. 961. In the words of Mr. Justice Connor at page 162, "To conclude the matter, the doctrine of Hoke v. Henderson is based upon the proposition that a public office is private property, with all the results that logically flow therefrom. In so far as that case holds this proposition to be law, we expressly overrule it and declare that no officer can have a property in the sovereignty of the State; that in respect to offices created and provided for by the Constitution, the people in convention assembled alone can alter, change their tenure, duties or emoluments, or abolish them; that in respect to legislative offices, it is entirely within the power of the Legislature to deal with them as public policy may suggest and public interest may demand."

When Hoke v. Henderson was decided, the Supreme Court of the United States had not then held, as it soon afterwards did, in Butler v. Pennsylvania, 10 Howard 402, 416, 13 L. Ed. 472, that an office was not a contract and not protected by the contract clause of the Federal Constitution. That court has maintained that doctrine with uniformity ever since notably in Newton v. Commissioners, 100 U. S. 548, 25 L. Ed. 710; Blake v. United States, 103 U. S. 227, 26 L. Ed. 462; Crenshaw v. United States, 134 U. S. 99, 10 S. Ct. 431, 33 L. Ed. 825; Taylor v. Beckham, 178 U. S. 548, 577, 20 S. Ct. 890, 1009, 44 L. Ed. 1187. Mr. Chief Justice Clark, in his concurring opinion in Mial v. Ellington, 134 N. C. 131, 165, 46 S. E. 961, ventures the opinion that, "Had those decisions, or any one of them, been rendered in 1833, it is quite certain Hoke v. Henderson would have been decided the other way, for the construction placed by the United States Supreme Court upon any clause of the Federal Constitution is conclusive upon all courts." It is interesting to note that Montgomery, J., in his dissenting opinion in Mial v. Ellington frankly admits that "it may be taken as true that the Supreme Court of North Carolina is the only court, State or Federal, which has held that a legislative office is property; that it is held by contract between the State and the officer, and that the officer can be deprived of his office by judicial determination only." And Mr. Justice Douglas, also dissenting, fails to name a single case outside of North Carolina holding with Hoke v. Henderson.

The case was decided at a time when the American political spirit was still in its most formative years. We had hardly learned to stand without leaning heavily upon English institutions and customs. It was customary to cling to or adopt English political ideas, unless conditions clearly indicated the inadvisability of so doing. The question in Hoke v. Henderson was one of first impression in any American court. It was quite natural that the famous court of that day, learned in English Law, should have decided as they did. Neither is it to be doubted that the high esteem in which that great court, composed of Ruffin, C. J., Gaston, J., and Daniel, J., is, and has always been, held by the courts of the State, was a great influence in upholding the decision in Hoke v. Henderson. However, at the dawn of the twentieth century, the principle, being so clearly out of harmony with the American political ideas, was at last forced to yield in the name of democratic progress. For, as Mr. Justice Connor points out in his opinion in Mial v. Ellington, supra, if it be held that a public office is private property, "the State instead of being sovereign, finds herself, in her efforts to perform her governmental functions, bereft of her sovereignty, her hands tied, her progress obstructed, for those whom she has commissioned to be her servants have, by grants of parts and parcels of her sovereignty, become her masters, and, connecting her commissions into grants, forbid her to proceed or go forward."

II. GENERAL CONSIDERATIONS.

One man may not hold two offices. Dowtin v. Beardsley, 126 N. C. 119, 35 S. E. 241.

Statute held unconstitutional as requiring the same person to fill two public offices in violation of this section. Brigman v. Baley, 213 N. C. 119, 195 S. E. 617.

At common law there was no limit on the right of a citizen to hold several offices, except the incompatibility of the duties of the several offices, and much learning was invoked in England and in this country on the question of "incompatibility." Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720, 721.

Under Constitution.—The question in this State does not turn upon the incompatibility of the duties of the two offices alone, as it did at common law, but upon the plain positive language of the Constitution. Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554; Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720, 722.

Under art. 14, § 7, providing that no person who shall hold any office or place of trust or profit under the United States or any department thereof or under the State, etc., shall hold or exercise any other office or place of trust or profit under the authority of the State, an office or place of trust is a public position, involving a delegation to the individual of some part of the sovereign functions of the government to be exercised for the public benefit. State v. Smith, 145 N. C. 476, 59 S. E. 649.

Office Vacated Ipso Facto.—The acceptance of a second office by one already holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which of the two he will retain, his election is deemed to be made when he accepts and qualifies for the second. State v. Thompson, 122 N. C. 493, 29 S. E. 720.

Necessity of Taking Oath.—The taking of an oath of office is not an indispensable criterion, for the office may exist without it. State v. Stanley, 66 N. C. 60; State v. Patrick, 124 N. C. 651, 33 S. E. 151, 153.

Power of the Legislature.—The Legislature may reduce or increase the salaries of such officers as are not protected by the constitution during their term of office, but can not deprive them of the whole. Cotten v. Ellis, 52 N. C. 545. This case is evidently following Hoke v. Henderson, 15 N. C. 1, which was overruled by Mial v. Ellington, 134 N. C. 131, 46 S. E. 961. For a complete discussion of this line of cases, see Editor's Note, supra.

Although an office is a constitutional one, the Legislature may, within reasonable limits, change the statutory duties and diminish the emoluments of such office, if the public welfare requires it. Fortune v. Board, 140 N. C. 322, 52 S. E. 950; Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269.

The Legislature may attach additional duties to an existing office, and it may afterwards lop off those duties and assign them to a new office, leaving the original office as it was before the additional duties were attached to it. Dowtin v. Beardsley, 126 N. C. 119, 35 S. E. 241. As to power of Legislature to wholly abolish an office, or to transfer its duties, see Editor's Note, supra.

Manner of Appointment.—Where officers have to be appointed to fill a regular term, the Governor nominates to the Senate, unless it be an officer who is elected by the people, and then he fills the vacancy or term until the people can elect his successor. People v. McIver, 68 N. C. 467. See also, People v. Bledsoe, 68 N. C. 457; People v. McKee, 68 N. C. 429.

Authority to Suspend or Remove.—The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests, in the absence of provisions to the contrary, in the body possessing the original power of appointment. Greene v. Owen, 125 N. C. 212, 34 S. E. 424.

By Consolidation.—Offices whose duties are congruous may be consolidated; but it is just, in cases of consolidation of offices, to postpone the operation of the law until a vacancy appears in the office whose duties are to be transferred. Troy v. Wooten, 32 N. C. 377.

III. DISTINGUISHING CHARACTERISTICS.

Definition.—Public office is tenure by virtue of an appointment, conferred by public authority. Willis v. Melvin, 53 N. C. 62, 63.

The term embraces the ideas of tenure, duration, emolument and duties. United States v. Hartwell, 6 Wall. 385, 393, 18 L. Ed. 830; State v. Patrick, 124 N. C. 651, 662, 33 S. E. 151.

Same—Portion of Sovereignty Attaches.—An office or place of trust requiring a proceeding by quo warranto for the motion of the incumbent is defined as follows: "A public position to which a portion of the sovereignty of the country, either legislative, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public." High Ex. Leg. Rem., sec. 620; Mechem Pub. Off., sec. 1; State v. Smith, 145 N. C. 476, 477, 59 S. E. 649.

Same—Agency from State.—A public office is an agency from the State, and the person whose duty it is to perform this agency is a public officer. State Prison v. Day, 124 N. C. 362, 32 S. E. 748.

Same—Same—Essence of Duty.—This is considered to be the true definition of a public officer in its original, broad sense. The essence of it is the duty of performing an agency, that is, of doing some act or acts or series of acts for the State. State v. Stanley, 66 N. C. 60, 63.

Same—Authority to Appoint.—If a person is authorized to appoint to an office, this duty of itself constitutes him a public officer. State v. Stanley, 66 N. C. 60, 8 Am. Rep. 488, citing Hoke v. Henderson, 15 N. C. 1, 12, cited in notes in 17 L. R. A. 243, 244, 247, 249; State v. Tate, 68 N. C. 546, cited in note in 17 L. R. A. 247.

Same—Combination of Duty and Agency.—In the textbooks it is taught that the word office in its primary signification implies a duty or duties—the agency from the State to perform the duties. The duties of the office are of first consequence, and the agency from the State to perform those duties is the next step in the creation of an office. It is the union of the two factors, duty and agency, which makes the office. State Prison v. Day, 124 N. C. 362, 368, 32 S. E. 748, 46 L. R. A. 295.

Mere Addition of Duties.—An act which merely attaches new duties to existing offices does not create a new office. McCullers v. Board, 158 N. C. 75, 82, 73 S. E. 816.

Distinguished from a Public Agency.—The most important characteristic which distinguishes an office from a public agency is that the conferring of the office carries with it a delegation to the individual of some of the sovereign functions of the government. In this respect the terms "office" and "place of trust" as used in our Constitution are synonymous. Doyle v. Raleigh, 89 N. C. 133, 136, 45 Am. Rep. 677; Barnhill v. Thompson, 122 N. C. 493, 495, 29 S. E. 720; State v. Smith, 145 N. C. 476, 59 S. E. 649, 650.

It is an administrative agency or public employment, and, as was said by Chief Justice Marshall, "although an office is an employment, it does not follow that every employment is an office." United States v. Maurice, Fed. Cas. No. 15747, 2 Brock. (U. S. C. C.), 96; State v. Smith, 145 N. C. 476, 478, 59 S. E. 649.

Distinguished from Placemen.—The distinction between officers and placemen is that the former are required to take an oath to support the Constitutions of the State and of the United States; whilst the latter are not. Worthy v. Barrett, 63 N. C. 199.

Distinguished from Employment and Contract.—An "office" is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from "employment" or "contract." Mech. Pub. Off. secs. 1, 4; Eliason v. Coleman, 86 N. C. 236. A public office is an agency for the state. State v. Stanley, 66 N. C. 60; Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720, 721.

IV. GENERAL ILLUSTRATIONS.

The Executive Department is an agency for the State, and the Governor and others, whose duty it is to discharge this agency, are public officers. State v. Stanley, 66 N. C. 60, 64.

The trustees of the University, and the directors of the penitentiary, of the lunatic asylum and of the institution for the deaf, dumb and blind, are public officers. People v. McKee, 68 N. C. 429; People v. Bledsoe, 68 N. C. 457, cited in notes in 17 L. R. A. 243, 246; People v. Johnson, 68 N. C. 471; People v. McGowan, 68 N. C. 520.

The position of public administrator is a mere administrative agency, and not an office or place of trust, within the Const. Art. 14, sec. 7, prohibiting a person from filling two or more offices or places of trust under the federal, State, or county government at the same time. State v. Smith, 145 N. C. 476, 59 S. E. 649.

Legislative Members.—Mr. Justice Reade declares that "members of the Legislature are not officers. Theirs are places of trust and profit, but not offices of trust and profit." Worthy v. Barrett, 63 N. C. 199; Doyle v. Raleigh, 89 N. C. 133, 136. But see the two following notes.

The Legislative Department is an agency for the State, and the members of the Senate and of the House of representatives are public officers. State v. Stanley, 66 N. C. 60, 64. This case and the next preceding one are to be considered in the light of the explanation given in the next succeeding note. Ed. Note.

In State v. Stanley, 66 N. C. 60, 65, Pearson, C. J., says: "The distinction between Worthy v. Barrett (supra) is this: Here we are treating the terms 'public offices and public officers' in the broad, original, legal sense in which these terms are used in the Constitution of the State; there we were treating the terms in the restricted sense in which

they are used in Article XIV of the Amendment of the Constitution of the United States."

Judges.—The judicial department is an agency for the State, and the judges are public officers. State v. Stanley, 66 N. C. 60, 64.

Federal Attorney Acting as Solicitor.—The appointment by the judge of the United States District Attorney to act temporarily for the absent solicitor in the prosecution of a criminal action in the State court, does not come within the inhibition of our Constitution, Art. XIV, sec. 7, as to holding two offices at the same time. State v. Wood, 175 N. C. 809, 95 S. E. 1050.

A clerk of the court is a public officer. Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139.

Deputy clerk and justice of the peace under Acts 1808, c. 12, sec. 3, declares the appointment of deputy clerk of the county court to be incompatible with the office of a justice of the peace. Wardens v. Sneed, 5 N. C. 485.

A town clerk is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

A recorder is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

Under Const. Art. 14, sec. 7, excepting a justice of the peace from the inhibition against one holding two offices of trust or profit, one may be both a justice of the peace and the recorder of a city recorder's court. State v. Lord, 145 N. C. 479, 59 S. E. 656.

A clerk of the peace is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

A constable is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

State Printer.—Under Acts 1869-70, c. 43, abolishing this office of State printer, and Acts 1871-72, c. 180, providing for the letting of the State printing by contract, the position of State printer is not a public office. Brown v. Turner, 70 N. C. 93, cited in note in 17 L. R. A. 248.

Clerk of City Works. — It has even been held that a clerk of the city works is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

The office of the superintendent of the State's prison, with its attendant duties, is a public office. State v. Stanley, 66 N. C. 60; Hoke v. Henderson, 15 N. C. 1; Wood v. Bellamy, 120 N. C. 212, 27 S. E. 113; State Prison v. Day, 124 N. C. 362, 32 S. E. 748, 749.

That the members of the county board of education are public officers is expressly held in Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720. Greene v. Owen, 125 N. C. 212, 34 S. E. 424, 426.

Member of Board of Health.—Laws 1911, c. 62, sec. 9, relating to boards of health, held not to violate Const. Art. 14, sec. 7, forbidding the holding of two offices by one person. McCullers v. Board, 158 N. C. 75, 73 S. E. 816.

The office of brigadier general under the Confederate States was held to be incompatible with that of adjutant general of the State of North Carolina, and the acceptance of the former office was held to vacate the latter which was held at the time of such acceptance. In the Matter of Martin, 60 N. C. 153, in the appendix. But it is now customary for the adjutant general of a state to hold a commission as brigadier general from the Federal government.—Ed. note.

The office of chief inspector of the shell fish commission is a public office. White v. Hill, 125 N. C. 194, 34 S. E. 432.

The place of chief engineer of the W. N. C. R. R. is not a public office. The true test of a public office is that it is parcel of the administration of government, or is itself directly created by the law-making power. Eliason v. Coleman, 86 N. C. 236.

Sexton.—It has even been held that a sexton is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436.

Performance of Duties after End of Term.—Where the statute imposes certain duties to be performed by an officer after the expiration of the term of office, their performance does not constitute a place or office of trust or profit so as to disqualify the former officer from holding another office at the same time. State v. Somers, 96 N. C. 467, 2 S. E. 161.

§ 128-2. Holding office contrary to the constitution; penalty.—If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the general assembly, contrary to the seventh section of the fourteenth article of the constitution of the state, he shall forfeit and pay two hundred dollars to any person who will sue for the same. Provided, such action shall not be brought or maintained by any person who is not a bona fide resident of the same county in which the defendant resides. (Rev., s. 2365; Code, s. 1870; R. C. c. 77, s. 1; 1790, c. 319; 1792, c. 366; 1793, c. 393; 1796, c. 450; 1811, c. 811; Ex. Sess. 1924, c. 110; C. S. 3201.)

Cross Reference.—As to parties to suits for penalties, see § 1-58.

Editor's Note.—This section was amended by chapter 110, Laws 1924, by adding thereunto the proviso restricting the right of action to residents of the county in which the defendant resides.

§ 128-3. Bargains for office void.—All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (Rev., s. 2366; Code, s. 1871; R. C., c. 77, s. 2; 5 and 6 Edw. VI, c. 16, s. 3; C. S. 3202.)

Section 162-24 prohibits a sheriff from letting to farm, in any manner, his county, or any part of it. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683.

Theory of Appointments.—Ames, C. J., says in Eddy v. Capron, 67 Am. Dec. 541: "By the theory of our government, appointments to office are presumed to be made solely upon the principle detur digniori, and any practice whereby the bare consideration of money is brought to bear in any form upon such appointments to or resignation of office conflicts with and degrades this great principle. The services performed under such appointments are paid for by salary or fees, presumed to be adjusted at the point of adequate remuneration only. Any premium paid to obtain office interferes with this adjustment and tempts to speculation, overcharges and frauds in the effort to restore the balance thus disturbed." Quoted with approval in Basket v. Moss, 115 N. C. 448, 458, 20 S. E. 733.

The public has a right to some better test of the capacity of their servants than the fact that they possess the means of purchasing their offices. Basket v. Moss, 115 N. C. 448, 457, 20 S. E. 733.

Agreements Void.—Public offices are public trusts, and should be conferred solely upon considerations of ability, integrity, fidelity and fitness for the position. Agreements for compensation to procure these tend directly and necessarily to lower the character of the appointments, to the great detriment of the public. Hence, such agreements, of whatever nature, have always been held void as being against public policy. Basket v. Moss, 115 N. C. 448, 457, 20 S. E. 733.

Contracts to procure appointments to an office (Mechem on Public Officers, sec. 351), or to resign an office in another's favor are void. Meacham v. Dow, 32 Vt. 721; Gracone v. Wroughton, 11 Exch. 146; Basket v. Moss, 115 N. C. 448, 457, 20 S. E. 733.

Same—Common Law.—Such agreements are void at common law, as well as by statute. Basket v. Moss, 115 N. C. 448, 457, 20 S. E. 733.

Same—Federal Offices.—Notwithstanding the office is an office under the United States government, if an action were brought in our courts to recover upon a bond or mortgage given for such consideration, our courts would hold it void. Basket v. Moss, 115 N. C. 448, 457, 20 S. E. 733.

§ 128-4. Receiving compensation of subordinates for appointment or retention; removal.—Any official or employee of this state or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office

by §§ 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2.)

§ 128-5. Oath required before acting; penalty.—Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the state, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (Rev., s. 2367; Code, s. 1873; R. C., c. 77, s. 4; C. S. 3203.)

Office May Exist without Taking of Oath.—The taking of the oath of office is not an indispensable criterion, for the office may exist without it. It is a mere incident, and constitutes no part of the office. State v. Stanley, 66 N. C. 60; Comrs. v. Evans, 74 Penn. St., 124, 139; State v. Patrick, 124 N. C. 651, 662, 33 S. E. 151.

§ 128-6. Persons admitted to office deemed to hold lawfully.—Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Rev., s. 2368; Code, s. 1872; R. C. c. 77, s. 3; 1844, c. 38, s. 2; 1848, c. 64, s. 1; Const., Art. IV, s. 25; C. S. 3204.)

Tabulation by Clerk.—A tabulation of the result of an election by the clerk, in the manner required by law is prima facie correct. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822.

Appointment Biennially.—A proviso for an appointment to office "biennially" ex vi termini, implies a two years' term of office. State v. Patrick, 124 N. C. 651, 33 S. E. 151.

A relator in quo warranto proceedings to try title to office accepts the position that he has been displaced in the office, by the form of action in which he seeks to assert his rights, and may not therein avail himself of the position that under the section, he should have been ousted therefrom by a judicial sentence, under a proper proceeding, etc. State v. Croom, 167 N. C. 223, 83 S. E. 354.

To constitute an officer de facto it is requisite that there be some colorable election or appointment to and induction into the office. Van Amringe v. Taylor, 108 N. C. 196, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202; Burke v. Elliott, 26 N. C. 355, 361; Gilliam v. Reddick, 26 N. C. 368; Burton v. Patton, 47 N. C. 124; Commissioners v. McDaniel, 52 N. C. 107; People v. Staton, 73 N. C. 546; Keeler v. New Bern, 61 N. C. 505; State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247.

The indispensable basis of being a de facto officer is that there is such an office. Meacham Public Offices, sec. 324, and numerous cases there cited; State v. Shuford, 128 N. C. 588, 591, 38 S. E. 808, cited in note in 15 L. R. A., N. S. 102.

Persons who have been regarded as public officers for the greater part of the time during which the office existed, and whose acts are recognized by other public functionaries, must be taken to be officers de facto. Burton v. Patton, 47 N. C. 124, 62 Am. Dec. 194.

An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised (1) without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be; (2) under color of a known and valid appointment or election, but where the officer failed to conform to some precedent requirement or condition, such as taking an oath, giving a bond, or the like; (3) under color of a known election or appointment, void because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; (4) under color of an election or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such. State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247; State v. Taylor, 108 N. C. 196, 12 S. E. 1005; State v. Speaks, 95 N. C. 689; Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976.

Acts of de facto officers, who exercise their office for a considerable length of time, are as effectual when they concern the rights of third persons or the public as if they were officers de jure, but to constitute one an officer de facto there must be an actual exercise of the office and acquiescence of the public authorities long enough to cause, in the mind of the citizen, a strong presumption that the officer was duly appointed. Hughes v. Long, 119 N. C. 52, 25 S. E. 743; Gilliam v. Reddick, 26 N. C. 368; Burke v. Elliott, 26 N. C. 355; State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247.

The acts of one purporting to be an officer are evidence of his authority; and such acts, as to third persons, are to be taken as valid while the incumbent is thus acting. Swindell v. Warden, 52 N. C. 575.

The official acts of persons entering into office under color of an irregular election are of full force until such officers are removed by a proper proceeding. Commissioners v. McDaniel, 52 N. C. 107.

Usurping De Facto and De Jure Officers Distinguished.—A usurper is one who takes possession without any authority. His acts are utterly void, unless he continues to act for so long a time or under such circumstances as to afford a presumption of his right to act. And then his acts are valid as to the public and third persons. But he has no defense in a direct proceeding against himself. A de facto officer is one who goes in under color of authority or who exercises the duties of the office so long or under such circumstances as to raise a presumption of his right; in which cases his necessary official acts are valid as to the public and third persons; but he may be ousted by a direct proceeding. A de jure officer is one who is regularly and lawfully elected or appointed and inducted into office and exercises the duties as his right. All his necessary official acts are valid, and he can not be ousted. The only difference between an officer de facto and an officer de jure is that the former may be ousted in a direct proceeding against him, while the latter cannot be. So far as the public and third persons are concerned, there is no difference whatever. The acts of one have precisely the same force and effect as the acts of the other. People v. Staton, 73 N. C. 546, 550, citing Burke v. Elliott, 26 N. C. 355; Gilliam v. Reddick, 26 N. C. 368; Commissioners v. McDaniel, 52 N. C. 107; Swindell v. Warden, 52 N. C. 575; Keeler v. New Bern, 61 N. C. 505; Culver v. Eggers, 63 N. C. 630; Ellis v. N. C. Institution, 68 N. C. 423.

A mere intruder or usurper is not ordinarily, but may become, an officer de facto in some cases. This can happen only by the continued exercise of the office by him and the acquiescence therein by the public authorities and the public for such length of time as to afford to citizens generally a strong presumption that he had been duly appointed. But when without color of authority he simply assumes to act, to exercise authority as an officer, and the public know the fact, or reasonably ought to know that he is a usurper, his acts are absolutely void for all purposes. The mere fact that, apart from his usurpation, his supposed official acts were fair and honest could not impart to them validity and efficiency. Burke v. Elliott, 26 N. C. 355, 361; State v. Staton, 73 N. C. 546; State v. Taylor, 108 N. C. 196, 202, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202; Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976.

To Try Title—In the Case of Contested Election.—Injunction does not lie to restrain county commissioners from declaring a public office vacant because of an apparent tie vote, where it is an attempt, in effect, to try the title to the office by injunction, which is not permissible. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822.

The erroneous action of the county commissioners, in declaring an office vacant because of an apparent tie vote, and ordering a new election, does not warrant the granting of an injunction to one of the candidates, since the title to the office can be inquired into by quo warranto even after such a new election. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822.

Same—By Incumbent against an Intruder.—Injunction is not the proper method of trying title to an office and it will not lie at the suit of the incumbent of a public office to restrain a claimant of the office from claiming and exercising its powers and duties. Jones v. Commissioners, 77 N. C. 280; Patterson v. Hubbs, 65 N. C. 119.

How Brought.—An action to try the right of an incumbent to any public office, may be brought by the Attorney-

General upon his own information, or upon the complaint of any private party. People v. Hilliard, 72 N. C. 169; People v. Wilson, 72 N. C. 155.

Right of Action.—Any person having a right to an office, can in his own name, bring an action for the purpose of testing his right as against one claiming adversely. Brown v. Turner, 70 N. C. 93.

Notwithstanding the maxim "De minimis non curat lex," a suit will be entertained to determine rights to an office paying only eight dollars a month in addition to board. Greene v. Owen, 125 N. C. 212, 34 S. E. 424.

Pleading—Proceeding in the Nature of Quo Warranto.—Title to a public office can not be tried by motion, but must be determined by a proceeding in the nature of quo warranto. Sneed v. Bullock, 77 N. C. 282, citing Patterson v. Hubbs, 65 N. C. 119; Brown v. Turner, 70 N. C. 93.

Same—As to Necessity of Demand.—No demand is necessary before suing to try the right to an office. Shennonhouse v. Withers, 121 N. C. 376, 28 S. E. 522.

Same—Allegation of Citizenship in Complaint.—Where persons who have been elected and qualified as county commissioners bring an action against persons appointed by the judge of the district, under the provisions of ch. 135, Laws 1895, to try the defendants' title to office, the complaint must allege that the plaintiffs are citizens and tax-payers of the county. Houghtalling v. Taylor, 122 N. C. 141, 29 S. E. 101, citing Hines v. Vann, 118 N. C. 3, 23 S. E. 932; Foard v. Hall, 111 N. C. 369, 16 S. E. 420, and cases there cited.

Conduct of Incumbent as Estoppel to Deny Vacancy.—Where a person had been elected clerk of the superior court, and at the proper time had tendered his bonds, which had been accepted by the court, and he inducted into office, while the former clerk was present in court, cognizant of what was going on, and did not object thereto, but surrendered up the office and records to the new clerk and retired from the performance of the duties of the office for twelve months thereafter: It was held, in an action in the nature of quo warranto, that such conduct in the old clerk amounted to a surrender of his office to the court, and justified the reception and induction into office of the newly elected clerk. Williams v. Somers, 18 N. C. 61.

Same—Estoppel to Deny.—A person who held himself out and who acted as an officer and who signed his name as such, and who in writing resigned the office, is estopped from denying that he accepted the office, and he vacated a prior office filled by him. Midgett v. Gray, 159 N. C. 443, 74 S. E. 1050, reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791.

A person who held himself out and who acted as an officer is estopped to deny his qualification when the acceptance of such office is relied on to vacate a prior office filled by him, and that he was not sworn on the Bible when he qualified for the second office is not available. Midgett v. Gray, 159 N. C. 443, 74 S. E. 1050, reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791; State v. Long, 76 N. C. 254; State v. Cansler, 75 N. C. 442.

§ 128-7. Officer to hold until successor qualified.—All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (Rev., s. 2368; Code, s. 1872; R. C., c. 77, s. 3; 1848, c. 64, s. 2; C. S. 3205.)

Holding over after Expiration of Term.—An officer elected by the people, holding over his regular term on failure of his successor to qualify, holds over until the place is filled at the next general election, under Const. Art. 3, §§ 1, 13. People v. McIver, 68 N. C. 467, cited in note in 50 L. R. A., N. S., 376.

Where an officer has been inducted into his office before the beginning of the term for which he was re-elected, one who is appointed to fill the vacancy, caused by his death before that term begins, holds only until the expiration of the first term. State v. Smith, 81 N. C. 304, cited in notes in 14 L. R. A. 858; 50 L. R. A., N. S., 380.

Term of Appointee of Judge.—In case of a vacancy in the office of the clerk of the superior court the appointee of the judge holds only until the next election at which members of the General Assembly are chosen. Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319.

Status of Officer Holding over—De Jure.—Whether regarded as a part of an original term or a new and conditional one by virtue of the statute, the holders are regarded as officers de jure until their successors have been lawfully elected or appointed and have properly qualified. State v. Simpson, 175 N. C. 135, 95 S. E. 106.

Same—De Facto.—Where a clerk of the superior court held over in office until his successor qualified, he was at least clerk de facto; his acts can not be collaterally impeached, and are valid as to third parties. Threadgill v. Carolina Cent. R. Co., 73 N. C. 178. It would seem that the rule now is, as laid down in the preceding case, to consider such an officer an officer de jure.

When Legislature Presumed to Acquiesce in Continuation in Office.—The general assembly having failed to appoint or provide for the election of successors to the highway and sinking fund commissioners of Madison County, who were appointed for a four or six-year term by ch. 341, Public-Local Laws of 1931, the general assembly is presumed to acquiesce in their continuance in office, and the general assembly having power to terminate, change or continue the appointments, it will not be held that it intended to create perpetuities or exclusive emoluments in violation of any of the provisions of Article I of the Constitution, and said commissioners continue to hold office with power to discharge the duties thereof. Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354.

Cited in Hill v. Ponder, 221 N. C. 58, 19 S. E. (2d) 5; Hedgpeth v. Allen, 220 N. C. 528, 17 S. E. (2d) 781.

§ 128-8. Officers and employees responsible for cash or property to be surety bonded. — All officers, officials and employees of the State charged with responsibility for cash, securities and/or property shall be surety bonded in corporate sureties admitted to do business in the State in such sums as may be fixed by the Governor and the Advisory Budget Commission. The premiums on such surety bonds will be paid by the State out of the appropriations to the respective departments and institutions and other agencies. (1929, c. 337, s. 5.)

§ 128-9. Peace officers employed by state to give bond.—The state of North Carolina shall require every peace officer employed by the state, elected or appointed, to give a bond with good surety payable to the state of North Carolina, in a sum not less than one thousand ($1,000.00) dollars and not more than two thousand five hundred ($2,500.00) dollars, conditioned as well for the faithful discharge of his or her duty as such peace officer as for his diligently endeavoring to faithfully collect and pay over all sums of money received. Said bond shall be duly approved and filed in the office of the insurance commissioner, and certified copies of the same by the insurance commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1937, c. 339, s. 1.)

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.—When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, set-

ting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within sixty days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars, of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as idemnity shall in no case exceed five hundred dollars. (1913, c. 80; C. S. 3206.)

The section applies to money collected before the passage of the act, and a citizen and taxpayer on sufficient and proper averment of default on part of the county officials, has a right to maintain an action of this character without resort to the provisions of the statute. Waddill v. Masten, 172 N. C. 582, 585, 90 S. E. 694.

Under the provisions of this section, citizens and taxpayers of a county may maintain an action against the commissioners of the county and its defaulting sheriff to enforce collection of the amount of the default upon allegations that the county commissioners have corruptly refused to perform their duties in this respect. Weaver v. Hampton, 201 N. C. 798, 161 S. E. 480.

§ 128-11. Trust funds to be kept separate.—Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

Editor's Note.—To the extent that this section requires local public officers to keep their official bank accounts separate from their personal accounts and prohibits them from applying official funds to personal uses and from intermingling official and personal moneys, it probably states a well-known principle of law. The need for the statute, however, arose out of cases where local officials had defaulted and where the mixup of personal and official funds in the same account made tracing difficult if not impossible. The new statute, therefore, by making the principle specific, perhaps puts the officers on warning. It should be read in connection with §§ 153-60 and 153-35, relating to the reports and deposits.

Cited in Patterson v. Southern Ry. Co., 214 N. C. 38, 198 S. E. 364.

§ 128-12. Violations to be reported; misdemeanors.—It shall be the duty of the director of the Local Government Commission to report to the solicitor of the district any violation of § 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 60, s. 3; 1931, c. 77, s. 2.)

Cited in Patterson v. Southern Ry. Co., 214 N. C. 38, 198 S. E. 364.

§ 128-13. Local: Officers compensated from fees to render statement; penalty; proceeds to school fund.—Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation for services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: first, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars and ten dollars additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and apply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December twelfth, one thousand nine hundred and thirteen.

This section applies only to the counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess. 1913, c. 10; 1935, c. 390.)

Power of Legislature to Regulate Pay.—One who accepts a public office does so, with well defined exceptions as to certain constitutional offices, under the authority of the Legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the Legislature, and the same may be reduced during the term of the incumbent, or he may therein be compensated by a salary instead of on a fee basis. Mills v. Deaton, 170 N. C. 386, 87 S. E. 123.

Construction of Act Changing Pay from Salary to Fee Basis.—An act changing the pay of county officials from a salary to a fee basis, taking prospective effect from the expiration of the terms of the present incumbents, will be presumed to have a sensible and just intent, with knowledge of existing conditions and will not be construed as to apply to deprive the incumbent sheriff of the emoluments of his term by requiring that he deliver the tax lists to his successor. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176.

§ 128-14. Identification cards for field agents or deputies of state departments.—Every field agent or deputy of the various state departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Preference for veterans in employment.—Hereafter in all examinations of applicants for positions with this state or any of its departments or institutions, a preference rating of ten per cent shall be awarded to all the citizens of the state who served the state or the United States honorably in either the army, navy, marine corps, or nurses' corps in time of war.

All departments and institutions of the state, or their agencies, shall give preference to such unemployed veterans as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways, or any other employment under the supervision of the state or its departments, institutions, or agencies: Provided, that the provisions of this section shall apply to widows of such veterans and to the wife of any disabled veteran. (1939, c. 8.)

§ 128-15.1. Section 128-15 applicable to persons serving in present war.—All the provisions for preference rating and preference of employment

to citizens who served the state or the United States, honorably in either the army, navy, marine corps or nurses' corps in time of war and to the widows of such veterans and the wives of disabled veterans provided in section 128-15 are hereby specifically made applicable to men and women who have served, are now serving, or shall serve in any branch of the armed services or the nurses' corps during the present war, and are honorably discharged from such service, and to the widows of such veterans and the wives of disabled veterans of the present war. (1943, c. 168.)

Art. 2. Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.—Any city prosecuting attorney, any sheriff, police officer, or constable, shall be removed from office by the judge of the superior court upon charges made in writing, and hearing thereunder, for the following cause:

First. For willful or habitual neglect or refusal to perform the duties of his office.

Second. For willful misconduct or maladministration in office.

Third. For corruption.

Fourth. For extortion.

Fifth. Upon conviction of a felony.

Sixth. For intoxication, or upon conviction of being intoxicated. (1919, c. 288; P. L. 1913, c. 761, s. 20; C. S. 3208.)

Cross References.—As to appropriate manner of action by which to try the title to an office, see § 1-515 and annotations thereto. As to removal for receiving compensation of subordinates, see § 128-4. As to removal of sheriffs and police for laches in enforcing laws relating to intoxicating liquors, see § 18-24.

Purpose.—The officer may be removed for misconduct or failure to perform the duties of his office, whether such failures were willful or habitually negligent; the statute was evidently enacted for the protection of the public, and not for the punishment of the delinquent officer. State v. Hamme, 180 N. C. 684, 687, 104 S. E. 174.

Failure to Take Oath Does Not Exempt from Liability.—There can be no doubt that if one elected to an office takes possession of it, and engages in the exercise of its duties, and misbehaves as in this case—takes unlawful and extortionate fees—he will be liable for such misbehavior, notwithstanding the fact that he failed to take oath of office. State v. Cansler, 75 N. C. 442, 444.

What Evidence Sufficient.—The evidence of a prosecuting attorney in proceedings before the judge to remove him from office under this section is sufficient to sustain an order removing him when it admits that he attempts to induce, and did induce, a person to violate the statutes of our State in participating in acts made an offense for immorality, etc., whatever his intent may have been therein. State v. Hamme, 180 N. C. 684, 104 S. E. 174. It was also held in this case that the prosecuting attorney could not complain because he was removed not in accordance with the specifications alleged in the petition, but upon his own evidence, the element of surprise or possibility of an amendment to the petition not entering.—Ed. Note.

Jury Not Required.—The proceedings under this section do not require an issue to be submitted to the jury. Upon the defendant's own admissions in this case, and evidence, he is guilty of the offense charged, which is sufficient to remove him from office; such office is not a property right under the provisions of the Constitution of North Carolina, Art. 1, section 19. State v. Hamme, 180 N. C. 684, 104 S. E. 174.

Appeal from Superior Court.—An appeal from the judgment of the superior court judge that a prosecuting attorney be removed for "willful misconduct or maladministration in office," etc., is upon questions of law and legal inferences, if justified by the findings of facts supported by evidence. Constitution, Art. VI, sec. 8; and the appeal is allowed by § 1-277. State v. Hamme, 180 N. C. 684, 104 S. E. 174.

Enjoining Vacating of Office by Commissioners before They Have Qualified.—An action to enjoin newly-elected county commissioners, who had not yet qualified, from declaring a public office vacant, and electing a successor, is properly dismissed as premature. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822.

§ 128-17. Petition for removal; county attorney to prosecute.—The complaint or petition shall be entitled in the name of the state of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the solicitor of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or solicitor to appear and prosecute this proceeding. (1919, c. 288; P. L. 1913, c. 761, s. 21; C. S. 3209.)

§ 128-18. Petition filed with clerk; what it shall contain; answer.—The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court his answer, which shall be verified. (1919, c. 288; P. L. 1913, c. 761, s. 22; C. S. 3210.)

§ 128-19. Suspension pending hearing; how vacancy filled.—Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vacancies in such office. (1919, c. 288; P. L. 1913, c. 761, s. 23; C. S. 3211.)

§ 128-20. Precedence on calendar; costs. — In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (1919, c. 288; P. L. 1913, c. 761, s. 24; C. S. 3212.)

Art. 3. Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions. — The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the North Carolina local governmental employees' retirement system as defined in this article.

(2) "Employer" shall mean any county or incorporated city or town participating in the retirement system. The North Carolina league of municipalities and the office of the retirement system shall be classed as employers eligible to participate in the retirement system.

(3) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subsection two of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the board of trustees shall decide who is an employee.

(4) "Member" shall mean any person included in the membership of the retirement system as provided in § 128-24.

(5) "Service" shall mean service as an employee as described in subsection three of this section and paid for by the employer as described in subsection two of this section.

(6) "Prior service" shall mean the service of a member rendered before the first day of July, nineteen hundred and forty-three, certified on a prior service certificate and allowable as provided in § 128-26.

(7) "Membership service" shall mean service as an employee rendered while a member of the retirement system.

(8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 128-26.

(9) "Board of trustees" shall mean the board provided for in § 128-28 to administer the retirement system.

(10) "Medical board" shall mean the board of physicians provided for in § 128-28, subsection twelve.

(11) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in § 128-30, subsection one.

(12) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the board of trustees in accordance with § 128-29, subsection two.

(13) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.

(14) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.

(15) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.

(16) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this article.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(19) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.

(20) "Average final compensation" shall mean the average annual earnable compensation of an employee during his last five years of service, or if he had less than five years of service, then his average earnable compensation for his total service.

(21) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this article.

(22) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(23) "Fiscal year" shall mean any year commencing July first and ending June thirtieth next following. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535.)

Editor's Note.—The 1941 amendment inserted the word "local" in subsection (1) and substituted "forty-one" for "thirty-nine" in subsection (6).

For comment on the 1941 amendment, see 19 N. C. Law Rev. 510.

The 1943 amendment substituted "forty-three" for "forty-one" in line three of subsection (6).

For acts relating to retirement systems for New Hanover county and the city of Wilmington, see Session Laws 1943, cc. 669, 708.

For comment on the 1939 enactment, see 17 N. C. Law Rev. 369.

§ 128-22. Name and date of establishment. — A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. The retirement system so created shall become operative as of the first day of July, nineteen hundred and forty-three: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535.)

Editor's Note.—The 1941 amendment substituted "forty-one" for "thirty-nine" in the first paragraph, and inserted the word "Local" in the second paragraph.

The 1943 amendment substituted "forty-three" for "forty-one" in line three of the second sentence.

§ 128-23. Acceptance by cities, towns and counties.—(1) The governing body of any incorporated city or town may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the retirement system, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(2) The board of commissioners of any county may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the retirement system, and the said county board of commissioners may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9 and in addition to the rates allowed by the constitution.

(3) Any eligible employer desiring to participate in the retirement system shall file with the board of trustees an application for participation under the conditions included in this article on a form approved by the board of trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this article, and to transmit such contributions to the board of trustees. It shall also agree to make the employer's contributions for the participation in the retirement system of all employees entering the service of the employer, after its participation begins, who shall become members.

(4) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the retirement system and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(5) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees, but such contributions payable during the period of temporary default shall be paid at such later time as may be mutually agreed upon by the employer and the board of trustees together with interest thereon at the rate of six per centum (6%) per annum. At such time as such defaulted contributions together with interest thereon shall be fully paid, such employer shall no longer be deemed in temporary default and shall be restored to good standing in the retirement system.

Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits. (1939, c. 390, s. 3.)

§ 128-24. Membership. — The membership of this Retirement System shall be composed as follows:

(1) All employees entering or reentering the service of a participating county, city, or town after the date of participation in the Retirement System of such county, city, or town.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city, or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of welfare or health departments whose compensation is derived from both state and local funds may be members of a North Carolina Local Government Employees' Retirement System to the extent of that part of their compensation derived from a county, city or town. (1939, c. 390, s. 4; 1941, c. 357, s. 3.)

Editor's Note.—The 1941 amendment struck out this section as it formerly read and substituted in lieu thereof the above.

§ 128-25. Membership in system.—Should sixty per centum (60%) of the members of any retirement, pension or annuity fund or system of any county, city or town of the state, hereafter referred to as a local pension system, elect to become members of the North Carolina governmental employees' retirement system, by a petition duly signed by such members, the participation of such members in the retirement system may be approved as provided in § 128-24 as though such local pension system were not in operation, and the provisions of this article shall also apply, except that the existing pensioners or annuitants of the local pension system who were being paid pensions on the date of the approval shall be continued and paid at their existing rates by the North Carolina governmental employees' retirement system, and the liability on this account shall be included in the computation of the accrued liability by the actuary as provided by § 128-30, subsection three. Any cash and securities to the credit of the local pension system shall be transferred to the North Carolina governmental employees' retirement system as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the North Carolina governmental employees' retirement system. The balance of the funds transferred to the North Carolina governmental employees' retirement system shall be offset against the accrued liability before

determining the special accrued liability contribution to be paid by the county, city or town as provided by § 128-30, subsection three. The operation of the local pension system shall be discontinued as of the date of the approval. (1939, c. 390, s. 5; 1941, c. 357, s. 4.)

Editor's Note.—The 1941 amendment struck out the former first paragraph of this section.

§ 128-26. Allowance for service. — (1) Under such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding July first, nineteen hundred and forty-three, and who becomes a member during the first year of operation of the retirement system, shall file a detailed statement of all service as an employee rendered by him to any county, city or town prior to July first, nineteen hundred and forty-three, for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the board of trustees may use for the purpose of this article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection fourteen of § 128-28 would have resulted in a same average salary of the member for the five years immediately preceding July first, nineteen hundred and forty-three, as the records show the member actually received.

(4) Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of service rendered prior to July first, nineteen hundred and forty-three, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the employee again become a member, such employee shall enter the system as an employee not entitled to prior service credit except as provided in § 128-27, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535.)

Editor's Note.—The 1941 amendment substituted "forty-one" for "thirty-nine" in subsections (1), (3) and (4).

The 1943 amendment substituted "forty-three" for "forty-one" in subsections (1), (3) and (4).

§ 128-27. Benefits. — (1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.

(c) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years: Provided, further, that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Allowance for Service Retirement.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at the age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years by twice the contributions which he would have made during such prior service had the system been in operation and he contributed thereunder.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial

equivalent of his accumulated contributions at the time of the retirement, and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Reëxamination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the retirement system.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pensions which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under the provisions of this article, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees.

(7) Optional Allowance.—With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate: Provided, such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees. (1939, c. 390, s. 7.)

§ 128-28. Administration. — The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in the Board of Trustees of the Teachers' and State Employees' Retirement System of North Carolina, and all of the provisions of § 135-6, relating to the administration by said Board of Trustees shall apply to the administration of this article by said Board of Trustees: Provided, that all expenses in connection with the administration of this North Carolina Local Government Employees' Retirement System shall be charged against this retirement system and paid from the expense fund as provided in subsection five of § 128-30. (1939, c. 390, s. 8; 1941, c. 357, s. 6.)

Editor's Note.—Prior to the 1941 amendment, which rewrote this section, administration was vested in a board of trustees created by the section.

§ 128-29. Management of funds. — (1) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in § 128-30, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon domestic life insurance companies in the making and disposing of their investment; and subject to like terms, conditions, limitations and restrictions, said trustee shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any monies belonging to said funds.

(2) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the monies of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) Custodian of Funds.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Cash Deposits for Meeting Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the retirement system, on deposit in one or more banks or trust companies of the state of North Carolina, organized under the laws of the state of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company.

(5) Selection of Depostories.—The board of trustees shall select a bank or banks for the deposits of the funds and securities of the retirement system in the same manner as such banks are selected by the treasurer of the state of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the state. The funds and properties of the North Carolina governmental employees' retirement system held in any bank of the state shall be safeguarded by a fidelity and surety bond, the amount to be determined by the board of trustees.

(6) Immunity of Funds.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for monies loaned or borrowed from the board of trustees. (1939, c. 390, s. 9; 1941, c. 357, s. 7.)

Editor's Note.—The 1941 amendment substituted in subsection (3) the words "state treasurer" for the words "secretary-treasurer of the board of trustees," and the word "secretary" for "secretary-treasurer."

§ 128-30. Method of financing. — All of the assets of the retirement system shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund and the expense fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(a) Each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty years and has completed thirty-five years of service. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. In determining the amount earnable by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer as to the amount of fees received by such member as compensation during the preceding year, and each month such member shall pay to his employer four per centum of one-twelfth of such compensation received from fees during the previous year, which shall be considered as deductions by the employer as provided in paragraphs (a) and (b) of Subsection one of this section.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for

his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one-half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this article. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the earnable compensation of each member, to be known as the "normal contribution," and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Until the first valuation the normal contribution for general employees shall be two and fourteen one hundredths per centum (2.14%) and the accrued liability contribution for general employees shall be one and seventy-eight one hundredths per centum (1.78%) of the payroll of the members who are general employees; and until the first valuation the normal contribution for firemen and policemen, including sheriffs and other law enforcing officers, shall be three and eighty one hundredths per centum (3.80%), and the accrued liability contribution for firemen and policemen, including sheriffs and other law enforcing officers, shall be three and nineteen one hundredths per centum (3.19%) of the payroll of the members who are firemen and policemen or other law enforcing officers.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the pro rata share of the cost of administration of the retirement system. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate.

(d) The county, city or town participating in

the system as provided in subsection four of § 128-23 shall make a special accrued liability contribution on account of its approval of the participation of its employees in the North Carolina local governmental employees' retirement system, which shall be determined by actuarial valuation of the accrued liability on account of the employees of such county, city or town who elected to become members in the same manner as the accrued liability rate was originally determined for employees who become members of the local governmental employees' retirement system prior to January first, nineteen hundred and forty-four. This special accrued liability contribution, subject to such adjustment as may be necessary on account of any additional prior service credits awarded to employees of such county, city or town, shall be payable in lieu of the accrued liability contribution payable on account of other employees in the system. The expense of making such initial valuation shall be assessed against and paid by the county, city or town on whose account it is necessary.

(e) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(f) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.

(g) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.

(h) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves of all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount to the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Expense Fund.—The expense fund shall be the fund from which the expenses of the administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

(a) The board of trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.

(b) For the purpose of organizing the retirement system and establishing an office, the board of trustees may provide as a prerequisite to participation in the retirement system that each participating employer or employee or both shall pay an additional contribution to the retirement system for the expense fund not to exceed two dollars for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the board of trustees shall determine, and/or the board of trustees may borrow such amounts as may be necessary to organize and establish the retirement system.

(6) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the retirement system the contributions payable by such member as provided in this article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.

(b) The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this article and shall transmit monthly, or at such time as the board of trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the board of trustees. The secretary-treasurer of the board of trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said board of trustees for use according to the provisions of this article.

(2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection three of this section. (1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535.)

Editor's Note.—The 1941 amendment added the last sentence to paragraph (a) of subsection (1). It also made changes in the first sentence of paragraph (d) of subsection (3) by substituting "subsection (4) of section 128-23" for "the last sentence of section 128-24," inserting the word "local" twice and changing the date from 1941 to 1942.

The 1943 amendment substituted "forty-four" for "forty-two" in paragraph (d) of subsection (3).

§ 128-31. Exemptions from execution. — The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this article, and the monies in the various funds created by this article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically otherwise provided. (1939, c. 390, s. 11.)

§ 128-32. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment not exceeding twelve months, or both, such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had their records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1939, c. 390, s. 12.)

§ 128-33. Other laws not applicable to members. —No other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the retirement system established by this article. (1939, c. 390, s. 13.)

§ 128-34. Transfer of members. — Any member of the North Carolina governmental employees' retirement system who leaves the service of his employer and enters the service of another employer participating in the North Carolina governmental employees' retirement system shall maintain his status as a member of the retirement system and shall be credited with all of the amounts previously credited to his account in any of the funds under this article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of his transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer. (1939, c. 390, s. 14.)

§ 128-35. Obligations of pension accumulation fund. — The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of said obligations of the said fund. (1939, c. 390, s. 15.)

§ 128-36. Local laws unaffected; when benefits begin to accrue.—Nothing in this article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of § 128-27, subsections one to four inclusive, shall become effective or begin to accrue until the end of one year following the date the system is established nor shall any compulsory retirement be made during that period. Notwithstanding anything else to the contrary in this article, the provisions of this article shall apply only to counties having a population of more than fifteen thousand inhabitants by the last preceding United States census and to municipalities. (1939, c. 390, s. 16; 1941, c. 357, s. 9B.)

§ 128-37. Levy of taxes; referendum; counties excepted.—No county, city, town, or other municipality, shall levy any tax, pledge its faith, or incur any indebtedness for the purposes herein mentioned until the same shall have been submitted to, and approved by, the qualified voters thereof at an election to be called by the governing body of said county, city, town, or other municipality: Provided, that the provisions of this section shall not apply to the following: The cities of Greensboro and Gibsonville; Mount Airy in Surry County; Rowan County or the municipalities therein; Pitt County, nor to any municipality therein; the Town of Aberdeen, in Moore County; Wake County and the municipalities located therein; Mecklenburg, Bladen, Durham and Alexander Counties and/or the municipalities therein; Pasquotank County or the municipalities therein, and such county and municipalities shall be entitled to participate in the retirement system in the manner provided by § 128-23; Lee County and the towns of Sanford and Jonesboro located therein; Randolph County and the Town of Asheboro located therein; Davidson and Alexander Counties and the municipalities located therein; Catawba County and the municipalities located therein; the city of Forest City in Rutherford County; and New Hanover County and the city of Wilmington. (1941, c. 357, s. 9A; 1943, cc. 258, 494, 525.)

Editor's Note.—The county of Catawba and the municipalities therein were added to the proviso of this section by the third 1943 amendment, and the city of Forest City was added by the second 1943 amendment. The first 1943 amendment, which added the county of New Hanover and the city of Wilmington, provided: "The commissioners of the county of New Hanover and of the city of Wilmington are hereby authorized, empowered and directed to appropriate a sufficient amount to put into effect the retirement of employees, both elective and appointive, of the county of New Hanover and the city of Wilmington."

§ 128-38. Withdrawal from System by participating units. — Any county, city or town participating in the Retirement System may by action of

its governing body later withdraw from the system, and all contributions of employees and employers shall be returned to them or their representatives. (1941, c. 357, s. 9B.)

Art. 4. Leaves of Absence.

§ 128-39. Leaves of absence for state officials.— Any elective or appointive state official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governor, for such period as the governor may designate. Such leave shall be obtained only upon application by the official and with the consent of the governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of cumulative sick leave to which he may be entitled under rules and regulations adopted pursuant to § 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the governor if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governor deems it necessary, the governor may appoint any citizen of the state, without regard to residence or district, as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 1.)

§ 128-40. Leaves of absence for county officials. — Any elective or appointive county official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. Such leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any qualified citizen of the county as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 2.)

§ 128-41. Leaves of absence for municipal officers. — Any elective or appointive municipal official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. Such leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 3.)

Chapter 129. Public Buildings and Grounds.

§ 129-1. Definitions. — Public buildings and grounds referred to in this chapter include the executive mansion and all the public buildings and grounds owned or maintained by the state, now existing or hereafter acquired, in the city of Raleigh, and the state warehouse located on the state fair grounds, but do not include any buildings or grounds which any state institution or agency other than the board of public buildings and grounds is required by law to care for and maintain.

"Board" as used in this chapter means the board of public buildings and grounds.

"Superintendent" means the superintendent of public buildings and grounds. (1941, c. 224, s. 1.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 445.

§ 129-2. Board of public buildings and grounds. —The governor, the secretary of state, the treasurer, the attorney general and the assistant director of the budget shall constitute the board of public buildings and grounds, and shall serve ex-officio as members of the board. (1941, c. 224, s. 2.)

§ 129-3. Powers and duties of board. — The board shall have the following powers and duties in addition to other powers and duties provided by law:

(1) To assume the custody and control of public buildings and grounds, and supervise the care, operation and maintenance of public buildings and grounds, and the establishment, location, care and maintenance of walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers and tablets on public grounds.

(2) To provide necessary and adequate quarters, office and working space for all state departments, agencies and legislative committees in the city of Raleigh when no other provision for space is made by law, and to this end the board is given full authority to allocate and reallocate space in public buildings and grounds and make such readjustments and provide such facilities as may be necessary to effectuate these powers.

(3) To employ, supervise and control such reliable and efficient assistants and laborers as may be necessary for the adequate care, operation and maintenance of the public buildings and grounds, and to fix their compensation with the approval of the budget bureau whenever such approval may be required by law.

(4) To provide necessary and adequate cleaning and janitor service, elevator operation service, and other operation or maintenance service.

(5) To provide necessary night watchmen.

(6) To procure and supervise the prompt repair of buildings, furniture and fixtures.

(7) To use at all times such means as may, in its opinion, be effectual to protect all public buildings and grounds from fire.

(8) To lease vacant lots of the state in the city of Raleigh not otherwise appropriated, upon such terms as may be reasonable and proper, for a period not to exceed twelve months under the terms of any one lease, and to collect the proceeds of such rentings and deposit them to the credit of the treasurer immediately upon collection: Provided, however, any lease entered into pursuant to this subsection may, in the discretion of the board, be extended or renewed from time to time, for a period not to exceed twelve months under the terms of any one extension or renewal.

(9) To supervise the work of janitors appointed by the general assembly to perform services in connection with the sessions of the general assembly until the legislature convenes.

(10) To keep in repair, out of funds appropriated for that purpose, all necessary furniture for the halls of the senate and house of representatives and the rooms of the capitol used by the officers, clerks and other employees of the general assembly.

(11) To make and enforce regulations with respect to the parking of automobiles on all public grounds.

(12) In its discretion, to store, destroy or otherwise dispose of obsolete papers, records and documents which have been discarded by any of the state departments or agencies and found by them to be of no value.

(13) In its discretion, to establish and maintain a central mailing system for all state departments and agencies, and in connection therewith and in the discretion of the board to make application for and procure a post office substation for such purpose, and to do all other things needful in the discretion of the board in connection with the establishment of such central mailing system. In the event of the establishment of such central mailing system the board shall have the right to allocate and charge against the respective departments and agencies their proportionate part of the cost of maintenance of such central mailing system.

(14) In its discretion, to provide necessary and adequate messenger service for the state departments and agencies for whom the board is required to furnish office or working space: Provided, that this shall not be construed to prevent the employment and control of messengers by any state department or agency when such messengers are compensated out of funds of said department or agency.

(15) To take or otherwise control birds and animals, such as pigeons, dogs, cats and squirrels, on public buildings and grounds.

(16) To beautify the public grounds.

(17) To provide necessary information service for visitors to the capitol.

(18) To provide suitable space for an arsenal.

(19) To have direct control and supervision over the location, plan and construction of any public buildings unless it shall be otherwise provided in the act authorizing such construction.

(20) To direct and supervise the superintendent in the administration of this chapter, and in the performance of all other powers and duties imposed by law. (1941, c. 224, s. 3.)

§ 129-4. Appointment and salary of superintendent.—The board shall appoint and, with the approval of the budget bureau, fix the salary of the superintendent. He shall hold office until his successor is appointed and files his bond in accordance with the provisions of § 129-5. (1941, c. 224, s. 4.)

§ 129-5. Bond of superintendent. — Before entering upon the duties of his office, the superintendent shall execute a bond with good and sufficient surety or security, in a sum to be fixed by the board, payable to the state of North Carolina and conditioned on the faithful discharge of his

duties. The board may, in its discretion, require that the penal sum of the bond be increased at any time. The bond shall be deposited in the office of the secretary of state, and shall be renewed every two years, with such surety or security and in such amount as the board may direct, and the same may be sued upon by the state upon the relation of the board whenever in the judgment of said board any condition thereof has been broken. The bond shall not be discharged until the whole penalty is exhausted in damages. (1941, c. 224, s. 5.)

§ 129-6. Duties of superintendent. — The superintendent shall perform all the duties and exercise all the powers delegated to him by the board with the approval and under the supervision of the board. (1941, c. 224, s. 6.)

§ 129-7. Board may make rules and regulations; violation a misdemeanor. — The board is empowered to promulgate reasonable and necessary rules and regulations to provide for the care, conservation and protection of buildings and grounds and all fixtures and adjuncts thereto. A violation of any rule or regulation duly promulgated by the board shall be a misdemeanor, and shall be punishable in the discretion of the court. (1941, c. 224, s. 7.)

§ 129-8. Accounts for labor.—No account for labor performed or materials furnished in connection with the care, maintenance and operation of public buildings and grounds shall be audited and paid until the same is certified by the superintendent to be accurate. (1941, c. 224, s. 8.)

§ 129-9. Disorderly conduct in and injury to public buildings and grounds.—If any person shall commit any nuisance, or conduct himself in a disorderly manner in or around any public buildings and grounds, or deface or injure any of the buildings and grounds or willfully trespass upon any of the buildings and grounds or commit waste thereon, or refuse to surrender possession after the expiration of a lease, or if there is no lease, after the expiration of ten days from demand made by the superintendent, such person shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1941, c. 224, s. 9.)

§ 129-10. Power of arrest. — The superintendent is hereby constituted a special peace officer, and shall have the right to arrest with warrant any person violating any law on or with respect to public buildings and grounds, and he shall have the right to arrest, or pursue and arrest, without warrant any person violating in his presence any law on or with respect to public buildings and grounds. The superintendent is authorized to designate as special peace officers such number of reliable and efficient employees as he may think proper who shall have the same power of arrest as the superintendent. Before the superintendent shall exercise any power of arrest under this section he shall take an oath to be administered by the attorney general; and before any officer designated by the superintendent shall exercise any power of arrest under this section, he shall take an oath to be administered by the superintendent. The oath shall be in the following form:

"I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of special peace officer for public buildings and grounds according to the best of my skill and ability, according to law; so help me, God." (1941, c. 224, s. 10.)

§ 129-11. Moore and Nash squares and other public lots.—The governing body of the city of Raleigh shall have power, at its own expense, to grade, lay out in walks, plant with trees, shrubbery and flowers, and otherwise adorn Moore and Nash squares, and to that end shall have the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots belonging to the state within the city limits and not otherwise appropriated. The governing body shall not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the board, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the said board shall call the matter to the attention of the governing body, and if the governing body then fails for a period of sixty days to begin to take proper care of the squares or lots, the board may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots shall be needed by the state, the license of the city of Raleigh to control and manage them shall terminate six months after notice given by the board to the governing body of the city, and thereupon possession shall be promptly surrendered to the state. (1941, c. 224, s. 11.)

§ 129-12. Construction of public buildings; use of contingency and emergency fund. — It shall be lawful to resort to the contingency and emergency fund, provided in the Appropriations Act, for financial aid in the construction, alteration, renovation or repair of state public buildings, when in the opinion of the governor and the council of state a condition of emergency exists rendering it necessary to construct, alter, renovate or repair one or more buildings for the purpose of housing state governmental bureaus, departments and agencies. (1941, c. 224, s. 12.)

Chapter 130. Public Health.

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

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SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

Art. 1. State Board of Health.

§ 130-1. Membership of board. — The North Carolina board of health shall consist of nine members, four of which members shall be elected by the Medical Society of the State of North Carolina and five of which members shall be appointed by the Governor. (Rev., s. 4435; Code, s. 2875; 1879, c. 177, s. 1; 1885, c. 237, s. 1; 1893, c. 214, s. 1; 1911, c. 62, s. 1; 1931, c. 177, s. 1; C. S. 7048.)

§ 130-2. Term of office; removal; vacancies; how filled. — The terms of all members of the present board of health shall expire on April first, one thousand nine hundred thirty-one, or as soon thereafter as their successors have been appointed and elected in the manner provided for herein and shall have duly qualified. The Medical Society of the State of North Carolina shall at its next annual meeting elect two members to serve for two years and two members to serve for four years, and the Governor on or before May first, one thousand nine hundred thirty-one, shall appoint five members, three of such members to serve for two years and two of such members to serve for four years. At the expiration of the terms of the members so elected and appointed their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. The Medical Society of the State of North Carolina shall have the right to remove any member elected by it for cause, and the Governor shall have the right to remove any member appointed by him for cause. Vacancies on said board among the membership elected by the Medical Society of the State of North Carolina shall be filled by the executive committee of said Medical Society until the next meeting of the said Medical Society, when the said Medical Society shall fill the vacancy for the unexpired term. Vacancies on said board among the membership appointed by the Governor shall be filled by the Governor for the unexpired term. (Rev., s. 4436; Code, s. 2877; 1879, c. 117, s. 3; 1885, c. 237, s. 3; 1893, c. 214, s. 2; 1901, c. 245; 1911, c. 62, s. 2; 1931, c. 177, s. 2; C. S. 7049.)

Editor's Note.—The Act of 1931 repealed the former section and substituted the above in lieu thereof.

§ 130-3. Duties of board.—The board of health shall take cognizance of the health interests of the people of the state; shall make sanitary investigations and inquiries in respect to the people, employing experts when necessary; shall investigate the causes of diseases dangerous to the public health, especially epidemics, the sources of mortality, the effect of location, employments, and conditions upon the public health. They shall gather such information upon these matters for distribution among the people, with the especial purpose of informing them about preventable diseases. They shall be the medical advisers of the state, and are herein specially provided, and shall advise the government in regard to the location, sanitary construction, and management of all state institutions, and shall direct the attention of the state to such sanitary matters as in their judgment affect the industries, prosperity, health, and lives of the people of the state. They shall make an inspection once in each year, and at such other times as they may be requested to do so by the state board of charities, of all

public institutions, including all convict camps under the control of the state's prison, and make a report as to their sanitary conditions, with suggestions and recommendations, to their respective boards of directors or trustees; and it shall be the duty of the officials in immediate charge of said institutions to furnish all facilities necessary for a thorough inspection. The secretary of the board shall make biennially to the general assembly, through the governor, a report of their work. (Rev., s. 4437; Code, s. 2876; 1879, c. 117, s. 2; 1885, c. 237, s. 2; 1893, c. 214, s. 3; 1911, c. 62, s. 3; C. S. 7050.)

Cross References.—As to the duty of the board of health to inspect bus stations, see § 62-113. As to duty to supervise sanitary and health conditions of prisoners, see § 148-10. As to duty to inspect hotels, restaurants, etc., see § 72-8. As to duty to prepare rules and regulations for hotels and restaurants and to rate them, see § 72-25.

§ 130-4. May make regulations in epidemics. — In times of epidemics of smallpox, yellow fever, typhoid fever, scarlet fever, diphtheria, typhus fever, bubonic plague, and cholera, the state board of health shall have sanitary jurisdiction in all cities and towns not having regularly organized local boards of health, and are hereby empowered to make all such regulations as they may deem necessary to protect the public health, and to enforce them by suitable penalties. (Rev., s. 4438; 1893, c. 214, s. 17; 1911, c. 62, s. 4; C. S. 7051.)

Validity.—Regulations and provisions for the vaccination of the inhabitants, and their enforcement by penalties, constitute a valid exercise of governmental police power for the public welfare, health and safety. State v. Hay, 126 N. C. 999, 35 S. E. 459.

§ 130-5. To issue bulletins; to check diseases; compensation. — Bulletins of the outbreak of disease dangerous to the public health shall be issued by the state board whenever necessary, and such advice freely disseminated to prevent and check the invasion of disease into any part of the state. It shall also be the duty of the board to inquire into any outbreak of disease, by personal visits or by any method the board shall direct. The compensation of members on such duty shall be four dollars a day and all necessary traveling and hotel expenses. (Rev., s. 4439; 1893, c. 214, s. 26; 1911, c. 62, s. 5; C. S. 7052.)

§ 130-6. Supervision of jails and camps by board of health.—The State Board of Health shall have the same supervision of all jails, county camps or other places of confinement of county or city prisoners in regard to the method of construction, sanitary or hygienic care as they have over the State Prison Department, and no jail, county camp, or other place of confinement of county or city prisons shall be construed or used as such for a period of six months, unless the State Board of Health shall have approved the same, and the violation of this section shall constitute a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1917, c. 286, s. 11½; 1925, c. 163; C. S. 7713.)

§ 130-7. Officers of; salary of secretary; pay of members.—The state board of health shall have a president, a secretary who shall also be treasurer, and an executive committee, said executive committee to have such powers and duties as may be assigned it by the board of health. The president shall be elected from the members of the board and shall serve six years. The secretary-treasurer shall be a registered physician of the State and he shall be elected by the board, subject to the approval of the Governor, and he shall serve for four years and until his successor has been elected and qualified. The board shall have the right to remove the secretary-treasurer from office for cause. The executive committee shall be composed of the president of the board, ex officio, and two other members of the board to be elected from those composing it. The executive office of the board shall be in the city of Raleigh, and the secretary shall reside there. The secretary shall be the executive officer of the board and shall, under its direction, devote his entire time to public-health work, and shall be known as the "state health officer." He shall receive for his services such yearly compensation as shall be fixed by the board, not to exceed eight thousand dollars and his actual traveling and hotel expenses when engaged in the work of the board. The said officer shall not receive any other compensation for the performance of his official duties than the salary herein stated. The board may in its discretion elect as a special assistant to the state health officer, for the antituberculosis work, the secretary of the state association for the prevention of tuberculosis, at an annual salary not to exceed six hundred dollars. The members of the board shall receive no pay, except that each member shall receive four dollars and necessary traveling and hotel expenses when on actual duty in attending the meetings of the board or of the executive committee or in pursuing special investigations in the state; but when attending important meetings beyond the limits of the state, the number of delegates thereto being limited to one in addition to the secretary, only actual traveling and hotel expenses shall be allowed. These sums shall be paid by the treasurer on authenticated requisition, approved and signed by the president. (Rev., s. 4440; Code, ss. 2878, 2881; 1879, c. 117, ss. 5, 7; 1885, c. 237, s. 4; 1893, c. 214, s. 4; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2; 1921, c. 130; 1927, c. 143; 1931, c. 177, s. 3; C. S. 7053.)

Editor's Note.—By amendment, Public Laws 1921, ch. 130, the salary of the secretary was raised from three thousand dollars per year to five thousand per year. The provision against receiving any other compensation was added at the same time. By Public Laws, 1927, ch. 143, the salary of the secretary was raised to eight thousand dollars per year.

The Laws of 1927, ch. 143, in amending this section refers to ch. 118, Art. 1, sec. 753. The reference to section 753 is a clerical error; sec. 7053 was intended.

The Act of 1931 changed the term of the secretary-treasurer from six to four years, and added the provision as to his removal for cause.

§ 130-8. Meetings to elect officers.—The meeting of the state board of health for the election of officers shall be on the second day of the annual meeting of the medical society of the state of North Carolina in the year one thousand nine hundred and one and every six years thereafter. (Rev., s. 4441; 1901, c. 245, s. 4; 1911, c. 62, s. 7; C. S. 7054.)

§ 130-9. Annual and special meetings. — Special meetings of the state board of health may be called by the president through the secretary. The regular annual meeting shall be held at the same time and place as the state medical soci-

ety, at which time the secretary shall submit his annual report. The executive committee shall meet at such times as the president of the board may deem necessary, and he shall call such meetings through the secretary. (Rev., s. 4442; 1893, c. 214, s. 27; 1911, c. 62, s. 8; C. S. 7055.)

Art. 2. State Laboratory of Hygiene.

§ 130-10. Laboratory established under control of state board of health.—For the better protection of the public health and to prevent the spread of communicable diseases there shall be established a state laboratory of hygiene, the same to be under the control and management of the state board of health. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7056.)

§ 130-11. To analyze potable waters. — It shall be the duty of the state board of health to have made in such laboratory monthly examinations of samples from all the public water supplies of the state; of all waters sold in bottle or other package, and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public. In the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation or entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown.

The board shall also cause examinations to be made of well and spring waters, when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7057.)

§ 130-12. To make examination for communicable diseases. — The board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, of throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of fæces in cases of suspected hookworm diseases, and such other examinations as the public health may require. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7058.)

Effect upon Other Laws.—The provision in this section in regard to examination of sputum in cases of suspected tuberculosis is not repealed or affected by other laws for "extension work" throughout the State against tuberculosis, nor does it affect these other laws. See sec. 131-52, et seq. State Sanatorium v. Lacy, 173 N. C. 810, 92 S. E. 689.

§ 130-13. Support of laboratory; tax on waters. —For the support of the state laboratory of hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate, and private, selling water to the people. The annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells, the gross annual sales from which for the previous calendar year are less than two thousand dollars and more than one thousand five hundred dollars, fifty dollars; less than one thousand five hundred and more than one thousand dollars, forty dollars; less than one thousand and more than five hundred dollars, thirty dollars; less than five hundred and more than two hundred and fifty dollars, twenty dollars; less than two hundred and fifty dollars, fifteen dollars; for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the public, fifteen dollars, and an additional tax for water sold in bottle or other package from such spring in accordance with the above schedule. The tax shall be collected quarterly by the sheriff, as other taxes, and shall be paid by the sheriff directly to the treasurer of the state board of health.

It shall be the duty of the secretary of the state board of health when any person, firm or corporation is delinquent in the payment of taxes and penalties due the state board of health for a period of six months to notify the attorney general of such delinquency, stating the amount then due by said person, firm or corporation for taxes and penalties. It shall be the duty of the attorney general to immediately institute an action in the superior court of the county in which such delinquent person, firm or corporation for the collection of said delinquent taxes and penalties resides or is situated, and upon the final determination of said suit, the judgment rendered in favor of the state board of health shall be certified by the clerk of the superior court of the county to the county in which the delinquent taxpayer lives and/or conducts his business, and such judgment shall be a lien as like judgments and be enforced under the general law of the State: Provided, however, that when any delinquent taxpayer has entered into an agreement with the state board of health to pay up his delinquent taxes and penalties in installments and is paying them according to said agreement, that the secretary of the state board of health may or may not in his discretion notify the attorney general to bring an action as provided in this section. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; 1935, c. 340; C. S. 7059.)

Editor's Note.—The last paragraph of this section was added by the amendment of 1935.

§ 130-14. Duty of seller to make reports and transmit samples; penalties.—Every corporation, firm, or person selling water in the manner set forth in the preceding section shall file with the treasurer of the state board of health, annually in the month of January, an affidavit as to the gross amount received from sales of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to file such affidavit within the time prescribed shall subject the corporation, firm, or person to double tax for the current year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the laboratory of hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of twenty-five dollars. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the

laboratory of hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring. (1911, c. 62, s. 36; C. S. 7060.)

§ 130-15. Nonresidents selling water.—Any person, firm, or corporation not a citizen of the state who shall sell or offer for sale any water in bottle or other package for consumption by the people of the state shall obtain a license from the treasurer of the state board of health and shall pay for said license the sum of sixty-four dollars per annum, or a less amount, equal to the tax paid by springs of the same class within the state, upon compliance with the conditions applying to them, payable in advance: Provided, that satisfactory evidence of purity furnished by the state hygienic laboratories of other states agreeing to reciprocate in the matter with this state shall be accepted in lieu of the license tax. (1911, c. 62, s. 36; C. S. 7061.)

§ 130-16. Publication of dangerous waters. — If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the state laboratory of hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the state board of health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analysis the water shall be found to be no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the water for sale, and publication of the fact shall be made in the monthly bulletin: Provided, that this shall not apply to therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the director of the state laboratory of hygiene. (1911, c. 62, s. 36; C. S. 7062.)

§ 130-17. Printing and stationery for laboratory.—The printing and stationery necessary for the laboratory shall be furnished and paid for out of the appropriation to the state board of health. (1911, c. 62, s. 36; 1913, c. 181, s. 14; 1917, c. 220, s. 1; 1919, c. 145, s. 25; C. S. 7063.)

Art. 3. County Organization.

§ 130-18. County board of health; organization: terms of members; chairman.—The chairman of the board of county commissioners, the mayor of the county town, and in county towns where there is no mayor the clerk of the superior court, and the county superintendent of schools shall meet together on the first Monday in April, one thousand nine hundred and thirty-one, and thereafter on the first Monday of January in the odd years of the calendar, and elect from the regularly registered physicians and dentists of the county two physicians and one dentist, who, with themselves, shall constitute the county board of health. The chairman of the board of county commissioners shall be the chairman of the county board of health, and the presence of three members at any regular or called meeting shall constitute a quorum. The term of office of members of the county board of health shall terminate on the first Monday in January in the odd years of the calendar, and while on duty the county may at its discretion pay them four ($4.00) dollars per diem, unless such board members are full time employees of the county or municipality located therein, in which event they shall receive no per diem compensation as member of the county board of health. (Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1931, c. 149; 1941, c. 185; C. S. 7064.)

Local Modification.—Cumberland: 1935, c. 159; 1943, c. 91; Caldwell: 1939, c. 366; Moore: 1943, c. 326, s. 2; Nash: 1941, c. 6, s. 1.

Editor's Note.—The Act of 1931 amended this section by placing a dentist on the board. This Act omitted the words "and while on duty they shall receive four dollars per diem to be paid by the county" appearing at the end of the former section.

The 1941 amendment added the part of the last sentence relating to compensation.

Constitutional.—This section is not repugnant to Article XIV, sec. 7, of the State Constitution, which forbids the holding of two offices by one man at the same time, but simply adds further duties to the offices already created, which expire with the term of office of each. McCullers v. Board, 158 N. C. 75, 73 S. E. 816.

Acts of De Facto Officers Cannot Be Upheld.—The acts of the Madison county board of health, created by ch. 322, Public-Local Laws of 1931, cannot be upheld on the ground that, notwithstanding the act is void, its members were de facto officers, since a de jure board of health for the county had been properly constituted under this section. Sams v. Board of Com'rs, 217 N. C. 284, 7 S. E. (2d) 540.

§ 130-19. Duties of county board of health; meetings; expenses. — The county board of health shall have the immediate care and responsibility of the health interests of their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health. All expenditures shall be approved by the board of county commissioners before being paid. (Rev., s 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; C. S. 7065.)

Limited Powers.—County boards of health and other administrative agencies, being creatures of statute, have only such powers as are conferred upon them by statute, either expressly or by necessary implication. Champion v. Vance County Board of Health, 221 N. C. 96, 100, 19 S. E. (2d) 239.

This section gives no power to tax, nevertheless, it indicates that a county board of health is a subordinate governmental agency which of necessity must derive funds either from the state or county, or both, with which to pay salaries or other expenditures required in carrying on the health program of the state. Champion v. Vance County Board of Health, 221 N. C. 96, 100, 19 S. E. (2d) 239.

Findings of Board Not Final.—The finding of the county board of health that the maintenance of a cemetery upon the watershed is a nuisance to the public health has not the same force as the positive declarations of statute, and it may be shown in answer to a notice to show cause why an injunction should not be continued to the final hearing that the particular cemetery, as maintained, was not a nuisance entitling the plaintiff to injunctive relief. Board of Health v. Lewis, 196 N. C. 641, 146 S. E. 592.

§ 130-20. Violation of rules of county board a misdemeanor.—If any person shall violate the rules and regulations made by the county board of health he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s.

3453; 1901, c. 245, s. 3; 1911, c. 62, s. 10; C. S. 7066.)

§ 130-21. To elect county physician or health officer.—The board of health shall meet on the first Monday of July, one thousand nine hundred and thirteen, and thereafter on the second Monday of January in the odd years of the calendar, and elect either a county physician or a county health officer, whose tenure of service shall be terminable at the pleasure of the county board of health, and who shall serve thereafter until the second Monday in January of the odd years of the calendar. If the county board of health of any county shall fail to elect a county physician or county health officer within two calendar months of the time set in this section, the secretary of the state board of health shall appoint a registered physician, of good standing in the said county, to the office of county physician, who shall serve the remainder of the two years, and shall fix his compensation, to be paid by the said county, in proportion to the compensation paid by other counties for like service, having in view the amount of taxes collected by said county. (Rev., ss. 4444, 4446; 1897, c. 201, s. 1; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233; C. S. 7067.)

Local Modification.—Nash: 1941, c. 6, s. 2; c. 193.

How Compensation of County Physician Fixed.—It is required that the board of county commissioners approve the expenditure for a county physician and pass upon its reasonableness, and upon their failure to do so mandamus will lie to compel them in good faith to pass upon it and in the exercise of a sound judgment say whether or not the compensation for the services as fixed are warranted by the statute. McCullers v. Board, 158 N. C. 75, 73 S. E. 816. But after a sum is fixed by them mandamus will not lie to compel payment of a greater sum. Halford v. Senter, 169 N. C. 546, 86 S. E. 525.

Validity of Appointment.—After the time expires in which the county board of health may appoint a county superintendent of health, one appointed by the Secretary of the State Board of Health takes the office, and one subsequently appointed by the county board of health has not a colorable title. McCullers v. Board, 158 N. C. 75, 73 S. E. 816.

Chapters 6 and 193, Public Laws 1941 are local laws relating to health and are void as being in contravention of Art. II, sec. 29 of the state constitution, and the election of the county health officer by the county board of health under this section is valid and effective without reference to any act by the county commissioners. Board of Health v. Board of Com'rs, 220 N. C. 140, 16 S. E. (2d) 677.

§ 130-22. Duties of county health officer; nonperformance a misdemeanor. — The duties of the county health officer shall be to devote his entire time to the county public-health work, and he shall perform the duties of county physician, the duties of quarantine officer, and the following additional duties: he shall make a sanitary examination during the summer months of every public school building and grounds in the county, and no school committee or teacher shall make use of any school building or grounds until the county superintendent of health shall certify in writing that said building and grounds have been inspected and found to be in a satisfactory sanitary condition within four months of the date of the certificate. He shall examine every school child that has previously been examined by the teacher according to methods furnished said teacher by the county superintendent of schools, and reported to said county superintendent of schools as probably defective in the condition of its eyes, ears, nose, or throat, and he shall further endeavor to have examined the feces of every child whom he suspects of having hookworm disease. He shall notify on blank forms and in accordance with instructions furnished by the state department of public instruction, every parent or guardian of a child having any defect of the aforesaid organs, or hookworm disease, and he shall suggest to said parent or guardian the proper course of treatment and urge that such treatment be procured. He shall coöperate fully with the county board of education, the county superintendent of schools, and the teachers in the public schools, to the end that children may be better informed in regard to the importance of health and the methods of preventing disease. He shall, through the county press, public addresses, and in every available way, endeavor to educate the people of his county to set a higher value on health, and to adopt such public and private measures as will tend to a greater conservation of life. Any violation of this section shall constitute a misdemeanor, and shall subject the defendant to a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S. 7068.)

§ 130-23. Duties of county physician; may employ another physician. — The duties of the county physician shall be to make the medico-legal post-mortem examinations for the coroners' inquests, to make examination of lunatics for commitment, to render professional service to sick inmates of the convict camp, jail, and county home, upon request of the superintendent or keeper of these institutions, and to determine the nature of any particular disease, upon the request of the quarantine or deputy quarantine officer. The county physician shall have the right to employ any other regularly registered physician of his county, to perform any or all of the duties pertaining to the jail, county home, or convict camp, when in his judgment it is desirable to do so; but the terms under which such physician is employed by the county physician shall be approved by the board of county commissioners. (Rev., s. 4445; 1901, c. 245, s. 3; 1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S. 7069.)

Right to Delegate Duties.—A county superintendent of health has no right to delegate the performance of his official duties to others, so as to give his employees the right to make their services a county charge. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574.

Same—Care of Smallpox Patient.—Under Laws 1893, ch. 214, sec. 9, providing that contagious diseases shall be promptly quarantined by the county superintendent of health, the services rendered by a person in removing a person afflicted with smallpox to a pesthouse, taking his meals to him and attending to him continually during his sickness, is a legitmate county charge, where the patient is insolvent and the services were rendered by the direction of the superintendent of health. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574.

§ 130-24. County quarantine officer.—The election, term of office, and compensation of county quarantine officer are regulated as provided in article 14 of this chapter, entitled Infectious Diseases Generally. The county physician, county health officer, municipal physician, or municipal health officer shall be eligible to the position of quarantine officer. The county board of health shall arrange with the quarantine officer to ac-

cept and discharge the duties assigned in this chapter to him and any other duties relating to the control of infectious diseases which may be assigned to him by the county board of health.

The quarantine officer is charged with the enforcement of article 14 of this chapter, entitled Infectious Diseases Generally, and nothing herein contained shall interfere with the performance of his duties under that article. He shall faithfully enforce all laws pertaining to inland quarantine and disinfection and the rules and regulations governing these matters as prescribed by the local, county, or municipal boards of health, but any child or other person may remain in the custody and care of parents or family.

The quarantine of ports shall not be interfered with, but the officers of the local state boards shall render all aid in their power to quarantine officers in the discharge of their duties.

The failure of the quarantine officer to perform the duties imposed in this section shall be a misdemeanor, and he shall be punished for each offense, except as otherwise specifically provided, by a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, ss. 16, 20; C. S. 7070.)

§ 130-25. Abatement of nuisances. — Whenever and wherever a nuisance shall exist which in the opinion of the county physician or county health officer is dangerous to the public health, it shall be his duty to notify in writing the parties responsible for its continuance, of the character of the nuisance and the means of abating it. Upon this notification, the parties shall proceed to abate the nuisance: Provided, however, that if the party notified shall make oath or affirmation before a justice of the peace of his or her inability to carry out the directions of the county physician or county health officer, it shall be done at the expense of the town, city, or county in which the offender lives. In the latter case the limit of the expense chargeable to the city, town, or county shall not be more than one thousand dollars in any case: Provided further, that nothing in this section shall be construed to give the county physician or county health officer the power to destroy or injure property without a due process of law as now exists for the abatement of nuisances. (Rev., s. 4450; 1893, c. 214, s. 22; 1911, c. 62, s. 12; 1913, c. 181, s. 3; C. S. 7071.)

Sufficient Evidence of a Nuisance.—Evidence that a stable is within four feet of a dwelling house, and because of its filthy condition those occupying the house were unable to eat, and the health officer has given notice to abate the nuisance, is sufficient to convict under this section, and sufficient to sustain a fine under sec. 130-26. State v. Wilkes, 170 N. C. 735, 87 S. E. 48.

Power to Burn Dwellings.—Neither town nor county commissioners have authority under this section to burn a residence house to prevent the spread of contagious and infectious diseases. But in case they exceed their authority and burn a house no action will lie against them, in their official capacity, their liability, if any, is personal. Prichard v. Board, 126 N. C. 908, 36 S. E. 353. This is a specific application of the general rule that a municipality is not liable for the torts committed by its agents or officers.

§ 130-26. Failure to abate nuisance after notice misdemeanor.—If any person, firm, corporation, or municipality responsible for the existence and continuance of a nuisance, after being duly notified in writing by the county physician or county health officer to abate said nuisance, shall fail to abate the same for twenty-four hours after such notice prescribed, he shall be guilty of a misdemeanor, and shall be fined two dollars a day as long as said nuisance remains. (Rev., s. 3446; 1893, c. 214, s. 22; 1911, c. 62, s. 13; 1913, c. 181, s. 3; C. S. 7072.)

§ 130-27. Certain nuisances in seaport towns.— All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water; all dead and putrefied animals lying about docks, streets, lanes, alleys, vacant lots, or yards; all privies that have no wells sunk under them; all slaughter-houses, all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of the state, are declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated, and removed. (Rev., s. 4462; Code, s. 2907; R. C., c. 94, s. 15; 1815, c. 893, s. 1; C. S. 7073.)

§ 130-28. Duty of owners of sunken lots in seaport towns; penalty.—Every person possessed of a lot in any seaport town, which from its low or sunken situation is liable to retain tide or rain water, or on which cellars or foundations for buildings may be dug (whether a tenement be erected over the same or not), shall during the months of June, July, August, September, and October, preserve and keep the said lot, cellars, and foundations dry and free from stagnant or putrid water and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town for every week he shall suffer such stagnant or putrid water or other filth to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioner of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended. (Rev., s. 4461; Code, s. 2908; R. C., c. 94, s. 16; 1815, c. 893, s. 2; C. S. 7074.)

§ 130-29. County commissioners may levy special tax to protect health.—The board of county commissioners of each county is hereby authorized at any time to levy a special tax, to be expended under the direction of a committee composed of the chairman of the board of county commissioners and the county health officer or county physician for the preservation of the public health. (Rev., s. 4455; C. S. 7075.)

Establishing Public Hospitals.—This section should be construed in connection with the sections of Chapter 131, as to the maintenance of permanent public hospitals, and requires that the question of establishing such hospitals, shall have the approval of the voters of the county in accordance to the methods and in the manner specified by the statute. Armstrong v. Board, 185 N. C. 405, 117 S. E. 388.

Maintenance of Public Welfare Departments.—No authority is given by this section to levy a special tax for the

purpose of raising revenue for the maintenance of the public welfare departments. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610.

Art. 4. Joint Health Departments.

§ 130-30. Appropriations for joint city and county health departments.—The governing authorities of all cities, towns and counties of North Carolina shall have the power and authority to appropriate annually and from time to time public moneys for the maintenance and operation of boards of health which have heretofore been created and are existing as joint city and county boards of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such joint county and city health department, and to levy special taxes therefor, for which the special approval of the general assembly is hereby given. (1941, c. 296.)

Art. 5. Municipal Organization.

§ 130-31. Municipal physician or health officer; municipal regulations.—The authorities of any city or town, not already authorized in its charter, are hereby authorized to elect a municipal physician or municipal health officer when in their judgment municipal health would be improved thereby, and to make such regulations, pay such fees and salaries, and impose such penalties as in their judgment may be necessary for the protection and the advancement of the public health. (Rev., s. 4454; 1893, c. 214, s. 25; 1911, c. 62, s. 14; 1913, c. 181, s. 4; C. S. 7076.)

§ 130-32. Duties of the municipal physician or health officer; enforcement.—The duties of the municipal physician within the jurisdiction of the town or city for which he is elected shall be identical with those of the county physician for the county, with the exception of the duties of the county physician pertaining to the jail, convict camp, and county home. The authorities of any city or town shall have the power to assign the duties of quarantine officers to the municipal physician or health officer, and in such cases the municipal health officer shall faithfully perform the duties of the quarantine officers as prescribed in this chapter, and shall be subject to the penalties provided for the refusal or nonperformance of such duties. If the physician is employed to devote his entire time to the public health interests of his town or city, he shall be known as the municipal health officer, and shall discharge all duties pertaining to the public schools of his town or city which were assigned in this chapter to the county health officer, and such other duties as may be assigned him by the municipal board of health.

Any one violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than ten dollars nor more than fifty dollars. (Rev., s. 4509; 1893, c. 214, s. 9; 1911, c. 62, s. 15; 1913, c. 181, s. 5; C. S. 7077.)

Cited in Board v. Henderson, 163 N. C. 114, 79 S. E. 442.

Art. 6. Sanitary Districts in General.

§ 130-33. Creation by state board of health.—For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation. (1927, c. 100, s. 1.)

Local Modification.—Caswell: 1939, c. 3, ss. 1, 2; 1941, c. 89; 1943, c. 287; Moore: 1939, c. 3, s. 3.

§ 130-34. Incorporation; petition from freeholders.— Such sanitary district shall be incorporated as hereinafter set out. Fifty one per cent or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which all or the major portion of the proposed district is located setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, if the same is approved by them, shall, through its chairman, transmit the petition to the State Board of Health requesting that the proposed sanitary district be created. Provided, however, that the board of county commissioners before passing upon said petition shall hold a public hearing upon the same and shall give prior notice of such hearing by advertising to be made by posting a notice at the court-house door of their county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then in either of such events a like publication of notice shall be made and given in each of said counties. (1927, c. 100, ss. 2, 3.)

Withdrawal of names from petition.—Signers of a petition for the creation of a sanitary district under this article are entitled as a matter of right to withdraw their names from the petition at any time before action is taken on the petition by the county commissioners on the question of approval, and when their withdrawal reduces the number of signers to less than 51% of the resident freeholders within the proposed district the board of county commissioners is without jurisdiction and its approval of the petition may be enjoined. Idol v. Hanes, 219 N. C. 723, 14 S. E. (2d) 801.

§ 130-35. State board of health to hold public hearing.—The State Board of Health shall name a time and place within the proposed district at which the State Board of Health, through a representative, shall hold a public hearing concerning the creation of the proposed sanitary district. The State Board of Health shall cause at least twenty days' notice to be given of the time and place of such hearing by publishing this information at least five times in a newspaper or newspapers published in or near the proposed district and having a general circulation therein. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place named by the representative of the State Board of Health. (1927, c. 100, s. 4.)

§ 130-36. Declaration that district exists; status of industrial villages within boundaries of district.—If, after such hearing the State Board of Health

shall deem it advisable to comply with the request of said petition and that a district for the purpose or purposes therein stated should be created and established, the State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a sanitary district; Provided, however, that any industrial plant and its contiguous village shall be included within or excluded from the area embraced within such sanitary district as expressed in the application of the person, persons or corporation owning or controlling such industrial plant and its contiguous village, said application to be filed with the State Board of Health on or before the date of the public hearing as hereinbefore provided. Each district when created shall be identified by a name or number assigned by the State Board of Health. (1927, c. 100, s. 5.)

§ 130-37. Election and terms of office of sanitary district boards.—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, freeholders within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners candidates for said district board shall be elected in the primary and elected at said general election as are county officers except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates to be elected in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election: Provided that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify. (1927, c. 100, s. 6; 1043, c. 602.)

Editor's Note.—The 1943 amendment added the matter contained in the second paragraph.

§ 130-38. Vacancy appointments to district boards.—Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled by the county commissioners of the county in which said sanitary district may be situate. (1935, c. 357, s. 2.)

§ 130-39. Corporate powers. — When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

1. Under the supervision of the state board of health to acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant or such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district.

2. To issue certificates of indebtedness against the district in the manner hereinafter provided.

3. To issue bonds of the district in the manner hereinafter provided.

4. To cause taxes to be levied and collected upon all the taxable property within the district sufficient to meet the obligations of the district evidenced by bonds, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.

5. To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within and/or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

6. To employ such engineers, counsel and other such persons as may be necessary to carry into effect any projects undertaken and to fix compensation thereof.

7. To negotiate and enter into agreement with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.

8. To formulate rules and regulations necessary for proper functioning of the works of the district.

9. (a) To contract with any person, firm, corporation, city, town, village or political subdivision of the state both within and/or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the state in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or con-

venient to effect the delivery of said water at the expense of the district, when in the opinion of the sanitary district board it will be for the best interest of the district and subject to the approval of the state board of health.

(b) To contract with any person, firm, corporation, city, town, village or political subdivision of the state within and/or without the corporate limits of the district to supply raw and/or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the state where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.

10. After the final approval and adoption of the plan as set forth in § 130-45, and the election as provided in § 130-46, and subject to the approval of the state board of health, to adopt a plan different from that adopted by said board and heretofore or hereafter voted upon by the qualified voters of the district, where the newly-adopted plan would not in the opinion of said board and the state board of health constitute a material deviation from the original plan, which new plan may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the state either within and/or without the corporate limits of the district instead of a sewage disposal line and other improvements, where the change in said plans would permit the disposal of sewage at a point nearer the district either within and/or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the state to whom the water is to be supplied and would effect a saving to the district, and to reappropriate for carrying out the new plan a sufficient amount of bond money theretofore appropriated by the vote of the qualified voters of the district to pay the costs of construction of the plan thereafter adopted.

11. Subject to the approval of the state board of health, to engage in and undertake the prevention and eradication of malaria within the district by the eradication of the mosquito and to that end the sanitary district board of said sanitary district is hereby empowered to employ sufficient employees suitable to the accomplishment of this work.

12. To collect and dispose of garbage, waste, and other refuse by contract or otherwise.

13. To establish a fire department for the protection of property within the district, or to contract with cities, counties or other governmental units to furnish fire fighting apparatus and personnel for use in the district.

14. The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection.

15. To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, all as provided in this article.

The provisions of subsections twelve, thirteen, fourteen and fifteen shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116.)

Local Modification.—Caswell: 1939, c. 3; 1941, c. 89; 1943, c. 287; Moore: 1939, c. 3.

Editor's Note.—Public Laws 1933, c. 8, struck out subsection 5 of this section and inserted the present reading in lieu thereof. The act also added subsection 9, consisting of clauses (a) and (b), and subsection 10.

Prior to the amendment of 1935 subsection 4 of this section required the taxes to be sufficient "to meet the obligations evidenced by bonds and certificates of indebtedness issued against the district." The 1935 amendment also added subsection 11 of the section.

The 1941 amendment, added subsections 12, 13, 14, and 15 to this section, and provides that said subsections "shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more."

For comment on the fire protection provisions of the 1941 amendment, see 19 N. C. Law Rev. 498.

§ 130-40. Organization of board. — Upon election a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation of five dollars when actually engaged in the business of the district payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistance as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8.)

§ 130-41. Power to condemn property.—When, in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of chapter 40 entitled "eminent domain" shall apply. Section 40-10 shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3.)

Editor's Note.—Public Laws 1933, c. 8, inserted the

clause appearing twice in this section, reading "within and/or without the corporate limits of the city."

§ 130-42. Construction of systems by corporations or individuals.—Whenever a corporation or the residents of any locality within the sanitary district shall desire a water supply, sewerage system or any part thereof and the sanitary district board shall deem it inadvisable or impracticable at that time, due to remoteness from its general system or other cause, for the sanitary district to build such system, such corporation or residents may nevertheless build and operate such system at its or their own expense but it shall be constructed and operated under plans, specifications and regulations approved by the district board. (1927, c. 100, s. 10.)

§ 130-43. Reports.—Upon the election of any sanitary district board it shall become the duty of the board to employ competent engineers to make a report or reports on the problems of the sanitary district, which report or reports shall be prepared and filed with the sanitary district board. Such report or reports shall embrace the following:

1. Suitable comprehensive maps showing the boundaries of the sanitary district and in a general way the location of the various parts of the work that is proposed to be done and such information as may be useful for a thorough understanding of the proposed undertaking.
2. A general description of existing facilities for carrying out the objects of the district.
3. A general description of the various plans which might be adopted for accomplishment of the objects of the district.
4. General plans and specifications for such work.
5. General descriptions of property it is proposed to be acquired or which may be damaged in carrying out the work.
6. Comparative detail estimates of cost for the various construction plans.
7. Recommendations. (1927, c. 100, s. 11.)

§ 130-44. Consideration of reports by sanitary district board.—The report or reports filed by the engineers shall be given careful consideration by the sanitary district board for adoption of a plan which they approve. If deemed advisable by the sanitary district board they may hold a public hearing, giving due and ample notice of the time and place thereof, for the purpose of considering objections to carrying out of the work according to the plan adopted by them. (1927, c. 100, s. 12.)

§ 130-45. Resolution after adoption of plan.—After final approval of the plan adopted the sanitary district board shall adopt a resolution setting forth:

1. A general outline of the work that is proposed to be done.
2. A reference to the engineer's report for details as to the plan adopted.
3. The amount of bonds that the board proposes to issue to cover the cost of doing the proposed work.
4. The form and term of the proposed bonds and the interest rate thereon.

The resolution shall, immediately after adoption, be published at least three times in one or more newspapers having a general circulation within the district. (1927, c. 100, s. 13.)

§ 130-46. Call for election. — Following the adoption of the resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds to provide funds for doing the work as set forth in the resolution adopted by the sanitary board. If, at such election the majority of the registered voters vote in favor of incurring the indebtedness as proposed, the district board shall issue and sell bonds for the amount set forth in the resolution. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond election shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located, if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are co-terminal with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication at least three times in some newspaper published or circulated in the district. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the same shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given by publication once in some newspaper published or circulated in said district at least thirty days before the close of the registration books. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in § 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places

on which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

The ballots to be used and the manner of voting shall conform to the provisions of Chapter 164, Public Laws of 1929. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the Clerk of the Superior Court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in § 130-53 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election. (1927, c. 100, s. 14.)

§ 130-47. Bonds. — The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice prescribe by resolution the form of bonds and the interest coupons attached thereto, the denominations of the bonds and the date and place at which they shall become payable. These bonds shall not be sold at less than par nor bear an interest rate in excess of six per cent. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be affixed thereto. In the event coupon bonds are issued, the coupons thereof may be signed by the secretary alone, or he may have lithographed, engraved, or printed thereon a facsimile of his signature. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. Said bank, however, shall be required to execute the proper bonds, giving as surety thereto some surety company authorized to do business in North Carolina, conditioned to account for and pay out upon said vouchers all funds so deposited in said bank. The penalty of said bond shall not be less than the amount of money so deposited in said bank. (1927, c. 100, s. 15.)

Constitutionality.—The validity of this article is not affected by the provisions that certain industrial enterprises and villages situate therein may be excluded upon application of the owners. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530.

This article constitutes a general law of Statewide application relating to health, and is valid. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530.

Bonds Valid as General Tax.—Bonds issued by a sanitary district formed in accordance with this article, are a valid obligation, and binding upon the property within the district as a general tax and not an assessment of property according to benefits received. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530.

Differentiating between Property Benefited and Not Benefited.—Bonds issued by a sanitary district for sewerage and a water supply under the provision of this article, will not be declared invalid because not differentiating between property benefited and not benefited when the voters within the territory unanimously voted for their issuance, and having full notice and opportunity to do so, no one appeared to make objection on that ground. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 722.

§ 130-48. Additional bonds. — Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to have an election held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds from the sale of the bonds shall be in excess of the amount necessary to complete the costs of the completed works of the district and pay the interest and principal due on said bonds before the placing into service of the works of the district and the collection of taxes levied or to be levied for that purpose, then the sanitary district board shall be required to purchase with said surplus, at par and accrued interest, any part of the outstanding issue of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4.)

Editor's Note.—Public Laws of 1933, c. 8, added the last sentence of this section as it now appears.

§ 130-49. Valuation of property; determining annual revenue needed. — Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per $100 necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per $100 so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every ninety days the amount of tax so collected shall be remitted to the sanitary district board and deposited by said board in a bank in the State of North Carolina separately from other funds of the district. Said bank, however, before said funds are deposited in it is to execute a proper surety bond as described in § 130-47 for the proper care and disbursement of and accounting for said taxes.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located with-

in the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred ($100.00) dollars necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred ($100.00) dollars necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political sub-divisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4.)

Editor's Note.—The amendment of 1935 added the clause beginning with the word "revenue" to the last sentence of the first paragraph of this section and added the last paragraph in its entirety.

§ 130-50. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.—A sanitary district board may issue certificates of indebtedness in anticipation of the levying and collection of taxes to cover any or all expenses incurred by the board incident to the preparation of the engineers' report, holding of bond election or any other expenses incurred by the board. The amount of any certificates of indebtedness issued by the sanitary district board shall be included in the bond issue as hereinbefore provided. In the event that the election held within the district for the purpose of issuing bonds to provide funds for carrying out the objects of the district results in the defeat of said bonds the sanitary district board shall cause to be levied and collected a tax sufficient to pay such certificates of indebtedness or any other indebtedness incurred by the sanitary district board. Such tax shall be levied and collected in the same manner as provided in § 130-49.

A sanitary district board may borrow money under the provisions of the Local Government Act, for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed fifty per cent of the amount of uncollected taxes and other revenue for the fiscal year in which the loan is made, as estimated by the chief financial officer and certified in writing by him to the governing body. (1927, c. 100, s. 18; 1935, c. 250.)

Editor's Note.—The amendment of 1935 added the last paragraph of this section relative to loans under local government act.

§ 130-51. Engineers to provide plans and supervise work; bids.—The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

Any contract shall be let to the lowest responsible bidder submitting a sealed bid in response to a notice calling for such bid and published at least five times over a period of at least fifteen days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located.

Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars, shall be purchased from the lowest responsible bidder in the same manner as above provided.

All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19.)

§ 130-52. Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not be unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5.)

Editor's Note.—Public Laws of 1933, c. 8, added the qualifying clause at the end of the second sentence of this section.

§ 130-53. Removal of member of board.—A petition carrying the signatures of twenty-five per cent or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or misfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of a

sanitary district is located. Upon receipt of such petition the board of county commissioners, or in the event that the district is located in more than one county, a joint meeting of the boards of county commissioners shall be called, shall adopt a resolution calling an election, naming election officials, naming date, and giving due notice thereof for the purpose of removing from office the member or members of the sanitary district board named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expense of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21.)

§ 130-54. Rights of way granted.—A right-of-way in, along, or across any county or State highway, street or property within a sanitary district is hereby granted to a sanitary district in case such right-of-way is found by the sanitary district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway shall be done in accordance with the rules and regulations of the State Highway and Public Works Commission. (1927, c. 100, s. 22; 1933, c. 172, s. 17.)

§ 130-55. Returns of elections.—In all elections provided for in this article the returns of such elections shall be made to the board or boards of county commissioners in which the sanitary district lies, and said board or boards of county commissioners shall canvass and declare the result of said election, and this determination of said board or boards of county commissioners upon the result of said election shall be by them certified to the sanitary district board for its action thereupon. (1927, c. 100, s. 23.)

§ 130-56. Procedure for extension of district.—The boundaries of any sanitary district may, with the approval of the sanitary district board, be extended under the same procedure as herein provided for the creation of a sanitary district: Provided, however, that twenty-five per cent or more of the resident freeholders within the territory proposed to be annexed institute by petition the proceedings for annexation, or that ten per cent of the freeholders resident in the district to be annexed are authorized to petition for an election upon the subject of annexation, and if such petition is filed with the sanitary district board, such election shall be held within the territory to be annexed under the rules and regulations hereinbefore provided. (1927, c. 100, s. 24; 1943, c. 543.)

Editor's Note.—The 1943 amendment substituted "or" for "and" in the eighth line.

§ 130-57. Validation of creation of sanitary districts and of bond elections.—The action of the various boards of commissioners of the various counties of the State and the action of the state board of health heretofore had and taken in the formation and creation of sanitary districts in the State wheresoever situate and the formation and creation, or the attempted formation and creation, of all sanitary districts in the State by the acts of the various county commissioners of the State and the state board of health or other officers of the State, and all elections held in any sanitary district of the State or in any district purporting to be a legal sanitary district of the State by virtue of the purported acts and authority of any board of county commissioners and the state board of health, for the purpose of authorizing the issue and sale of bonds of the said sanitary districts in order to secure funds for the construction and maintenance of water and/or sewer systems and all of such bonds themselves, and all the acts and procedure in any wise had and taken by any and all officials and persons in relation to the formation and creation of such sanitary districts and the issue and sale of such bonds, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are declared to be legal and binding obligations of such sanitary districts, respectively, when issued and sold as such. (1935, c. 357, s. 1.)

§ 130-57.1. Dissolution of certain sanitary districts.—If any sanitary district established under this chapter has been in existence for as much as three years, and has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which the district or the greater part thereof is situated to dissolve said district. Upon receipt of such petition, the board of county commissioners shall hold a public hearing upon the question of dissolving said district. Notice of such hearing shall be posted at the courthouse door of the county or counties in which the district lies and shall also be published at least once a week for four successive weeks in a newspaper published in or near the district, and having a general circulation therein.

If, after the hearing, the county board of commissioners approves the petition, the chairman shall transmit the petition to the state board of health requesting that the sanitary district be dissolved. The state board of health shall name a time and place within the district at which the board of health, through a representative, shall hold a public hearing concerning the dissolution of the district. The state board of health shall cause notice of the hearing to be given by publication at least once a week for two successive weeks in a newspaper published in or near the district, and having a general circulation therein. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place determined by the representative of the state board of health. If after such hearing, the state board of health shall deem it advisable to comply with the request of said petition, it shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1943, c. 620.)

Art. 7. Special-Tax Sanitary Districts.

§ 130-58. Question of special sanitary tax submitted; district formed.—Special-tax sanitary districts may be formed by the county board of health in any county, without regard to township lines, under the following conditions: Upon a petition of a majority of the freeholders within the proposed special sanitary district, in whose names real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of health, the board of county commissioners, after thirty days notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special sanitary district, whether there shall be levied in such district a special annual tax of not more than the amount specified in the petition on the one hundred dollars valuation of property and on the poll to conduct the health work of the district as is hereinafter provided, in case such special tax is voted. The board of county commissioners shall appoint a registrar and two pollholders, and shall designate a polling place and order a new registration for such district, and the election shall he held in the district under the law governing general elections, as near as may be, and the registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of said board of commissioners. The expense of holding said election shall be paid out of the general funds of the county. The ballots to be used and the method of voting shall conform to Chapter 164, Public Laws of 1929. In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All moneys levied under the provisions of this section shall, upon collection, be placed to the credit of the health committee or board in such district, which committee shall be appointed by the county board of health, and such health committee shall have the authority to carry on the health work in the district as hereinafter provided. (1913, c. 154, s. 1; C. S. 7078.)

Local Modification.—Moore: 1933, c. 453.

§ 130-59. Election as to enlarging district.—Upon the written request of a majority of the health committee of any special-tax district, the county board of health may enlarge the boundaries of any special-tax district established under this article, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts; and in case a majority of the qualified voters in such new territory shall vote at such election in favor of a special tax of the same rate as that voted and levied in the special-tax district to which said territory is contiguous, then the new territory shall be added to and become a part of the said special-tax district; and in case a majority of the qualified voters shall vote against said tax, the district shall not be enlarged. (1913, c. 154, s. 1; C. S. 7079.)

§ 130-60. Election to abolish or to restore district or increase tax.—Upon petition of two-thirds of the qualified voters residing in any special-tax sanitary district established under this article, endorsed and approved by the county board of health, the board of county commissioners shall order another election in said district, to be held under the provisions prescribed in this article for holding other elections. If at such election the majority of the qualified voters in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued. No election for revoking a special tax in any special-tax district shall be ordered and held in such district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on said question in said district; and no petition revoking such tax shall be approved by the county board of health oftener than once in two years. These provisions for ordering a new election to revoke a special tax in any special-tax district shall not apply to elections in such districts for increasing or restoring the special-tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this article for establishing new special-tax districts. (1913, c. 154, s. 1; C. S. 7080.)

§ 130-61. Sanitary committee; appointment; qualifications; pay.—The county board of health of each county shall immediately after the formation of a special-tax sanitary district, and on the first Monday in July of the odd years of the calendar thereafter, appoint in each sanitary district three intelligent men of good business qualifications, who are known to be in favor of public education, who shall serve for two years from the date of their appointment as health or sanitary committeemen in their respective district and until their successors are elected and qualified. If a vacancy shall occur at any time, by death, resignation, or otherwise, it shall be the duty of the county board of commissioners to fill such vacancy. Such board shall have the power to pay out of the special-tax fund to each member of the committee thus appointed one dollar per day for not more than six days per annum. (1913, c. 154, s. 2; 1935, c. 357, s. 2; C. S. 7081.)

§ 130-62. Election of chairman and secretary; records kept.—The sanitary committee, as soon as practicable after their election and qualification, not to exceed twenty days, shall meet and elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county health officer and to the state health officer. (1913, c. 154, s. 3; C. S. 7082.)

§ 130-63. Powers of committee; may make rules.—The authority and duties of the special-tax sanitary committee shall be the same as those given by the public laws of the state to the county board of health in so far as they are applicable to the special-tax sanitary district. The committee shall have the immediate care and responsibility of the health interest of this district. They shall make such rules and regulations, pay such fees

and salary, purchase supplies, and impose such penalties as in their judgment may be necessary to protect and advance the public health, but no rules or regulations they may promulgate shall conflict with the rules and regulations of the boards of health of the state and county of which the district is a part. (1913, c. 154, ss. 4, 5; C. S. 7083.)

§ 130-64. Employment of health officer; disbursement of funds. — The committee shall have authority to employ a registered physician of the state as health officer, and if he should persistently neglect the performance of his full duties for a period of ninety days he may be dismissed by the committee and his successor employed to fill the unexpired term. If the committee is satisfied that the provisions of this article have been complied with, they shall give an order approved by the chairman and secretary of the committee on the treasurer of the county, payable to the health officer for the full monthly amounts due for services in accordance with the contract, but monthly statements of the work done by the health officer shall be made to the committee; and he shall supply reports promptly of such information as he can on blanks supplied by and returnable to the state board of health. Orders for all funds to the credit of the special-tax sanitary district before it shall be a valid voucher on the county treasurer must be first approved by the chairman and secretary of the committee for the sanitary district. (1913, c. 154, s. 4; C. S. 7084.)

§ 130-65. Powers and duties of health officer.— The duties and powers of the health officer elected for the special-tax sanitary district shall be the same as those prescribed by the public laws of the state for the county health officer, in so far as they are applicable to the sanitary district, and such additional duties as may be imposed on him by the special-tax sanitary committee. (1913, c. 154, s. 6; C. S. 7085.)

Art. 8. Local and District Health Departments.

§ 130-66. Local and district health departments authorized.—The state board of health is hereby authorized to use any available funds at its command, not otherwise appropriated, to establish full time local and district health department service for any town, city and county, or group of such units in the state where the local governing powers desire the formation of such a department and are willing to assist financially in the enterprise, to an amount at least equal to the amount of state financial assistance. (1935, c. 142, s. 1.)

§ 130-67. Authority of district health officer; election of county physician unaffected. — Where there is a district health department, the district health officer shall have the authority now delegated to town, city and county health officers and town, city and county quarantine officers in each of the several counties or units comprising the district, by §§ 130-22 and 130-24: Provided, that nothing in this article shall affect in any way the election of a county physician in counties comprising a district health department. (1935, c. 142, s. 2.)

§ 130-68. Article not obligatory upon counties. —Nothing in this article shall be so construed as to require any county to enter into this agreement unless it so desires. (1935, c. 142, s. 3.)

Local Modification.—Martin: 1935, c. 142, s. 4; 1937, c. 17; Rockingham: 1935, c. 142, s. 4.

SUBCHAPTER II. VITAL STATISTICS.

Art. 9. Registration of Births and Deaths.

§ 130-69. State board of health to enforce regulations.—The state board of health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms, and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in the succeeding section, and in the central bureau of vital statistics at the capital of the state. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend to the general assembly any additional legislation that may be necessary for this purpose. (1913, c. 109, s. 1; C. S. 7086.)

§ 130-70. State registrar.—The secretary of the state board of health shall be state registrar of vital statistics, and shall have general supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board. Adequate fireproof space in one of the state buildings for filing cases for the death and birth certificates made and returned under this article shall be provided by the board on public buildings and grounds. (1913, c. 109, s. 2; 1941, c. 224; C. S. 7087.)

§ 130-71. Registration districts. — For the purposes of this article the state shall be divided into registration districts as follows: Each city, each incorporated town, and each township shall constitute a local registration district. (1913, c. 109, s. 3; C. S. 7088.)

§ 130-72. Control of board over districts.—The state board of health shall have authority to abolish or consolidate existing registration districts, and/or create new districts when, in the judgment of the board, economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3.)

§ 130-73. Appointment of local registrar. — The chairman of every board of county commissioners in the state shall appoint a local registrar of vital statistics for each township in his county, and the mayor of every incorporated town or city in the state shall appoint a local registrar of vital statistics for his town or city, and the chairman of the boards of county commissioners and the mayors of the cities or towns shall notify the state registrar, in writing, of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year in which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. In cities where health officers or other officials are, in the judgment of the

state board of health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all the provisions of this article. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by a local registrar appointed by the same official who appointed the local registrar whose retirement creates the vacancy. Any chairman of a board of county commissioners or mayor of a city or town who appoints a local registrar to fill a vacancy in the office of local registrar shall notify the state registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the chairman of the board of county commissioners for the township local registration office, and by the mayor of the city or town for the town or city registration office. Each local registrar shall be a bona fide resident of the township, city, or precinct for which he is appointed, and removal from the township, city, or precinct shall terminate the office. (1913, c. 109, s. 4; 1915, c. 20; C. S. 7089.)

§ 130-74. County health officer may act as registrar. — The state board of health shall have authority and power to designate and appoint the whole-time health officer of the county as registrar for that county, or fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the county health officer under such appointment, shall be used by the local board of health in its discretion for health service. (1933, c. 9, s. 3.)

§ 130-75. Removal of local registrar.—Any local registrar who, in the judgment of the secretary of the state board of health, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required thereby, shall be forthwith removed from his office by the secretary of the state board of health, and such other penalties may be imposed as are provided under § 130-105. (1913, c. 109, s. 4; C. S. 7090.)

§ 130-76. Appointment of deputy and sub-registrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the state registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S. 7091.)

§ 130-77. Permit for burial or other disposition of body.—The body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this article other than the compensation provided in § 130-102. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S. 7092.)

§ 130-78. Stillborn children to be registered.—A stillborn child shall be registered as a birth and also as a death, but only one certificate shall be required of such birth and death, which shall be filed with the local registrar, the certificate to contain, in place of the name of the child, the word "stillbirth"; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical at-

tendance, as provided for in this article. (1913, c. 109, s. 6; 1933, c. 9, s. 2; C. S. 7093.)

Editor's Note.—Prior to Public Laws of 1933, c. 9, this section required a separate certificate of birth and death of a stillborn child.

§ 130-79. Contents of death certificates. — The certificate of death shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of death, including state, county, township, or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.
2. Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."
3. Sex.
4. Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.
5. Conjugal condition—as single, married, widowed, or divorced.
6. Educational attainments—as illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent. If the deceased is less than fifteen years of age the educational attainments of the mother, if living, or of the father, if living, or of the guardian, in the order named, shall be given.
7. Date of birth, including the year, month, and day.
8. Age, in years, months, and days. If less than one day, the hours or minutes. If exact information is unobtainable, give approximate age.
9. Occupation. The occupation to be reported of any person who had any remunerative employment, stating (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).
10. Birthplace; at least state or foreign country, if known.
11. Name of father.
12. Birthplace of father; at least state or foreign country, if known.
13. Maiden name of mother.
14. Birthplace of mother; at least state or foreign country, if known.
15. Signature and address of informant.
16. Official signature of registrar, with the date when certificate was filed, and registered number.
17. Date of death—year, month, and day.
18. Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory secondary cause or complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature, date of signature, and address of physician or official making the medical certificate.
19. Length of residence (for inmates of hospitals and other institutions; transients or recent residents) at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.
20. Place of burial or removal; date of burial.
21. Signature and address of undertaker or person acting as such.

The personal and statistical particulars (items one to thirteen) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause), and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required under subsection 18 above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; C. S. 7094.)

§ 130-80. Death without medical attendance; duty of undertaker and officials.—In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification. When the local health officer is not a qualified physician, or when the death takes place in a township registration district, or where there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts. If the registrar has reason to believe that the death had been due to unlawful act or neglect, he shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as

may be required by the state registrar in order properly to classify the death. (1913, c. 109, s. 8; C. S. 7095.)

§ 130-81. Undertaker to file death certificate and obtain permit.—The undertaker or person acting as undertaker shall file the certificate of death with the local registrar of the district in which the death occurred, and obtain a burial or removal permit, prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in §§ 130-79 and 130-80. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. He shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company, this permit to accompany the corpse to its destination, where, if within the state, it shall be delivered to the person in charge of the place of burial. (1913, c. 109, s. 9; C. S. 7096.)

§ 130-82. Sales of caskets regulated. — Every person, firm, or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the state registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the state board of health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S. 7097.)

§ 130-83. Permit for burial in state.—If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. (1913, c. 109, s. 10; C. S. 7098.)

§ 130-84. Interment without permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S. 7099.)

§ 130-85. Registration of births.—The birth of every child born in this state shall be registered as hereinafter provided. (1913, c. 109, s. 12; C. S. 7100.)

§ 130-86. Birth certificate to be filed within five days.—Within five days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the state board of health with a view of procuring a full and accurate report with respect to each item of information enumerated in § 130-89. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified in the following section, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signature, when requested to do so by the local registrar. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S. 7101.)

§ 130-87. Registration of birth certificate more

than five days and less than four years after birth. —Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. (1941, c. 126.)

§ 130-88. Registration of birth certificate four years or more after birth.—The state board of health is authorized to promulgate rules and regulations under which any birth which has not been registered with the bureau of vital statistics within four years after birth, as provided in § 130-86 or 130-87, may be registered with the register of deeds of the county in which the birth occurred: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. Each such birth must be registered in duplicate on forms approved by the state board of health and furnished by the state registrar. The register of deeds shall forward the original and duplicate certificate to the bureau of vital statistics for final approval. If the certificate complies with the rules and regulations of the state board of health and has not been previously registered, the state registrar shall file the original and return the duplicate to the register of deeds for recording.

Certificates registered with the register of deeds under this section shall contain the date of the delayed filing and be distinctly marked "Delayed;" and those altered after being filed shall contain the date of alteration and be distinctly marked "Altered".

All copies of birth certificates registered under the provisions of this section, properly certified by the state registrar, shall have the same evidentiary value as those registered within five days after birth.

The register of deeds shall receive a fee of fifty cents for each registration, to be paid by the registrant. (1941, c. 126.)

§ 130-89. Contents of birth certificate. — The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

2. Full name of child. If the child dies without a name before the certificate is filed, enter the surname preceded by "Unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

5. For plural births, number of each child in order of birth.

6. Legitimate or illegitimate: Provided, that in illegitimate births the word "illegitimate" shall be written across the face of the certificate and all items on the certificate which would in any way reveal the identity of the father, mother, or illegitimate child itself shall be omitted.

7. Date of birth, including the year, month, and day.

8. Full name of father: Provided, that if the child is illegitimate, the name of the putative father shall not be entered without his consent, but the other particulars relating to the putative father (items nine to thirteen) may be entered if known, otherwise as "Unknown."

9. Residence of father.

10. Color or race of father.

11. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

12. Age of father at last birthday, in years.

13. Birthplace of father; at least state or foreign country, if known.

14. Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

15. Maiden name of mother.

16. Residence of mother.

17. Color or race of mother.

18. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

19. Age of mother at last birthday, in years.

20. Birthplace of mother; at least state or foreign country, if known.

21. Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

22. Number of children born to this mother, including present birth.

23. Number of children of this mother living.

24. The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in item seven), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, each in the order named, whose duty it shall be to notify the local registrar of such birth, as required by § 130-86.

25. Exact date of filing in office of local registrar, attested by his official signature, and reg-

istered number of birth, as hereinafter provided. (1913, c. 109, s. 14; C. S. 7102.)

§ 130-90. Validation of irregular registration of birth certificates.—The registration and filing with the bureau of vital statistics of the birth certificate of any person whose birth has not been registered within five days of birth under § 130-86 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the state registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by § 130-86. (1941, c. 126.)

§ 130-91. Blank furnished for report of name.—When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (1913, c. 109, s. 15; C. S. 7103.)

§ 130-92. Institutions to keep records of inmates.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this article, which are required in the forms of the certificates provided for by this article, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S. 7104.)

Editor's Note.—See note 13 N. C. Law Rev., 326, 328, on "Admissibility of Medical Records in Evidence."

§ 130-93. Certificate of identification in lieu of birth certificate where parentage cannot be established.—A certificate of identification for a foundling child whose parentage cannot be established shall be filed with the local registrar of vital statistics of the district in which the child was found by the juvenile court which determines that the child is a foundling. This certificate of identification shall contain such information and be in such form as the state board of health may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3.)

§ 130-94. State registrar to supply blanks; to perfect and preserve birth certificates.—The state registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state registrar, in person, by mail, or through the local registrar. No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed: Provided, that a new certificate of birth shall be made by the state registrar whenever:

(a) Proof is submitted to the state registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

(b) When notification is received by the state registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(c) Satisfactory proof is submitted to the state registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the state registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall notify the local registrar, or the registrar of deeds, providing the copy has been filed with him, that a new certificate of birth has been made and such facts shall be noted on the copy of the certificate of birth on file, if any. The state registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

The state registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered, such index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. (1913, c. 109, s. 17; 1941, c. 297, s. 2; C. S. 7105.)

Editor's Note.—The 1941 amendment inserted that part of this section beginning with the proviso following the fourth sentence and extending down to, but not including, the last paragraph.

§ 130-95. To inform registrars as to dangerous diseases.—He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S. 7106.)

§ 130-96. Birth certificate as evidence. — At the expiration of five years after the ratification of this article, certified copies of birth registration certificates shall be accepted by public school authorities in this state as prima facie evidence of age of children registering for school attendance, and no other proof shall be required. At the expiration of fourteen years from the passage of this article certified copies of birth registration certificates shall be required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof shall be required from children born in this state or states which for fourteen years previous to the date of such certificate have had registration laws essentially identical with this article. When, however, it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S. 7107.)

§ 130-97. Church and other records filed and indexed; fees for transcript.—If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of (fifty cents per hour or fraction of an hour necessarily consumed in making such transcript) and to a fee of fifty cents for the certificate, which fees shall be paid by the applicant. (1913, c. 109, s. 17; C. S. 7108.)

§ 130-98. Clerk of court to furnish state registrar with facts as to paternity of illegitimate children judicially determined.—Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the said registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the state registrar in the same manner. (1941, c. 297, s. 1.)

§ 130-99. Duties of local registrar as to birth and death certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make two complete and accurate copies of each birth and each death certificate registered by him on blanks supplied by the state registrar. He shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month and shall, at the same time, transmit to the register of deeds of the county a copy of each certificate of birth or death registered by him for the preceding month and shall retain one copy of each certificate for his own files. The register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the state registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; C. S. 7109.)

Editor's Note.—By amendment Ex. Sess. 1920, ch. 58, sec. 1, the date for depositing record books with the registers of

deeds was changed from not later than January fifteenth to not later than February fifteenth.

The Act of 1931 inserted before the last sentence the following: "and he shall at the same time transmit to the Register of Deeds of the county in which such birth or death occurred an exact copy of each such certificate."

Public Laws of 1933, c. 9, omitted a provision, formerly appearing at the end of the next to the last sentence, that the registrar shall transmit an exact copy of the certificate to the register of deeds.

The 1943 amendment rewrote the last four sentences.

§ 130-100. Delivery of data to health officer. — Each local registrar of vital statistics serving in any county or municipality of North Carolina in which there is employed a wholetime county or municipal health officer shall, on or before the fifth day of each month, deliver by mail or in person to the health officer of his respective county or municipality such data from birth and death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said whole-time county or municipal health officer, and as authorized by the State Registrar of Vital Statistics.

All forms necessary for the use of local registrars in complying with this section shall be supplied, without charge, by the State Registrar of Vital Statistics.

Any local registrar who shall fail, neglect, or refuse to perform the duties required by this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00). (1925, c. 53.)

§ 130-101. Pay of local registrars. — Each local registrar shall be paid the sum of fifty cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the state registrar, as required by this article. And in case no births or deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers for registration work outside of incorporated municipalities, and by the town or city treasurer for registration work in incorporated municipalities. The state registrar shall certify every six months to the treasurers of the several counties and incorporated municipalities the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; Ex. Sess. 1920, c. 58, s. 2; C. S. 7110.)

Editor's Note.—By amendment, Ex. Sess. 1920, ch. 58, sec. 2, the compensation for each certificate and report was raised from twenty-five cents to fifty cents.

§ 130-102. Certified copy of records; fee. — The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. The United States census bureau may, however, obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed, and for transcripts so furnished the state registrar may receive from the census bureau such compensation for this service, as the state board of health may approve. Any copy of the record of a birth or death, properly certified by the state registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the state board of health. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; 1941, c. 297, s. 4; C. S. 7111.)

Editor's Note.—The 1941 amendment struck out the words "not exceeding two cents for each certificate" formerly appearing after the word "service" in the second sentence.

Death Certificate as Evidence of Cause of Death.—The exclusion of the death certificate of insured, offered for the purpose of showing the cause of death, was not reversible error, it not appearing whether the cause of death was stated therein as a fact or as an opinion, the certified copy of such record being prima facie evidence of the facts stated therein but not conclusions or opinions expressed therein, and it further appearing that the cause of death was not perforce material. Rees v. Jefferson Standard Life Ins. Co., 216 N. C. 428, 5 S. E. (2d) 154.

Error in Admission Cured by Verdict.—In an action for wrongful death plaintiff objected to admission in evidence of his testator's death certificate, which had not been certified in accordance with this section, plaintiff contending that admission of the certificate was prejudicial on the ground that the contents supported an inference that testator's death did not result from the accident in suit. The verdict of the jury in plaintiff's favor on the issue of negligence rendered the error, if any, in the admission of the certificate harmless. McClamroch v. Colonial Ice Co., 217 N. C. 106, 6 S. E. (2d) 850.

Cited in State v. Trippe, 222 N. C. 600, 24 S. E. (2d) 340.

§ 130-103. Information furnished to officers of American Legion.—Upon application to the Bureau of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, it shall be the duty of the Bureau of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to ex-soldiers of the World War and members of their families and/or beneficiaries under Government insurance or adjusted compensation certificate issued to such ex-soldier. Provided, that the state registrar shall furnish to any American Legion Post in this state, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this section. (1931, c. 318; 1939, c. 353.)

Editor's Note.—The 1939 amendment added the proviso.

§ 130-104. Violations of article; penalty. — Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

1. Inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, with-

out the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found;

2. Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;

3. Wilfully alter, otherwise than as provided by § 130-94, or shall falsify any certificate of birth or death, or any record established by this article;

4. Being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required;

5. Being a state registrar, a chairman of a board of county commissioners, a mayor of a city or town, a local registrar, a deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars, and for each subsequent offense not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not more than thirty days. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S. 7112.)

§ 130-105. Duties of registrars and others in enforcing this article.—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the state registrar. He shall make an immediate report to the state registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of the provisions of this article to the prosecuting attorney of the county, or the solicitor of the district, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney-general shall likewise assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S. 7113.)

§ 130-106. Local systems abrogated. — No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this state other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S. 7115.)

§ 130-107. Establishing fact of birth by persons without certificate.—1. Any person born in the state of North Carolina not having a duly recorded certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his or her legal residence or place of birth, setting forth the date, place, and parentage of his or her birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon filing said petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of such birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The said clerk shall certify the same to the state bureau of vital statistics and the same shall thereupon be recorded in the state bureau of vital statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The fees charged hereunder by the clerk shall not exceed two dollars ($2.00).

2. The record of birth established by such person under this section when so recorded shall become a public record, and shall be accepted as such by the courts and other agencies of this state in the same manner as other public records.

3. The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122.)

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

Art. 10. Water Protection.

§ 130-108. Persons supplying water to protect its purity.—In the interest of the public health, every person, company, or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed. (Rev., s. 3058; 1899, c. 670, s. 1; 1903, c. 159, s. 1; 1911, c. 62, s. 24; C. S. 7116.)

Cited in Hudson v. Morganton, 205 N. C. 353, 171 S. E. 329.

§ 130-109. Board of health to control and examine waters; rules; penalties.—The state board of health shall have the general oversight and care of all inland waters, and shall from time to time,

as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. Any individual, firm, corporation, or municipality, or person responsible for the management of water supply, failing to comply with said rules and regulations, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. (1911, c. 62, s. 24; C. S. 7117.)

§ 130-110. Systems of water supply and sewerage; plans submitted; penalties.—The state board of health shall from time to time consult with and advise the boards of all state institutions, the authorities of cities and towns, corporations, or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, or firms which may be affected thereby. All such boards of directors, authorities, corporations, and firms are hereby required to give notice to said board of their intentions in the premises and to submit for its advice outlines of their proposed plans or schemes in relation to water supplies and disposal of sewage, and no contract shall be entered into by any state institution or town for the introduction of a system of water supply or sewage disposal until said advice shall have been received, considered, and approved by the said board. For the purpose of carrying out the general provisions of this and the preceding sections, every municipal or private corporation, company, or individual supplying or authorized to supply water for drinking or other domestic purposes to the public shall file with the secretary of the state board of health, within ninety days after the receipt of notice from said secretary, certified plans and surveys, in duplicate, pertaining to the source from which the water is derived, the possible source of infections thereof, and the means in use for the purification thereof, in accordance with the directions to be furnished by the said secretary. Failure on the part of any individual, firm, corporation, or municipality to comply with this section shall be a misdemeanor, and upon conviction those responsible therefor shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the court. (1911, c. 62, s. 24; C. S. 7118.)

§ 130-111. Condemnation of lands for water supply.—All municipalities operating water systems and sewer systems, and all water companies operating under charter from the state or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law under the chapter Eminent Domain. (Rev., s. 3060; 1903, c. 159, s. 16; 1905, c. 287, s. 2; 1905, c. 544; 1911, c. 62, s. 25; C. S. 7119.)

§ 130-112. Compensation for land.—If damages shall be claimed for the use of such lands, and the parties cannot agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law under the chapter Eminent Domain. (1911, c. 62, s. 27; C. S. 7120.)

§ 130-113. Inspection of watersheds.—The municipality or water company shall have quarterly sanitary inspections made of the entire watershed of any waterworks that derives its water from a surface supply, except in those cases where the supply is taken from large creeks or rivers that have a minimum daily flow of ten million gallons, in which case the inspection shall apply to the fifteen miles of watershed above the waterworks intake. Whenever in the opinion of the board of health of the city or town to which the water is supplied, or, where there is no such local board of health, in the opinion of the county board of health, or county physician or county health officer, or in the opinion of the state board of health, there is special reason to apprehend the infection of the water from any particular locality by the germs of typhoid fever or cholera, then the municipality or water company shall cause to be made at least once in every week a sanitary inspection of that particular locality. The inspection of the entire watershed as herein provided for shall include a particular examination of the premises of every inhabited house on the watershed, and, in passing from house to house, a general inspection for dead bodies of animals or accumulations of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The sanitary inspector shall give in person to the head of each household on the watershed, or, in his absence, to some member of the household, the necessary directions for the proper sanitary care of his premises, and shall deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the state board of health. Full report in duplicate of all such inspections shall be made promptly by the sanitary inspector to the secretary of the state board of health, and their accuracy certified to by the affidavit of the inspector.

The authorities of any town or city that makes use of a public surface water supply or the officers of a public surface water supply company may make such additional inspections as such officials may deem necessary. (Rev., ss. 3045, 3046; 1899, c. 670; 1903, c. 159, s. 2; 1911, c. 62, s. 28; 1919, c. 71, s. 14; Ex. Sess. 1921, c. 49, s. 1; C. S. 7121.)

Editor's Note.—By amendment, Ex. Sess. 1921, ch. 49, sec. 1, it was provided that the inspection should be by the municipality or water company. Formerly this duty was on the state board of health.

Cited in Hudson v. Morganton, 205 N. C. 353, 355, 171 S. E. 329.

§ 130-114. Inspectors may enter premises.—Each sanitary inspector is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required. (Rev., s. 3050; 1899, c. 670, s. 8; 1903, c. 159, s. 10; 1911, c. 62, s. 30; C. S. 7122.)

§ 130-115. Control of residents on watersheds.—Every person residing or owning property on the watershed of a lake, pond, or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him in the matter hereinbefore set forth directly by the municipal health officer or by the state board of health. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (Rev., ss. 3049, 3859; 1903, c. 159, s. 7; 1911, c. 62, s. 31; C. S. 7123.)

Instructions Must Be Furnished.—If the instructions as to sanitation required by this section are not furnished, one is not subject to a penalty, since this is a condition precedent to the enforcement of this section. Hudson v. Morganton, 205 N. C. 353, 355, 171 S. E. 329.

Allegation.—It is not necessary to allege that defendant owned or lived upon the land embraced in the municipal watershed, to state a cause of action under this section and § 130-108. Morganton v. Hudson, 207 N. C. 360, 177 S. E. 169.

§ 130-116. Defiling water supply misdemeanor.—If any person shall defile, corrupt, or make impure any well, spring, drain, branch, brook, creek, or other source of public water supply by collecting and depositing human excreta on the watershed, or depositing or allowing to remain the body of a dead animal on the watershed, or in any other manner, and if any person shall destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor. (Rev., ss. 3457, 3857; Code, s. 1114; R. C., c. 34, s. 97; 1893, c. 214; 1850, c. 104; 1903, c. 159, s. 12; 1911, c. 62, s. 32; C. S. 7124.)

§ 130-117. Discharge of sewage into water supply prohibited.—No person, firm, corporation, or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the state board of health; and the continued flow and discharge of such sewage may be enjoined upon application of any person.

If any person, firm, or corporation, or officer of any municipality having a sewerage system in charge shall violate the provisions of this section he shall be guilty of a misdemeanor. (Rev., ss. 3051, 3858; 1903, c. 159, s. 13; 1911, c. 62, ss. 33, 34; C. S. 7125.)

Constitutionality.—This section is not unconstitutional as a taking of property without condemnation and without compensation, but is a valid exercise of the police power of the State to secure the public health. Durham v. Eno Cotton Mills, 141 N. C. 615, 54 S. E. 453; Shelby v. Cleveland Mill, etc., Co., 155 N. C. 196, 71 S. E. 218; North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019.

Sewerage Defined.—The meaning of "sewerage," under this section, is confined to the liquid and solid matter flowing from the water-closets through the sewer and drain. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465.

Dyestuff of fecal matter from privies, which were not passed through sewer to the river from which water supply was received does not come within the meaning of this section. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465.

This section does not impose the mandatory duty upon the trial judge of enjoining a municipality from discharging raw sewage into a stream from which another municipality takes its water supply, and where the order prayed for would cause untold hardship upon the inhabitants of defendant municipality, the court's order denying the injunctive relief but providing that the judgment should not prevent the bringing of another suit for the same relief upon a change in the fundamental conditions, will be upheld on appeal. Smithfield v. Raleigh, 207 N. C. 597, 178 S. E. 114.

And Surrounding Facts Are to Be Considered. — The words "may be enjoined" as used in this section, clearly demonstrate that surrounding facts and circumstances must be considered in entering a peremptory order of injunctive relief. Smithfield v. Raleigh, 207 N. C. 597, 600, 178 S. E. 114.

Injurious Effects Unnecessary.—An injunction will issue under this section against emptying sewerage into a river, without proof of any injurious effect on plaintiff's water supply. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465.

No Right by Prescription Acquired.—The unlawful emptying of untreated sewage into a stream without hindrance or question on the part of the health authorities or others, cannot confer upon a town the right to continue emptying therein contrary to the express provision of the statutes, or acquire for it a prescriptive right as against the public, however long the same may have continued; nor can the town acquire a vested right therein to defeat the enforcement of the provisions of the statute subsequently passed. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019.

Nor can title be lost to the public by non-user, unless by legislative enactment. Shelby v. Cleveland Mill, etc., Co., 155 N. C. 196, 197, 71 S. E. 218.

No Special Treatment for Sewage Prescribed.—This section does not require that an arbitrary or fixed method of treating sewage before emptying into a stream, etc., should be established in advance, but that the defendant confer with the State Board of Health and obtain and follow the reasonable requirements prescribed for the conditions presented. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019.

Not Confined to Watershed Distance.—This section is not confined to the watershed of 15 miles above the intake as defined in section 130-113, but extends beyond 15 miles from the intake of any stream from which water is taken to be supplied to the public for drinking purposes. Durham v. Eno Cotton Mills, 141 N. C. 615, 54 S. E. 453. In case of menace to a lower town seventy-five miles below the place where the sewer empties, an injunction will be granted. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019.

Action by Secretary of the State Board of Health.—In a suit to enjoin a town from emptying untreated sewage into a stream, the Secretary of the State Board of Health, in his individual name, comes within the meaning of the statute, that the act "may be enjoined on the application of any person," and the question is not presented as to the authority of the board, acting as such, to maintain the action. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019.

§ 130-118. Cemeteries on watersheds forbidden.—No burying ground or cemetery shall be established on the watershed of any public water supply nearer than five hundred yards of the source of supply, nor in violation of the rules and regulations of the state board of health as authorized by this article. (Rev., s. 3053; 1903, c. 159, s. 15; C. S. 7126.)

§ 130-119. Water supply of communities without sewerage systems. — All schools, hamlets, villages, towns, or industrial settlements which are

now located or may be hereafter located on the shed of any public water supply not provided with a sewerage system shall provide and maintain a reasonable system approved by the state board of health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (Rev., ss. 3052, 3860; 1903, c. 159, s. 14; 1907, c. 585; 1911, c. 62, s. 35; C. S. 7127.)

When Injunction Granted.—An injunction will not be granted under this section except when it is shown that there are special damages, or that such conditions existed as to render the water unfit for the usage to which it was applied. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465.

§ 130-120. Damage to private water supply misdemeanor.—If any person shall wilfully put into the well, spring, or cistern of water of any other person any substance or thing whereby such well, spring, or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor. (Rev., s. 3456; Code, c. 1114; R. C., c. 34, s. 97; 1850, c. 104; C. S. 7128.)

Art. 11. State Housing Law.

§§ 130-121 to 130-146: Repealed by Session Laws 1943, c. 55.

Art. 12. Privies.

§ 130-147. Privy defined.—The term "privy" as used in this article shall be understood to include any and all buildings which are not connected with a system of sewerage, or with septic tanks of such construction and maintenance as approved by the state board of health and which are used for affording privacy in acts of urination or defecation. (1919, c. 71, s. 1; C. S. 7129.)

§ 130-148. Sewerage, septic tank or approved privy required, when.—No person shall maintain or use a residence, located within three hundred yards of another residence, that is not provided with sewerage, or with septic tanks approved by the state board of health, or with a sanitary privy which complies in construction and maintenance with the requirements of this article: Provided, however, that nothing in this section shall curtail the right of a municipality to require and enforce immediate sewer connection. Provided, that plans and specifications for construction of privy buildings prescribed by the state board of health by authority of this article shall be construed as recommendatory but not mandatory as to exact size, architecture and dimensions of same: Provided, further, that privy buildings as used in the above last proviso shall not be construed to include any item pertaining to the exclusion of flies from excreta. (1919, c. 71, s. 2; Ex. Sess. 1921, c. 49, s. 2; 1927, c. 244; C. S. 7130.)

Editor's Note.—All of this section including and following the phrase "Provided that plans," was added by Public Laws 1927, ch. 244.

§ 130-149. License form to be fastened on certain privies.—The state board of health, through its officers and inspectors, shall fasten a license form on all privies within three hundred yards of the residence of any person other than that of the owner or tenant thereof during the last three calendar months of every year, when, on inspection, the said privy is approved by the officer making the inspection as constructed in a sanitary manner and to be in good repair, in accordance with reasonable rules and regulations to be prescribed by the state board of health for the sanitary construction and maintenance of privies. The license shall apply to the calendar year following its issuance, except as hereinafter provided. (1919, c. 71, s. 3; C. S. 7131.)

§ 130-150. Certain privies to be maintained in accordance with regulations.—Every privy located within three hundred yards of the residence of any person other than that of the owner or tenant thereof shall be maintained in a sanitary manner and in accordance with reasonable rules and regulations to be prescribed by the state board of health and posted in suitable form inside of the privy by an officer of the said board. (1919, c. 71, s. 4; C. S. 7132.)

§ 130-151. Responsibility for sanitary maintenance of privy.—The head of a family or household, the proprietor of a boarding-house, hotel, restaurant, or store, the principal or superintendent of a school, the agent or station-master of a railroad station or depot, or the person in charge of an office building, establishment, or institution, shall be responsible for the sanitary maintenance, as prescribed in § 130-150, of such privy or privies as may be used by his or her household, guests, customers, pupils, passengers, occupants, employees, workers or other persons. (1919, c. 71, s. 5; C. S. 7133.)

§ 130-152. Supervision of privies by board of health.—The state board of health, through its officers and inspectors, shall exercise such supervision over the sanitary construction and maintenance of privies as may be necessary to enforce the provisions of this article. (1919, c. 71, s. 6; C. S. 7134.)

§ 130-153. Use of insanitary privies prohibited.—If an officer or an inspector of the state board of health shall find a privy located within three hundred yards of the residence of a person other than that of the owner or tenant thereof which is not constructed in accordance with the provisions of § 130-149 of this article, he shall securely fasten on the said privy a notice reading, "Insanitary; unlawful to use"; and if the inspector or officer of the board shall find, in the course of his inspection, a privy not being maintained in a sanitary manner and in accordance with the reasonable rules and regulations of the state board of health for the maintenance of privies, he shall remove the license from the privy and securely fasten on the privy a notice, reading, "Insanitary; unlawful to use." (1919, c. 71, s. 7; C. S. 7135.)

§ 130-154. Privy license not to be removed or defaced.—No person shall remove or deface a privy license or other official notice fastened on or in a privy by an officer of the state board of health. (1919, c. 71, s. 8; C. S. 7136.)

§ 130-155. Violation of this article.—Any person who violates any of the provisions of this article, and any person who is responsible for the sanitary maintenance of a privy, and who permits such privy after an official notice reading, "Insanitary; unlawful to use," has been fastened on it, to be used, shall be guilty of a misdemeanor and fined not less than five dollars nor more than fifty dollars or imprisoned not exceeding thirty days. (1919, c. 71, s. 9; C. S. 7137.)

§ 130-156. Bureau of sanitary engineering and inspection; duties.—For the faithful execution of this article, the state board of health shall organize and maintain a bureau of sanitary engineering and inspection which shall (1) study, ascertain, and recommend for installation suitable types of privies for the variety of geologic, sociologic, and economic conditions found in the state of North Carolina; (2) exercise such oversight over the construction and maintenance of privies coming within the meaning of this article as may be necessary for the protection of public health; (3) organize, supervise, and direct a force of sanitary inspectors who shall (a) inspect, license, and close privies in accordance with the provisions of this article and the rules and regulations of the state board of health, as provided for in this article; (b) make such other sanitary inspections as are required of the state board of health by law; (c) assist in the enforcement of the public health laws of the state, more especially the vital statistics law and the quarantine law; (d) collect samples of water from public water supplies for analyses by the state laboratory of hygiene when such analyses are deemed necessary by the state board of health. (1919, c. 71, s. 11; C. S. 7139.)

§ 130-157. Powers of board of health and inspectors; penalty for interference.—The members of the executive staff of the state board of health, and such additional state sanitary inspectors as shall be appointed for the enforcement of this article, are hereby authorized and are empowered to enter upon any premises and into any buildings or institutions for the purposes of inspection as provided for or required by state laws or regulations of the state board of health pursuant to such laws, but the privacy of no person shall be violated. Any person or persons who wilfully interfere with or obstruct the officers of the state board of health in the discharge of any of the aforementioned duties shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment at the discretion of the court. (1919, c. 71, s. 12; C. S. 7140.)

When Judge May Direct Verdict. — In an indictment against one who is charged with willfully obstructing a sanitary inspector of the State Board of Health in the discharge of his duties, the trial judge may not direct a verdict, and it is only when uncontradicted evidence, if accepted as true, establishes the defendant's guilt that he may properly instruct the jury to return a verdict of guilty if they find the evidence to be true beyond a reasonable doubt. State v. Estes, 185 N. C. 752, 117 S. E. 581.

Mere words or opprobrious language with an expression of an intention to resist are not sufficient to sustain an indictment for willfully interfering with or obstructing an officer of the law in the performance of his duties, as prescribed by this section, unless spoken under circumstances which are calculated to deter an officer of ordinary courage and reasonable prudence in the discharge of his duty pertaining to his office, which raises an issue of fact for the jury to determine. State v. Estes, 185 N. C. 752, 117 S. E. 581.

§ 130-158. Provisions of this article applicable to all privies on watersheds.—The provisions of this article shall apply to all residences, institutions, and establishments, and all privies without regard to their distance from the homes of persons other than that of the owners or tenants thereof, which are located on the watershed of a public surface water supply. For the purpose of this article, the term "watershed" shall include the entire watershed of all streams, creeks, and rivers that have a daily average flow of less than ten million gallons, but for watersheds of streams, creeks or rivers that have a daily average flow of more than ten million gallons, the watershed shall include only such drainage areas as lie within fifteen miles of the waterworks intake. (1919, c. 71, s. 13; C. S. 7141.)

§ 130-159. Exceptions to provisions of this article.—This article shall not apply to any city the population of which shall be in excess of twenty thousand according to the latest official estimates of the bureau of the census, if the authorities of such city, before October first, one thousand nine hundred and nineteen, shall officially request the state board of health to exempt it from its provisions. This article shall not apply to the residences of farmers and the homes of their tenants that are located more than one mile from the corporate limits of a town or city or the geographic center of a village. (1919, c. 71, s. 16; Ex. Sess. 1920, c. 71; C. S. 7144.)

Editor's Note.—Prior to the amendment, Ex. Sess, 1920, ch. 71, this section was by its last sentence made not to apply to residences and homes of farmers and tenants located more than three hundred yards from residences that come within the meaning of this article.

Art. 13. Used Plumbing Fixtures.

§ 130-160. Regulations for installation or sale of fixtures.—In order to prevent the spread of disease through the sale of unsanitary, inefficient or defective plumbing fixtures, and in order to promote the general health, it is hereby declared to be unlawful for any person, firm or corporation to sell or offer to sell, or install, or cause to be sold or installed, any second-hand or used bathroom fixtures, toilet fixtures or other plumbing fixtures until the same have been inspected and labeled in the manner hereinafter set forth, and unless at the time of such sale or installation it shall bear the label indicating that it has been inspected and approved by the state board of health. (1939, c. 324, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 330.

§ 130-161. Application for inspection of fixtures.—Any person, firm or corporation desiring to sell or install any second-hand or used bathroom fixtures, toilet fixtures or other plumbing fixtures, shall file with the state board of health, or some agent or representative thereof, on the form prescribed by the state board of health, an application for the inspection of the fixtures to be sold. Such application (among other things) shall contain a description and identification marks of each fixture and the sworn statement of the applicant as to the person, firm or corporation from whom

said fixture was purchased, and as to the approximate date when the same was manufactured, and as to where and for how long the said fixture had been used prior to the date of such application. (1939, c. 324, s. 2.)

§ 130-162. Preparation of labels by state board of health.—The state board of health shall cause to be prepared labels in the form prescribed by the state board of health, stating (among other things) that the fixture is a second-hand or used fixture, and stating further that said fixture has been inspected and approved, and providing a blank for the date of such approval and a blank for the approximate date of the manufacture of the fixture. Such labels shall be assembled in books of one hundred; and such books shall be sold by the state board of health for the sum of twenty-five dollars ($25.00) per book. When a book has been so sold, the name of the person, firm or corporation buying the same shall be entered on the back thereof and the book shall be retained by the state board of health for use in labeling the fixtures or accessories of the purchaser. No application shall be received from any person, firm or corporation for a greater number of fixtures than the number of labels of the applicant held by the state board of health at the time of such application. (1939, c. 324, s. 3.)

§ 130-163. Inspection of fixtures by state board; labeling of fixtures for resale.—Upon receiving an application for inspection, it shall be the duty of the state board of health, through such agents or representatives as shall be employed under the terms of this article, to inspect the fixtures referred to in the application, for the purpose of determining whether they can be resold and reused without danger to public health. If the state board of health shall determine that any fixture can be used without danger to public health, it shall affix to each complete fixture a label of the applicant in the form prescribed in § 130-162 and shall insert in said label the date of approval and the approximate date of the manufacture of the fixture. (1939, c. 324, s. 4.)

§ 130-164. Proceeds from sale of labels to be used in administration of article.—All proceeds received by the state board of health from the sale of the labels provided for in this article shall be used by the state board of health in the administration of this article; and the state board of health shall be under no duty to use any of its other funds for the administration of this article. (1939, c. 324, s. 5.)

§ 130-165. Construction of article.—This article shall not be construed to prevent any person, firm or corporation from using or installing on his own premises fixtures which have theretofore been used on other premises of such person, firm or corporation. This article shall not apply to any person, firm or corporation not regularly engaged in the sale or installation of plumbing fixtures as a part of his or its business. (1939, c. 324, s. 6.)

§ 130-166. Violations made misdemeanor.—Any person, firm or corporation who shall sell, offer for sale, install or cause to be sold or installed any used or second-hand bathroom fixtures, toilet fixtures or other plumbing fixtures except as provided in this article, or who shall violate any provision or requirement of this article, shall be guilty of a misdemeanor and upon conviction shall be fined the sum of one hundred dollars ($100.00) or imprisoned for not less than one nor more than three months. The sale of each separate fixture in violation of this article shall constitute a separate offense. (1939, c. 324, s. 7.)

§ 130-167. Counties exempt. — Nothing contained in this article shall apply to the counties of Anson, Alexander, Alleghany, Ashe, Avery, Bertie, Bladen, Buncombe, Burke, Cabarrus, Carteret, Caswell, Chatham, Cherokee, Clay, Cleveland, Columbus, Cumberland, Dare, Davidson, Davie, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Henderson, Hyde, Jackson, Johnston, Jones, Macon, Madison, Martin, McDowell, Onslow, Pender, Perquimans, Polk, Randolph, Robeson, Rockingham, Sampson, Stanly, Stokes, Swain, Transylvania, Tyrrell, Union, Warren, Washington, Watauga and Wilkes. (1939, c. 324, s. 7½.)

Art. 14. Infectious Diseases Generally.

§ 130-168. Quarantine officers; election; term; vacancies.—The county board of health in each county shall designate some person in each county to be county quarantine officer. The official term of service of a county quarantine officer, including those in office and serving on June first, one thousand nine hundred and seventeen, except in those counties where there is a county health officer, shall expire on the first Monday in January of the fourth year from the year of their appointment or election. In those counties having a county health officer who makes official oath or affirmation to enforce this article, the office of county quarantine officer shall be coterminous with the office of the said county health officer. The county board of health shall elect a successor to the county quarantine officer, or the county health officer acting as county quarantine officer, on or before the expiration of the term of service of said officer as herein defined. If the county quarantine officer, or the county health officer acting as such, is disqualified to continue in office by resignation, death, or otherwise, the county board of health shall, within five days thereafter, elect a county health officer or county quarantine officer to fill out the unexpired term. If the county board of health fails so to elect a successor to complete the unexpired term, the secretary of the North Carolina state board of health shall immediately appoint a county quarantine officer who shall make official oath or affirmation to enforce this article. (1917, c. 263, s. 2; C. S. 7146.)

§ 130-169. Election notified to state board of health; officer to qualify.—The county board of health on electing a county quarantine officer shall promptly notify, in writing, the secretary of the North Carolina state board of health of such action, and failure to do so shall nullify the election. The officer-elect shall promptly notify the secretary of the North Carolina state board of health, in writing, of his having taken the oath or affirmation of office, inclosing a certified copy thereof, and failure to do so shall be construed as failure to have taken such official oath or affirmation. (1917, c. 263, s. 3; C. S. 7147.)

§ 130-170. Failure of officer to enforce article; penalty. — Any county quarantine officer, or county health officer acting as county quarantine officer, who fails or refuses to enforce this article in his county shall be guilty of a misdemeanor, and, on conviction, fined not exceeding fifty dollars, and may, if the secretary of the North Carolina state board of health so decide, be disqualified for continuance in office. (1917, c. 263, s. 4; C. S. 7148.)

§ 130-171. Municipalities; how far included.— This article shall not apply to incorporated towns and cities of the state having a population, according to the last decennial census, of ten thousand or over; nor shall it apply to those counties the sanitary administration of which is directed by a joint board of health presiding over both the county and a town or city having a population, according to the last federal decennial census, of ten thousand or more; but the system of quarantine in force in such cities and counties shall be approved by the North Carolina state board of health, and reports of the occurrence of contagious diseases therein shall be made to the North Carolina state board of health as from all other cities and counties in the state. (1917, c. 263, s. 5; C. S. 7149.)

§ 130-172. Compensation of quarantine officers. —For his services the county quarantine officer shall be paid monthly, on certification from the secretary of the North Carolina state board of health that he has performed the duties of his office in a satisfactory manner, out of the county funds by the county treasurer, or in those counties that have no county treasurer by that official who performs the usual duties of the treasurer's office. The said certification and the sum paid the quarantine officer by the county authority shall be in accordance with a system of fees determined by the North Carolina state board of health for each item of work involved in the duties of the quarantine officer: Provided, however, that the total annual payment for any county shall not be in excess of the sum stated for such county classified according to population as follows:

	Per month.
Counties with a population less than 10,000	$15.00
Counties with a population of from 10,000 to 15,000	17.50
Counties with a population of from 15,000 to 25,000	25.00
Counties with a population of from 25,000 to 40,000	35.00
Counties with a population of from 40,000 to 50,000	45.00
Counties with a population over 50,000	50.00

In addition to such monthly salary, the county treasurer, or the person acting as county treasurer, shall pay to the quarantine officer all financial statements with receipted bills attached for sums paid out for postage registration of letters, and disinfectants, the total sum not to exceed ten dollars in any month nor one hundred dollars in any one year. The secretary of the North Carolina state board of health shall supply the county quarantine officer, without cost to the county, with all forms, placards, and literature necessary for carrying out the provisions of this article. County authorities may revise their understandings with those county physicians who are acting as both physicians to county charges and as quarantine officers, and whose terms of office as quarantine officer shall expire in January, one thousand nine hundred and twenty-one, unless discontinued by death, resignation, or other disqualification, on a basis of compensation adequate to the new duties herein required; but in no case shall the compensation allowed for the services required of quarantine officers be less than that herein named. (1917, c. 263, s. 6; 1921, c. 53; C. S. 7150.)

Editor's Note.—Prior to the amendment, Public Laws 1921, ch. 53, which installed the fee system in this section, a salary was paid under the scale in this section, which now, because of the amendment, limits the amount of fees to be paid.

§ 130-173. Physicians to report infectious diseases.—It shall be the duty of every physician to notify the county quarantine office of the name, address, including the name of the school district, of any person living or residing, permanently or temporarily, in the county about whom such physician is consulted professionally and whom he has reason to suspect of being afflicted with whooping-cough, measels, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, typhus fever, Asiatic cholera, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable, within twenty-four hours after obtaining reasonable evidence for believing that such person is so afflicted. If the afflicted person is a minor, the physician consulted professionally about him shall notify the county quarantine officer of the name and address of the parent or guardian of the minor in addition to the name, address, and school district of the minor himself. (Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 7; 1921, c. 223, s. 1; C. S. 7151.)

Editor's Note.—By amendment, Public Laws 1921, ch. 223, sec. 1, the part of this section reading as follows: "or other disease declared by the North Carolina state board of health to be preventable" replaced a part reading as follows: "or other disease declared by the North Carolina state board of health to be infectious or contagious."

§ 130-174. Parents and householders to report. —It shall be the duty of every parent, guardian, or householder in the order named to notify the county quarantine office of the name, address, including the name of the school district, of any person in their family or household about whom no physician has been consulted but whom they have reason to suspect of being afflicted with whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable. (1917, c. 263, s. 8; 1921, c. 223, s. 2; C. S. 7152.)

Editor's Note.—By amendment Public Laws, 1921, ch. 223, sec. 1, the last words of this section, i. e. "preventable" replaced the words "infectious or contagious."

§ 130-175. Quarantine officers to report cases to state board of health.—It shall be the duty of the county quarantine officer to report all cases of whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable,

reported to him by physicians and parents, guardians, or householders, within twenty-four hours of the receipt of such report to the secretary of the North Carolina state board of health at Raleigh, and to make this report on forms supplied him by the secretary and in accordance with the rules and regulations adopted by the North Carolina state board of health. (1917, c. 263, s. 9; 1921, c. 223, s. 3; C. S. 7153.)

Editor's Note.—By amendment, Public Laws, 1921, ch. 223, sec. 3, the following words, "declared by the North Carolina state board of health to be preventable" replaced, "declared by the North Carolina state board of health to be infectious and contagious."

§ 130-176. Rules of state board of health; rules of local authorities.—The North Carolina state board of health shall adopt what in their judgment seems to be the necessary rules and regulations governing the management, supervision, or control of the diseases coming within the meaning of this article, and shall cause the rules and regulations adopted to be published in the North Carolina state board of health bulletin and to be supplied in suitable quantities to all concerned with the execution of this article, and the North Carolina state board of health shall revise such rules and regulations from time to time to adjust their requirements to new discoveries and improved methods for dealing with the sources and modes of infection of the diseases specified. The rules and regulations so adopted shall be regarded as the minimum requirements, and the authorities of any county, town, or city may adopt such additional rules and regulations for the control of the diseases mentioned in this article, and pay such additional fees and salaries as in their judgment seem necessary. (1917, c. 263, s. 10; C. S. 7154.)

§ 130-177. Violation of article or rules misdemeanor.—Any person wilfully violating any of the provisions of this article and any person violating any of the rules and regulations adopted by the North Carolina state board of health, as provided in the preceding section, shall, in the absence of specific provisions in other sections of this article, be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not more than thirty days, at the discretion of the court. In case the offender be stricken with the disease for which he is quarantinable, he shall be subject to the penalty on recovery, unless in the opinion of the secretary of the North Carolina state board of health the penalty should be omitted. (Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 11; C. S. 7155.)

§ 130-178. Bureau of epidemiology; state epidemiologist.—For the purpose of seeing that this article and the rules and regulations adopted by the North Carolina state board of health, as provided in this article, are faithfully executed, a bureau of epidemiology and the office of state epidemiologist is hereby created. The aforesaid bureau and the state epidemiologist shall be under the control and supervision of the North Carolina state board of health. (1917, c. 263, s. 12; C. S. 7156.)

§ 130-179. Disposal of bowel discharges in typhoid and cholera; penalties.—Any householder in whose family there is to his knowledge a person sick of cholera or typhoid fever, who shall permit the bowel discharges of such sick person to be emptied without first having disinfected them according to instructions to be obtained from the attending physician or county superintendent of health, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two nor more than twenty-five dollars, or imprisoned not less than ten nor more than thirty days. In cases where such undisinfected discharges are emptied on the watershed of any stream or pond furnishing the source of water supply for any public institution, city, or town, the penalty shall be a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment for not more than thirty days. And any physician attending a case of cholera or typhoid fever who refuses or neglects to give the proper instructions for such disinfection as soon as the diagnosis is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less then ten dollars nor more than fifty dollars.

During an epidemic of cholera all common carriers shall so arrange their water-closets as to catch in water-tight receptacles the dejections of all persons using the same, and shall disinfect the said dejections in a manner satisfactory to the state board of health before emptying them. (Rev., s. 4459; 1893, c. 214, s. 16; 1909, c. 793, s. 8; C. S. 7158.)

§ 130-180. Travel of infected persons regulated; inspectors; penalty.—The county or municipal boards of health in counties, cities, or towns near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travelers may pass from infected places in other states, who may examine such travelers as may be suspected of bringing any infection dangerous to the public health, and, if need be, may restrain them from traveling until licensed thereto by the quarantine officer or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such infected place who, without such license, travels within this state, except to return by the most direct route to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall be isolated or ejected, at the discretion of the quarantine officer or of the municipal health authorities last mentioned. And all common carriers bringing into this state any such persons as named above are hereby required to return them to some point without this state, if required by the quarantine officer or municipal health authorities above specified; and upon refusal to comply with the regulations of such boards of health or municipal health authorities upon this subject, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or imprisoned not more than thirty days. Nothing in this section shall prevent the state board of health in time of epidemics from appointing such additional examiners as they may deem necessary to the preservation of the public health. (Rev., ss. 3454, 4506; 1893, c. 214, s. 15; 1901, c. 245, s. 6; C. S. 7159.)

§ 130-181. Quarantine of infected travelers.—When a person comes to a city or town from abroad or from some other place in this state

which is infected or has lately been infected with either of the diseases specified in this article or other disease declared by the North Carolina state board of health to be infectious or contagious, the quarantine officer or lawful municipal authority specified in this article shall make effective provision in the manner deemed best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself or his parents, where able, otherwise at the charge of the city, town, or county to which he belongs. (Rev., s. 4507; 1893, c. 214, s. 14; 1901, c. 245, s. 5; C. S. 7160.)

§ 130-182. Transportation of bodies of persons dying of infectious diseases.—No railroad corporation or other common carrier or persons shall convey or cause to be conveyed through or from any city, town, or county in this state the remains of any person who has died of smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever, or cholera until such body has been disinfected and encased in such manner as shall be directed by the state board of health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk, or health officer or any other person shall give a permit for the removal of such body until he has received from the local board of health or other proper health authorities of the city, town, or county where the death occurred a certificate stating the cause of death and that the said body has been prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists. (Rev., s. 4459; 1893, c. 214, s. 16; C. S. 7161.)

Art. 15. Smallpox.

§ 130-183. Notification of occurrence required; vaccination of school children.—On the appearance of a case of smallpox in any neighborhood, town, or city, the quarantine officer shall use all due diligence to warn the public of its existence and to notify the public of the proper means for preventing its spread; the said warning and notification to be according to the instructions of the state health officer. The board of health of any town, city, or county shall have authority to require children attending the public schools to present certificate of immunity from smallpox either through recent vaccination or previous attack of the disease. If any parent, guardian, school committee, principal, or teacher shall permit a child to violate such a requirement of the aforesaid authorities, he or she shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars. (1911, c. 62, s. 23; 1913, c. 181, s. 11; C. S. 7162.)

Prior to this section, under a regulation providing for vaccination of all the inhabitants of a town the school children were subject to vaccination the same as other persons in the town. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149.

Power to Require Vaccination.—Where a school board has entire and exclusive control of the public schools, they may require vaccination as a prerequisite to attendance. Hutchins v. School Committee, 137 N. C. 68, 49 S. E. 46.

§ 130-184. Free vaccination.—On the appearance of a case of smallpox in any neighborhood due warning of the existence of the disease shall be given, and all persons not able to pay shall be vaccinated free of charge by the county physician or health officer or by the municipal physician or health officer, and the county physician or health officer shall vaccinate every person admitted into a public institution, jail, or county home as soon as practicable, unless he is satisfied, upon examination, that the person is already successfully vaccinated; the money for vaccine to be furnished by the county commissioners. (Rev., s. 4451; 1913, c. 181, s. 12; C. S. 7163.)

Constitutional.—There is no provision of the Constitution which forbids the Legislature to enact laws for the preservation of the health of the inhabitants of the state, and it is indeed an exercise of that governmental police power to legislate for the public welfare which is inherent in the General Assembly, except when restrained by some express constitutional provision. State v. Hay, 126 N. C. 999, 1000, 35 S. E. 459.

Such rules and regulations as provided for by this section, when reasonable and relevant to the purpose, are a valid exercise of authority. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149.

Reasonableness.—Clark, J., in State v. Hay, 126 N. C. 999, 1003, 35 S. E. 459, in discussing the vaccination laws says: "But even if we were of opinion with the small number of medical men who contend that vaccination is dangerous to health, and not a preventive of the disease, the Court is not a paternal despot, gifted with infallable wisdom, whose function is to correct the errors and mistakes of the Legislature."

Douglas J., concurring, in State v. Hay, 126 N. C. 999, 1004, 35 S. E. 459, says: "Compulsory vaccination is not an unreasonable requirement, as experience has shown that it is in times of epidemic necessary for the protection of the community and equally so of the individual."

Arrest of Persons Exposed. — A city is not liable to one arrested on the ground of having been exposed to smallpox, where the officers act without malice. Levin v. Burlington, 129 N. C. 184, 39 S. E. 822.

§ 130-185. Rules as to vaccination; violations punished.—The board of health of any city, town, or county may make such regulations and provisions for the vaccination of the inhabitants of their city, town, or county, and impose such penalties as they may deem necessary to protect the public health, and the violations of such rules shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (Rev., s. 3455; 1913, c. 181, s. 12; C. S. 7164.)

Cross Reference.—As to constitutionality see note to preceding section.

Punishment Valid.—The punishment provided for by this section when administered for the violation of a reasonable regulation, is a valid exercise of authority. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149.

When Vaccination Would Be Dangerous.—The general law embraces all, leaving it optional to no one's private judgment whether to render compliance or not. If there are exceptional cases, where owing to the peculiar state of the health or system, vaccination would be dangerous, that would be matter of defense, the burden of which would be on the defendant, and a fact to be found by the jury. State v. Hay, 126 N. C. 999, 35 S. E. 459.

Cited in 1 N. C. Law Rev. in discussion of Legislative Power to Penalize Violation of Administrative Rule.

Art. 16. Diphtheria.

§ 130-186. Antitoxin furnished to indigents.—The state board of health is hereby authorized and directed to arrange for a sufficient supply of diphtheria antitoxin for the treatment therewith,

free of charge, of indigent persons sick of diphtheria, and for immunizing against infection such indigent persons as may be exposed to the disease, and to extend the facilities for making the diagnosis of the disease. (1909, c. 389, s. 1; C. S. 7165.)

§ 130-187. Laboratory of hygiene to furnish antitoxin to counties. — The board of health shall keep on hand in the state laboratory of hygiene a supply of reliable diphtheria antitoxin, and shall distribute it, through the said laboratory, to the several counties of the state, whenever the boards of county commissioners thereof shall request it, and shall notify the secretary of the state board of health that they will pay for the same upon presentation of a bill, and shall designate the person or persons with whom it shall be deposited. The antitoxin shall be furnished at the lowest figure obtainable for a reliable preparation. (1909, c. 389, s. 2; C. S. 7166.)

§ 130-188. Physician's requisitions for antitoxin. —Whenever a physician is called to a case of diphtheria in an indigent person or one in immediate need and unable to pay for antitoxin, he may obtain the same from one of the depositories or diphtheria stations by filling out and signing in duplicate the blank requisition form to be supplied with the antitoxin by the said board of health, and presenting the same to the county health officer or county physician or any member of the county board of health, or to such person as the said county board of health may appoint, who, after satisfying himself as to the indigency of the person or persons for whom the antitoxin is intended, shall approve and countersign in duplicate the requisition. The person dispensing the antitoxin shall retain one copy of the requisition and shall mail the duplicate promptly to director of the laboratory of hygiene. He shall also return to the said director all packages of antitoxin in his possession as soon as they become out of date. (1909, c. 389, s. 3; C. S. 7167.)

§ 130-189. Article applicable to cities and towns. —The provisions of §§ 130-186 to 130-189 shall apply to cities and towns upon the same conditions as it does to counties. (1909, c. 389, s. 4; C. S. 7168.)

§ 130-190. Immunization of children.—The parent or parents or guardian of any child in North Carolina shall have administered to such child between the ages of six months and twelve months an immunizing dose of a prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products.

The parent or parents or guardian of any child in North Carolina between the ages of twelve months and five years who has not been previously immunized against diphtheria, shall have administered to such child an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products.

It shall be incumbent upon the parent or parents or guardian of such child to present said child to a regularly licensed physician in the state of North Carolina, of his or her or their own choice, and request said physician to render this profesional service. If the said parent or parents or guardian of such child are unable to pay for the services of a private physician of his or her or their own choice, they shall then present such child to the county health officer in the county in which such child resides and ask that an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products, be administered, and such county health officer shall administer such treatment.

If there is no regularly employed health officer in the given county in which the indigent parent or parents or guardian referred to in the third paragraph of this section resides, the parent or parents or guardian of the indigent child shall present such child to the county physician, who shall then administer the prophylactic diphtheria agent or secure the services of another regularly licensed physician in such county and pay such physician for such services to the said indigent child out of such funds of said county as are provided for such purposes.

A certificate giving the name and address of the parent, parents or guardian, the name and age of the child and the date of the administration of the prophylactic agent, shall be submitted by the physician rendering this professional service to the local health officer, and in instances where there is no health officer, said certificate shall be submitted to the county physician. Such certificate shall be kept on file as a permanent record by the local county registrar for births. Furthermore, such certificate of immunization shall be presented to school authorities upon admission to any public, private or parochial school in North Carolina.

Any wilful violation of this section, or any part thereof, shall constitute a misdemeanor and shall be punishable at law by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than thirty (30) days, in the discretion of the court. Provided this section shall not apply to children whose parent or parents or guardians are bona fide members of a religious organization whose teachings are contrary to the practices herein required, and no certificates for admission to any public, private or parochial school shall be required as to them. (1939, c. 126.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 360.

Art. 17. Hydrophobia.

§ 130-191. Board of health to provide treatment. —The state board of health is hereby authorized and empowered to provide for and have conducted under its direction the preventive treatment of hydrophobia or rabies, whenever in its judgment circumstances, financial and other, will justify it. To meet the expenses of this treatment the said board is hereby given authority to supplement the revenue derived from the fees for the treatment by such sums from the treasury of the state laboratory of hygiene as may be necessary: Provided, that the usefulness and efficiency of the said laboratory is not thereby impaired. (1907, c. 891, s. 1; C. S. 7170.)

§ 130-192. Treatment to be without charge.— The benefits of said treatment shall be given free

of charge to all residents of the state who shall present to the secretary of the state board of health or its representative having in charge the management of this special work, an affidavit of inability to pay, duly sworn to and subscribed before a justice of the peace, or, if the case be a minor, such an affidavit by the parent or guardian. To meet as far as may be the expenses of this special work the said state board of health is hereby authorized and directed to demand from those able to do so the payment in advance of a reasonable fee, not to exceed in any case the usual charge made by the reputable Pasteur institutes of this country. (1907, c. 891, s. 2; C. S. 7171.)

Art. 18. Inflammation of Eyes of Newborn.

§ 130-193. Ophthalmia neonatorum described.—Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (ophthalmia neonatorum). (1917, c. 257, s. 1; C. S. 7180.)

§ 130-194. Inflammation of eyes of newborn to be reported.—It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, parent, relative, and any persons attendant on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth or any time within two weeks after childbirth, knowing the condition, hereinabove defined, to exist, immediately to report such fact, as the state board of health shall direct, to the local health officer of the county, city, town, village, or whatever other political division there may be within which the infant or the mother of any such infant may reside. For such services the attending physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital shall receive from the state treasurer a fee of fifty cents. In the event of there being no health officer in the city, village, or town in which the infant resides, midwives shall immediately report the condition to some qualified practitioner of medicine, and thereupon withdraw from the case, except as she may act under a physician's instructions. On receipt of such receipt, the health officer, or the physician notified by a midwife where no health officer exists, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the said county, city, village, or town. (1917, c. 257, s. 2; C. S. 7181.)

§ 130-195. Eyes of newborn to be treated; penalty for omission.—It shall be unlawful for any physician or midwife practicing midwifery in the state of North Carolina to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, two drops of a solution prescribed or furnished by the state board of health. (1917, c. 257, s. 3; C. S. 7182.)

Duty of Physician.—This section does not impose upon the physician attempting in good faith to obey the statute the absolute duty of ascertaining the percentage of the solution furnished by a hospital for this purpose, and he is not liable for damages resulting from the use of a larger per cent of such solution when so furnished by the hospital. Covington v. Wyatt, 196 N. C. 367, 145 S. E. 673.

§ 130-196. Duties of local health officer.—It shall be the duty of the local health officer:

1. To investigate or to have investigated each case as filed with him in pursuance with the law, and any other such cases as may come to his attention.

2. To report all cases of inflammation of the eyes of the newborn and the result of all such investigations as the state board of health shall direct.

3. To conform to such other rules and regulations as the state board of health shall promulgate for his further guidance. (1917, c. 257, s. 4; C. S. 7183.)

§ 130-197. Duties of state board of health.—It shall be the duty of the North Carolina state board of health:

1. To enforce the provisions of this article.

2. To promulgate such rules and regulations as shall, under this article, be necessary for the purposes of this article, and such as the state board of health may deem necessary for the further and proper guidance of local health officers.

3. To provide for the gratuitous distribution of the scientific prophylactic for inflammation of the eyes of the newborn, as designated in § 130-195, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

4. To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn, and the necessity for prompt and effective treatment.

5. To furnish copies of this law to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

6. To keep a proper record of any and all cases of inflammation of the eyes of the newborn as shall be filed in the office of the state board of health in pursuance with this law and as may come to their attention in any way, and to constitute such records a part of the biennial report to the governor and the legislature. (1917, c. 257, s. 5; C. S. 7184.)

§ 130-198. Treatment in hospitals and institutions.—It shall be the duty of physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant's eyes, within two hours after birth, to use the prophylactic against inflammation of the eyes of the newborn specified in this article, and to make record of the prophylactic used. It shall also be the duty of such institution to maintain such records of cases of inflammation of the eyes of the newborn as the state board of health shall direct. (1917, c. 257, s. 6; C. S. 7185.)

§ 130-199. Violations of article; penalties.—Whoever being a physician, surgeon, midwife, obstetrician, nurse, manager, or person in charge of a maternity home or hospital, parent, relative, or person attendant upon or assisting at the birth of any infant, violates any of the provisions

of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in a sum not less than ten dollars nor more than fifty dollars, and, if possessed of the required amount of property, subject to suit by the parent or guardian of the children for damages resulting to the child; and if such a suit shall be brought the establishment of the fact that the physician or midwife did not place the drops in the child's eyes within two hours of its birth shall be accepted as prima facie evidence of the physician's or midwife's responsibility for the injury of the disease to the eye or eyes of the child. It shall be the duty of the prosecuting attorney to prosecute all violations of this article. (1917, c. 257, s. 7; C. S. 7186.)

§ 130-200. Registration of midwives.—All midwives who now practice midwifery in North Carolina, other than regularly registered physicians, shall register, without fee, their names and addresses with the secretary of the North Carolina state board of health on or before the first day of July, one thousand nine hundred and seventeen, in order that the prophylactic solution and necessary instructions may be furnished them. After the aforesaid date no person, physician, or midwife shall practice midwifery in North Carolina until at least ten days have elapsed following the registration of the name and address of the person who intends to engage in the practice of midwifery, and in this period of ten days elapsing between the registration and beginning of the practice of midwifery by the registered person the state board of health shall furnish the necessary directions and solution to the physician or midwife for compliance with this article. (1917, c. 257, s. 8; C. S. 7187.)

§ 130-201. Failure to register; penalty.—Any physician or midwife failing to register their names and addresses with the North Carolina state board of health as required in the preceding section shall be guilty of a misdemeanor and subject to a fine of from ten dollars to fifty dollars. (1917, c. 257, s. 9; C. S. 7188.)

§ 130-202. Expenses of prosecution.—Any and all necessary and legitimate expenses that may be incurred in prosecuting a case under this article shall, on proper showing, be met by the state board of health. (1917, c. 257, s. 10; C. S. 7189.)

§ 130-203. Copies of article to be distributed.—Every health officer shall furnish a copy of this article to each person who is known to him to act as midwife or nurse in the county, city, or town for which such health officer is appointed, and the secretary of state shall cause a sufficient number of copies of this article to be printed and supply the same to the health officer of the county, city, or town, and the state board of health, on application. (1917, c. 257, s. 11; C. S. 7190.)

Art. 19. Venereal Diseases.

Part 1. Control and Treatment.

§ 130-204. Venereal infection.—Syphilis, gonorrhea, and chancroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for any one infected with these diseases or any of them to expose another person to infection. (1919, c. 206, s. 1; C. S. 7191.)

§ 130-205. Physicians and superintendents of institutions to report cases.—Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a case of venereal disease, shall make a report of such case to the health authorities according to such form and manner as the North Carolina state board of health shall direct. (1919, c. 206, s. 2; C. S. 7192.)

§ 130-206. Sources of infection investigated; suspected persons examined.—State, county, and municipal health officers, or their authorized deputies, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known; to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of venereal disease, to coöperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution. Provided, that no examination of any person for venereal diseases under this section shall be made by any one except a licensed physician. (1919, c. 206, s. 3; 1925, c. 217, s. 1; C. S. 7193.)

Editor's Note.—By amendment, Public Laws 1925, ch. 217, sec. 1, the provision for examination by only licensed physicians was added.

§ 130-207. Prisoners examined and treated; isolation of patients.—All persons who shall be confined or imprisoned in any state, county, or city prison in the state shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be so isolated or quarantined under the provisions of the first preceding section, shall be isolated and treated at public expense until cured; or, in lieu of such isolation, any of such persons may, in the direction of the North Carolina state board of health, be required to report for treatment to a licensed

physician or submit to treatment provided at public expense as provided in § 130-206. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Provided, that no examination of any person for venereal disease under this section shall be made by any one except a licensed physician. (1919, c. 206, s. 4; 1925, c. 217, s. 2; C. S. 7194.)

Editor's Note.—By amendment, Public Laws 1925, ch. 217, sec. 2, the provision for examination by only licensed physicians was added.

§ 130-208. Treatment of prisoners infected with communicable venereal disease required before release.—Whenever any person shall be confined or imprisoned in any state, county, or city prison in this state and, upon examination provided in § 130-207, such person has been found to be infected by a communicable venereal disease by the county health officer or other licensed physician authorized by law to make the said examination, the said person shall not be set at liberty until treated for the said disease in accordance with the provisions of the said section, unless such person shall give a bond with surety satisfactory to the clerk of the superior court of the county where he is imprisoned, conditioned upon his making his personal appearance at a stated time and place before the county health officer, and to submit to such examinations as may be proper in the case, and to satisfy said officer that he is undergoing, or has undergone, satisfactory treatment for his said disease.

Upon the giving of the said bond, such person shall, from time to time, as required by the county health officer, personally appear before him for examination, and when, in the judgment of the said health officer, the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said person from further attendance and examination shall be made by the clerk of superior court, upon certificate of the aforesaid health officer or other physician authorized to make the examination. (1937, c. 230.)

§ 130-209. Board of health may make rules and regulations to enforce this article.—The North Carolina state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this article, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of § 130-206, and such other rules and regulations, not in conflict with provisions of this article, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this article, and shall have the force and effect of law. (1919, c. 206, s. 5; C. S. 7195.)

§ 130-210. Expenses authorized. — The North Carolina state board of health, through its officers, are hereby empowered and authorized to incur such expenses in the examination, detention, quarantine, and treatment of persons suspected of having, or having, venereal diseases as in their judgment is necessary. (1919, c. 206, s. 6; C. S. 7196.)

§ 130-211. Statements of expenses to county commissioners; payment of expenses.—The North Carolina state board of health shall submit to the county commissioners of the county in which persons suspected of having, or having, venereal diseases are suspected of having spread the disease, an itemized statement of expenses incurred in the examination, detention, quarantine, or treatment of such persons, and the county commissioners shall, within thirty days after the receipt of such statement of expenses, pay to the treasurer of the North Carolina state board of health a sum equal to that expended. (1919, c. 206, s. 7; C. S. 7197.)

§ 130-212. Violation of this article or authority pursuant thereto a misdemeanor.—Any person who shall violate any of the provisions of part one of this article or any lawful rule or regulation made by the North Carolina state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county, or municipal health officer, pursuant to the authority granted in this article, shall be deemed guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court. (1919, c. 206, s. 8; 1943, c. 734; C. S. 7198.)

Editor's Note.—Prior to the 1943 amendment the latter part of this section read "and shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00), or by imprisonment for not more than thirty days."

Part 2. Prescriptions and Reports.

§ 130-213. Treatment except by physician unlawful.—It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease. (1919, c. 214, s. 1; C. S. 7199.)

§ 130-214. Patented and proprietary remedies; druggists to report sales of.—Any druggist or other person who sells at retail any patented, proprietary, or trade-mark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhea, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethral injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina state board of health the sale of such remedies or alleged remedies to the bureau of venereal diseases of the North Carolina state board of health. (1919, c. 214, s. 2; C. S. 7200.)

§ 130-215. Obtaining prescription or remedy under false name a misdemeanor.—Any person who, in obtaining a prescription from a physician under § 130-213, or in obtaining drugs or remedies mentioned in § 130-214, gives a false or as-

sumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in § 130-220. (1919, c. 214, s. 3; C. S. 7201.)

§ 130-216. Quarantine officer may appoint physicians as agents to issue prescriptions.—For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina state board of health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases. (1919, c. 214, s. 4; C. S. 7202.)

§ 130-217. Fees of quarantine officer and agents.—A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the state laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina state board of health, shall be entitled to a fee of fifty cents, twenty-five cents of which shall be paid by the bureau of venereal diseases of the North Carolina state board of health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the bureau of venereal diseases of the North Carolina state board of health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent: Provided, that the municipal authorities shall pay the above amount for prescriptions issued by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription. (1919, c. 214, s. 5; C. S. 7203.)

§ 130-218. Druggists to keep record of prescriptions; subject to inspection.—Any and all prescriptions for venereal diseases (gonorrhea, syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies, or alleged remedies mentioned in § 130-214, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina state board of health. (1919, c. 214, s. 6; C. S. 7204.)

§ 130-219. Purchaser of remedies may be examined.—The state health officer or his deputy or agent may require any purchaser of remedies or alleged remedies designated in § 130-214, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease. (1919, c. 214, s. 7; C. S. 7205.)

§ 130-220. Violation of this article a misdemeanor.—Any person violating any of the provisions of part two of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days. (1919, c. 214, s. 8; C. S. 7206.)

Part 3. Prospective Mothers.

§ 130-221. Wassermann test required of prospective mothers.—Every woman who becomes pregnant shall have a blood sample taken and submitted to a laboratory approved by the North Carolina state board of health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 359.

§ 130-222. Services of duly licensed physician upon request; reference of cases thereto.—Any duly licensed physician shall, upon the request of said woman, secure or cause to be secured a sample of blood and submit said sample to a laboratory approved by the state board of health for performing the Wassermann test or other approved tests for syphilis.

Such persons as are permitted by law to attend a woman during the period of her gestation and at childbirth but not permitted by law to take such blood samples shall, upon the request of said patient, refer such patient to a duly licensed physician who, in turn, shall take or cause to be taken such blood sample and submit same to a laboratory approved by the state board of health for performing the Wassermann test or other approved test for syphilis. (1939, c. 313, s. 2.)

§ 130-223. Services of health officer or county physician available.—Any woman who is pregnant and who is unable to pay a duly licensed physician to take a blood sample for testing, as is required in part three of this article, may have such blood sample secured by the local county health officer or county physician and submitted to a laboratory approved by the state board of health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 3.)

§ 130-224. Birth certificates to contain information as to tests.—In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed. If such test has been made during pregnancy, those required to report births and stillbirths shall state the date on which the test was made. In addition to the usual information asked for on each certificate of birth, the supplementary confidential medical tab shall be filled out on each birth certificate. Every certificate of birth shall state whether a sereological test for syphilis was made during pregnancy or at delivery. (1939, c. 313, s. 4.)

§ 130-225. Penalty for violation.—Any knowing and wilful violation of part three of this article, or any part thereof, by any physician, attending mid-wife, county health officer or county physician charged herein with the responsibility of its enforcement, shall be declared a misdemeanor and shall be punishable by a fine of twenty-five dollars ($25.00) or imprisonment for thirty days, or

both, in the discretion of the court. (1939, c. 313, s. 6.)

Art. 19A. Prevention of Spread of Tuberculosis.

§ 130-225.1. Certain acts of tubercular persons made misdemeanor.—Any person having tuberculosis in the communicable form who, after being instructed by an agent of the county board of health as to precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, shall wilfully refuse to follow such instructions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the prison department of the North Carolina sanatorium for a period of sixty days for the first offense and for a period of six months for any subsequent offense. (1943, c. 357.)

Art. 20. Tubercular Prisoners.

Part 1. Segregation of Tubercular Prisoners.

§ 130-226. Tuberculous county prisoners to be segregated.—The board of county commissioners of the respective counties of North Carolina shall provide in the jail-house or in any camp or place where prisoners are committed for keeping or sentenced to a term of imprisonment in any county in the state of North Carolina, separate cells or rooms or a place in which shall be confined any prisoner or prisoners who may be committed for keeping or sentenced to said prison or place of confinement for a term of imprisonment, who has been examined by the county physician or county health officer and pronounced to be affected with tuberculosis. (1907, c. 567, s. 1; C. S. 7207.)

§ 130-227. Sheriff to have prisoners suspected to be tuberculous examined and separated.—When a prisoner is placed in the custody of a sheriff for the purpose of being committed to jail or to any place where prisoners are kept, and the sheriff has reason to believe or suspect that the prisoner is suffering with tuberculosis, it shall be the duty of the sheriff to have such prisoner examined by the county physician or county health officer, and if upon examination the prisoner is pronounced tubercular, then he shall be separated from other prisoners and confined in a separate cell or other place of confinement. (1907, c. 567, s. 2; C. S. 7208.)

§ 130-228. Tuberculous state prisoners to be segregated.—It shall be the duty of the board of directors of the state's prison to provide separate cells or apartments for the confinement of prisoners sentenced to that institution for a term of imprisonment, who have been examined and pronounced by the physician in charge to be affected with tuberculosis. (1907, c. 567, s. 3; C. S. 7209.)

§ 130-229. Separate cells for tuberculous prisoners; fumigation.—Cells or places of confinement provided for prisoners affected with tuberculosis must be kept exclusively for such prisoners, and when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or county health officer, or the physician in charge and the health authorities of the state's prison, have been notified, and until such cells or places of confinement have been thoroughly fumigated and disinfected under the supervision of such officials, in the manner required by the state board of health. (1907, c. 567, s. 4; C. S. 7210.)

§ 130-230. Prison authorities to have prisoners suspected to be tuberculous examined.—When a prisoner is committed to any prison or place of confinement designated in this article, and the sheriff of the county, the warden of the state's prison or other authorities of the prison know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of such authorities to cause the prisoners to be examined by the county physician, the county health officer, or the physician in charge within five days after the prisoner has been committed or sentenced to the prison. (1907, c. 567, s. 5; C. S. 7211.)

Part 2. Prevention of Tuberculosis Among Prisoners.

§ 130-231. Tuberculous prisoners not to be worked.—No prisoner suffering with tuberculosis shall be worked on any public or private works. (1917, c. 262, s. 1; 1943, c. 543; C. S. 7213.)

Editor's Note.—The 1943 amendment rewrote this section.

§§ 130-232 to 130-233: Repealed by Session Laws 1943, c. 543.

§ 130-234. Health authorities to examine all prisoners.—It shall be the duty of every county physician or city physician, or county health officer, or city health officer, or other physician having in charge the medical care of prisoners in any city or county in this state, or on any public or private works where prisoners or convicts are employed, to make a thorough physical examination of every prisoner committed to the county or city jail or to the county or city chain-gang or road force, or any public or private works within forty-eight hours after the admission of such prisoner; and when he finds a prisoner suffering with tuberculosis, he shall make a written report of same to the state board of health, stating in detail the conditions found and the stage of the disease, within twenty-four hours after making such diagnosis, and he shall also report same to the superintendent of the chain-gang or the jailer or the superintendent of the public or private works, and to the sheriff of the county, in writing, within twenty-four hours after having made such diagnosis of tuberculosis. (1917, c. 262, s. 4; C. S. 7216.)

§ 130-235. Officials in charge of prisoners to report on health.—Every superintendent of convicts, or superintendent of public or private works where convicts are employed, and the superintendent of the central prison and state farm, and every jailer, shall make such reports as to the existence of cases of tuberculosis or suspected cases of tuberculosis, or other disease or diseases, and loss of time on account of sickness, and the disease or diseases causing such loss of time and such other things that may have a bearing on the health of the prisoners and the sanitation of the camp, prison, or jail,

to the state board of health at such stated periods and on such stated forms as may be requested by the state board of health. And every health officer or other physician having charge of prisoners in county convict camps, on county or city roads or streets or public or private works, or in jails or prisons, state, city, or county, shall likewise make such reports to the state board of health as to the physical condition and transfer of prisoners and as to the sanitary condition of camps, jails, or prisons, as may be requested by the state board of health. (1917, c. 262, s. 5; C. S. 7217.)

§ 130-236. Reports to include transference and particulars as to tuberculous. — The superintendent of the central prison or state farm, convict camp, or of any public or private works where convicts are used, and the jailers of the county jails and the sheriff of the county, and the medical officer connected with any of the above mentioned places where convicts are kept or worked, shall make such reports to the state board of health as to transference of prisoners suffering with tuberculosis, giving name of prisoner, length of time said prisoner had been under his jurisdiction, the stage of the disease, point or place to which he was transferred, name and address and official title of the person to whom he was transferred, and such other information as may be requested by the state board of health. (1917, c. 262, s. 6; C. S. 7218.)

§ 130-237. Food and work of tuberculous prisoners.—In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the superintendent of the central prison and state farm and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. And such prisoners suffering with tuberculosis shall only do such work as may be prescribed by the prison physician. (1917, c. 262, s. 7; C. S. 7219.)

§ 130-238. Violation of article misdemeanor.—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. (1907, c. 567, s. 7; 1917, c. 262, s. 8; C. S. 7220.)

Art. 21. Health of Domestic Servants.

§ 130-239. Domestic servants required to furnish health certificate.—Hereafter all domestic servants who shall present themselves for employment shall furnish their employer with a certificate from a practicing physician or the public health officer of the county in which they reside, certifying that they have been examined within two weeks prior to the time of said presentation of said certificate, that they are free from all contagious, infectious or communicable diseases and showing the non-existence of any venereal disease which might be transmitted. Such certificate shall be accompanied by the original report from a laboratory approved by the state board of health for making such tests, showing that the Wasserman or any other approved tests of this nature are negative. Such tests shall have been made within two weeks of the time of the presentation of such certificates; and such certificate shall also affirmatively state the non-existence of tuberculosis in the infectious state. (1937, c. 337, s. 1.)

§ 130-240. Annual examinations.—All domestic servants employed shall be examined at least once each year and as often as the employer may require, and upon examination shall furnish to the employer all of the evidence of the condition of their health, as is set out in § 130-239. (1937, c. 337, s. 2.)

§ 130-241. Punishment for failure of servants to comply; publication of law by county health officer.—Any domestic servant who shall fail or refuse to comply with the terms of §§ 130-239 and 130-240, upon conviction shall be fined not more than $50.00 or imprisoned not more than thirty days. (1941, c. 223.)

Art. 22. Surgical Operations on Inmates of State Institutions.

§ 130-242. Operations for improvement of mental, moral, or physical condition.—The medical staff of any penal or charitable hospital or institution of the state of North Carolina is hereby permitted and instructed to have any surgical operation performed by competent and skillful surgeons upon any inmate of any such penal or charitable hospital or institution when, in the judgment of the board hereinafter created in the next succeeding section, such operation would be for the improvement of the mental, moral, or physical condition of such inmate of any such institution: Provided, such operation shall not be performed until same shall have been affirmed by the governor and the secretary of the state board of health. (1919, c. 281, s. 1; C. S. 7221.)

§ 130-243. Board of consultation for carrying out provisions of this article.—At least one representative of the medical staff of the several charitable and penal institutions of the state, and one from the state board of health, such representatives to be designated by the governing bodies of the several institutions, shall constitute a board of consultation for the carrying out of the provisions of this article. Such board shall cause a permanent record to be kept by one of its members, designated as secretary, of all its actions and judgments, taken at a meeting held only after due notice has been issued to all its members. (1919, c. 281, s. 2; C. S. 7222.)

Art. 23. Maritime Quarantine.

§ 130-244. Fees charged on vessels.—Every vessel subject to visit and inspection shall pay a fee of five dollars, if of less than two hundred and fifty tons burden; if of more than two hundred and fifty and less than five hundred tons burden, eight dollars; if of more than five hundred and less than one thousand tons burden, ten dollars; if over one thousand tons, fifteen dollars, which shall be collected and accounted for by the quarantine officer, as provided for in this article, and every person taken to the hospital shall pay a fee not exceeding three dollars per day, until discharged by the quarantine officer, for the payment of which the vessel shall be responsible, and only such vessel shall be

subject to visit and inspection as may be from ports designated, from time to time, by the medical officer, except that all vessels having sickness on board shall be brought to the visiting station for examination. (Rev., s. 4522; Code, s. 2916; 1868, c. 33, s. 5; 1891, c. 533; C. S. 7231.)

§ 130-245. Pilots to bring vessels to station; penalty.—It shall be the duty of all pilots to bring vessels to the visiting station, as they may be required from time to time by the quarantine officer, and they shall not take any vessel subject to quarantine or visitation, past the station, until released by the quarantine officer; and any pilot who shall wilfully violate any quarantine regulation shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port in the state. (Rev., s. 4512; Code, s. 2917; 1868, c. 33, s. 6; C. S. 7232.)

§ 130-246. Master refusing to obey regulations; penalty.—Any master of a vessel who shall refuse to obey the quarantine regulations shall forfeit and pay a fine of two hundred dollars for each day he shall refuse to obey the same, for which forfeiture the property of the captain, together with the vessel and cargo, shall be held responsible. (Rev., s. 4523; Code, s. 2918; 1868, c. 33, s. 7; C. S. 7233.)

§ 130-247. Violating quarantine regulations; penalty.—Any person who shall violate the quarantine regulations, as prescribed from time to time by the quarantine officers, shall forfeit and pay the sum of two hundred dollars for each offense; and all penalties and forfeitures imposed by this chapter may be recovered before any court having jurisdiction, one-half to the informer, the other half to the payment of the expenses of the quarantine establishment. Any person who shall violate any of the rules and regulations made by the quarantine board for the control, government, and maintenance of the quarantine station on Cape Fear river, as provided for in this part of this article, shall be guilty of a misdemeanor. (Rev., ss. 3450, 4524; Code, s. 2919; 1868, c. 33, s. 8; C. S. 7234.)

§ 130-248. Quarantine officer may issue warrants.—The quarantine medical officer may issue a warrant to any sheriff or other officer, commanding him to arrest the body of any person violating the quarantine, and have him without delay before some competent jurisdiction for trial. (Rev., s. 4525; Code, s. 2920; 1868, c. 33, s. 9; C. S. 7235.)

§ 130-249. Site may be sold and new site purchased.—If the quarantine board, on investigation, shall consider a site further removed from inhabited places as essential to the public safety, and shall so recommend, it shall be the duty of the governor to sell the present hospital site at Price's Creek in such manner as he may deem best, and make title to the purchaser thereof, and the moneys received for said site to turn over to the quarantine board, to be used by them for quarantine purposes at some other point as convenient as possible to the quarantine anchorage off Deepwater Point. (Rev., s. 4534; 1889, c. 521, s. 5; C. S. 7236.)

§ 130-250. Control of maritime quarantine; rules.—Except as otherwise provided in this chapter, the commissioners of navigation in the respective ports and inlets of the state, or where there are no commissioners of navigation, the governing authorities of any seaport town, may appoint such place or places as they may think proper for vessels to perform quarantine; and when a vessel shall arrive at any port or inlet of this state, having an infectious distemper on board, or shall come from any place or port which at the time of her sailing, or shortly before, was infected with any malignant disorder, the master and pilot of such vessel shall anchor her at the place so appointed, and give immediate information thereof to the county physician or health officer of the county in which such port is situated or to the municipal physician or health officer of such town, who shall thereupon cause such vessel and her crew to be examined by the county or municipal health authorities, who shall have power to order and command the master of the vessel, crew, and passengers to perform such quarantine as shall be deemed most proper and reasonable to check or prevent any infectious distemper from spreading in this state, and to require every person on board such vessel strictly to perform quarantine, and to obey the orders given by the health authorities aforesaid respecting the victualing, purifying, and cleansing of such vessel and all articles on board, and to regulate and control the intercourse of such persons with the inhabitants of the state, the receiving any person on board or the putting them on shore; and if any pilot or master neglect to give such information as above required, the pilot for such neglect shall forfeit and pay one hundred dollars, and the master for a like neglect shall forfeit and pay two hundred dollars. In case the master of any vessel ordered to perform quarantine should refuse to comply with or fail to fulfill the orders for performing quarantine with his vessel, he shall forfeit and pay two hundred dollars for each day he shall fail to perform the quarantine. The property of the captain, together with the vessel and cargo, whether owned by the captain or not, shall be liable for the penalty herein imposed. If there be at the port where the vessel enters a port physician, as provided for in this article, he shall perform the duties and have all the power by this section conferred upon the health authorities aforesaid. The state authorities shall coöperate in all matters of quarantine with the federal authorities. (Rev., s. 4510; Code, s. 2893; R. C., c. 94, s. 1; 1783, c. 194, s. 12; 1793, c. 379, s. 1; 1802, c. 624; C. S. 7237.)

§ 130-251. Commissioners of navigation authorized to appoint harbor master and health officer.—The commissioners of navigation of the several seaport towns in the state shall have power to appoint a harbor and health officer, to prescribe their duties and authority, to make rules and regulations for their government, allow them a reasonable compensation for their services, and determine how such compensation is to be paid. And they shall have power to pass such by-laws (not inconsistent with the laws of the land) for the better regulation of the quarantine to be performed by vessels arriving from ports infected or suspected to be infected with any infectious disease, and for

preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to such by-laws by imposing such penalties as they may think proper. (Rev., s. 4537; Code, s. 2905; R. C., c. 94, s. 13; C. S. 7238.)

§ 130-252. Governing authorities of seaport towns; powers.—The governing authorities of the several seaport towns and towns having a port of entry, where there are no commissioners of navigation, shall have the same power and authority and be subject to the same duties as are prescribed for the commissioners of navigation in relation to the quarantine of vessels in the ports of their respective towns; and all persons offending against the regulations of such governing authorities shall be subject to the same fines, penalties, and forfeitures as though the said regulations had been made by the commissioners of navigation. (Rev., s. 4536; Code, s. 2906; R. C., c. 94, s. 14; C. S. 7239.)

§ 130-253. Port physician; appointment.—The commissioners of navigation in the several ports of the state, and, where there are no such commissioners, the governing authorities of the several seaport towns, may appoint port physicians, and regulate and prescribe the fees to which they shall be respectively entitled, according to the different quarantine stations, which they shall be bound to attend for the purpose of inspecting vessels, as required by this article, and giving certificates of their situation and condition, in regard to the health of their respective crews and passengers. (Rev., s. 4517; Code, s. 2896; R. C., c. 94, s. 3; 1817, c. 946, s. 2; C. S. 7240.)

§ 130-254. Vessels from infected ports to anchor at quarantine; punishment for failure.—If any vessel shall be brought into the state from a place which at the time of her departure was infected with the yellow fever, smallpox, or other infectious disorder, or if any vessel, arriving in the state, shall have the smallpox or yellow fever or other infectious disorder on board, or shall have had such disorder on board during her passage to the state, such vessel shall be anchored at the place appointed for quarantine, and there remain until permitted to remove by the commissioners of navigation, or by the municipal authorities of the town to which the vessel is bound, or by the county physician or health officer. If such vessel shall come to any town or harbor without permission obtained as herein required, the pilot or master conducting the vessel or permitting her to be so conducted shall be guilty of a misdemeanor, and fined not less than one thousand dollars and imprisoned not exceeding one year. (Rev., ss. 3451, 4511; Code, s. 2894; R. C., c. 94, s. 2; 1817, c. 946, s. 1; C. S. 7241.)

§ 130-255. Pilots bringing in vessels without certificate; penalty.—If any pilot shall bring any vessel beyond the place fixed and limited by the commissioners of navigation without a certificate of the health officer declaring that there is no danger to be apprehended from any infectious disease on board said vessel, such pilot shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port of the state. (Rev., s. 4513; Code, s. 2904; R. C., c. 94, s. 12; 1797, c. 486, s. 2; C. S. 7242.)

§ 130-256. Master must declare health of crew.—The commissioners of navigation or the county physician or health officer may, whenever they think proper, require the master of a vessel, on his arrival in the state, to declare on oath the state of the health of himself, crew, and passengers, and the place whence he came. And if any master shall give a false declaration, or any physician shall wilfully give a false certificate of the health of the persons on board any such vessel, he shall forfeit and pay two thousand dollars. (Rev., s. 4514; Code, s. 2901; R. C., c. 94, s. 9; 1793, c. 379, s. 6; C. S. 7243.)

§ 130-257. Vessel removed to quarantine.—The commissioners of navigation or (where there are no such commissioners) the governing authorities of the town in the harbor of which any vessel has arrived in violation of this article, or the county physician or county health officer as aforesaid, may use such force as shall be necessary to remove said vessel to the place of quarantine; their reasonable charge for which service shall be paid by the master or owner of the vessel, and may be recovered of either of them before any court having jurisdiction. (Rev., s. 4515; Code, s. 2895; R. C., c. 94, s. 3; 1817, c. 946, s. 2; C. S. 7244.)

§ 130-258. Vessel furnished with provisions.—The commissioners of navigation or (where there are no such commissioners) the governing authorities of the seaport town are empowered and directed to furnish any vessel, ordered to ride quarantine, with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel, and cargo shall be liable. (Rev., s. 4516; Code, s. 2902; R. C., c. 94, s. 10; 1793, c. 379, s. 7; C. S. 7245.)

§ 130-259. Going on quarantined vessel; penalty.—When any vessel shall be directed to perform quarantine, and any person knowing of such order, by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners of navigation or the county physician or county health officer aforesaid, such person shall forfeit and pay one hundred dollars. If any person shall be permitted by the master to come on board without informing him of the orders as to quarantine and intercourse given as provided in § 130-250 of this article, the master shall forfeit and pay two hundred dollars for every person so offending, and four hundred dollars for suffering any person so on board to depart his vessel without permission as provided in this article, and the commissioners of navigation or the county physician or county health officer are empowered to order every person who shall go on board any such vessel to remain there for such length of time as they may think proper; and if he disobey such order, he shall pay one hundred dollars. (Rev., s. 4518; Code, s. 2898; R. C., c. 94, s. 6; 1793, c. 397, s. 3; C. S. 7246.)

§ 130-260. Landing goods from quarantined vessels; penalty.—If any master of a vessel ordered to ride quarantine shall convey, or cause or permit to be conveyed, any article of goods, wares,

and merchandise from his vessel on any other lands or into any other boat or vessel than the commissioners of navigation or the county physician or county health officer shall authorize, he shall forfeit and pay two hundred dollars for every such offense. And any other person so conveying, or causing to be conveyed, any article as above mentioned, shall be liable to the like penalty. (Rev., s. 4519; Code, s. 2900; R. C., c. 94, s. 8; 1793, c. 379, s. 5; C. S. 7247.)

§ 130-261. Person breaking quarantine to be returned.—The commissioners of navigation or the county physician or county health officer, respectively, may issue their warrant to any sheriff or other officer, commanding him to take the body of any person that may have left any vessel ordered to ride quarantine, and carry him on board of said vessel; and the officer may summon such persons to assist him in the execution of the warrant as he may see fit. (Rev., s. 4520; Code, s. 2899; R. C., c. 94, s. 7; 1793, c. 379, s. 4; C. S. 7248.)

§ 130-262. Penalty for breaking quarantine.—When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, contrary to the order and direction of the commissioners of navigation or the county physician or county health officer, leave the vessel and land on any other place than they shall allow, the seaman or passenger offending shall forfeit and pay two hundred dollars for each offense; and when he has left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offense of any of his passengers or seamen. (Rev., s. 4521; Code, s. 2897; R. C., c. 94, s. 5; 1793, c. 379, s. 2; C. S. 7249.)

§ 130-263. Disposition of penalties and forfeitures.—All penalties and forfeitures imposed by this article may be recovered and applied, one-half to the use of the informer, the other half by the commissioners of navigation for the use and benefit of the navigation of the port within whose jurisdiction the penalty or forfeiture may have been incurred. (Rev., s. 4538; Code, s. 2903; R. C., c. 94, s. 11; 1793, c. 379, s. 8; C. S. 7250.)

Art. 24. Meat Markets and Abattoirs.

§ 130-264. Sanitation and rating of places selling fresh meats.—For the better protection of the public health, the state board of health is hereby authorized, directed and empowered to prepare and enforce rules and regulations governing the sanitation of meat markets, abattoirs, and other places where meat or meat products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No such meat market or abattoir shall operate which receives a sanitary rating of less than seventy per cent (70%): Provided, that this article shall not apply to farmers and others who raise, butcher and market their own meat or meat products. (1937, c. 244, s. 1.)

§ 130-265. When inspectors required to file reports with local health officer.—Where municipalities or counties have a system of meat inspection as already provided by law the person or persons responsible for such meat inspection work shall file a copy of all inspection work, reports and other official data with the city or the county health officer, as the case may be, and in municipalities and counties having no organized health department, such person or persons shall file a copy of all inspection work, reports and other official data with the state health officer. The state board of health shall provide or approve the report forms referred to in this section. (1937, c. 244, s. 2.)

§ 130-266. Violation a misdemeanor.—Any person, firm, or corporation found guilty of violating any of the provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned in jail for not less than thirty days at the discretion of the court. (1937, c. 244, s. 3.)

§ 130-267. Effect of article.—Nothing in this article shall in any way repeal or affect §§ 106-159 to 106-166, or the rules and regulations promulgated thereunder. (1937, c. 244, s. 4.)

Art. 25. Regulation of the Manufacture of Bedding.

§ 130-268. Definitions; possession prima facie evidence of intent to sell.—As used in this article:

The word "mattress" means: Any mattress, upholstered spring, comforter, pad, cushion, or pillow to be used in sleeping.

The word "person" means: Any individual, corporation, partnership, or association.

The term "new material" means: Any material which has not been used in the manufacture of another article or used for any other purpose: Provided, this shall not exclude by-products of industry that have not been in human use, unless included in the following paragraph.

The term "previously used material" means: (a) Any material which has been used in the manufacture of another article or used for any other purpose: (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including juts and shearings.

The word "renovate" means: The reworking of a used mattress and returning it to the owner for his own personal use or the use of his immediate family.

The word "manufacture" means: Any making or re-making of a mattress out of new or previously used material, other than renovating.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, offer to sell, deliver or consign in sale, or possess with intent to sell, deliver, or consign in sale.

Possession of one or more articles covered by this article when found in any store, warehouse, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell, or sterilize and sell.

All words shall include plural and singular, masculine and feminine, as the case demands. (1937, c. 298, s. 1.)

§ 130-269. Sterilization; tagging mattresses received for renovation, etc.—No person shall renovate a mattress without first sterilizing it by a process approved by the state health officer.

No person shall manufacture a mattress containing previously used material without first sterilizing such material by a process approved by the state health officer.

No person shall sell or give away in connection with a sale a used mattress or a mattress containing any previously used material unless sterilized, since last used, by a process approved by the state health officer: Provided, this article shall not apply to a mattress sold by the owner from his home direct to the purchaser, unless such mattress has been exposed to an infectious or contagious disease.

Any person desiring to operate a sterilizer shall first secure license from the state health officer, the fee for which shall be twenty-five dollars ($25.00) for each calendar year or part thereof. Such license shall be kept conspicuously posted in the place of business: Provided, however, that blind persons operating under the direction of the state commission for the blind shall be exempt from said license fee.

Any sterilizing apparatus used under this article shall be inspected and approved by a representative of the state health officer. If, in the opinion of such representative, the apparatus does not effectively sterilize, or if at any time it is not maintained in a satisfactory condition, it may be condemned by any representative of the state health officer, in which event it shall not be used for sterilizing any mattress or material required to be sterilized under this article until the defects have been remedied and the apparatus approved by a representative of the state health officer.

Any person sterilizing material or mattresses for another person shall keep in a well-bound book a complete record of the kind of material and mattresses so sterilized, such record to be open to inspection by any representative of the state board of health.

Any person who receives a mattress for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2.)

Editor's Note. — This statute escapes the condemnation which befell the Pennsylvania statute in Weaver v. Palmer Bros. Co., 270 U. S. 402, 46 S. Ct. 320, 70 L. Ed. 654. In fact, the opinion in that case indicates that sterilization is the proper way to regulate the manufacture of bedding and mattresses from second-hand material. 15 N. C. Law Rev. 328.

§ 130-270. Manufacture regulated; required information to be stamped on tags; use of "sweeps" or "oily sweeps" material.—No person shall manufacture or sell a mattress to which is not securely sewed a cloth or cloth-backed tag at least two (2) inches by three (3) inches in size, to which is affixed the adhesive stamp provided in § 130-272. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English (a) the name of the material or materials used to fill such mattress; (b) the name and address of the maker or vendor of the mattress; (c) in letters at least one-eighth inch high the words "made of new material," if such mattress contains no previously used material; or the words "made of previously used materials," if such mattress contains any previously used material; or the words "second-hand" on any mattress which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or second-hand mattresses. Such tag shall be approved by the state health officer.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the stamp required by this article, and shall be sewed to the outside covering of every mattress being manufactured, before the filling material has been inserted.

When the word "cotton" is used, the kind of cotton shall be clearly stated on said tag.

Material known in the cotton waste trade as "sweeps" or "oily sweeps" shall not be used unless washed in accordance with rules to be promulgated by the state board of health.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine and is inserted into the mattress in layers. (1937, c. 298, s. 3.)

§ 130-271. Altering, etc., tags prohibited.—No person, other than a purchaser for his own use or a representative of the state board of health, shall remove from a mattress, or deface or alter, the tag required by this article. (1937, c. 298, s. 4.)

§ 130-272. Enforcement funds.—The state health officer is hereby charged with the administration and enforcement of this article, and he shall provide specially designated adhesive stamps for use under § 130-270. Upon request he shall furnish no less than five hundred said stamps to any person paying in advance ten dollars ($10.00) per five hundred stamps. State institutions engaged in the manufacture of mattresses for their own use or that of another state institution shall not be required to use such stamps.

All money colleced under this article shall be paid to the state health officer, who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the state board of health, solely for expenses in furtherance of the enforcement of this article. The state health officer shall semiannually render to the state auditor a true statement of all receipts and disbursements under said fund, and the state auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for (a) salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or (b) expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the state health officer without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the state board of health. (1937, c. 298, s. 5.)

§ 130-273. Enforcement by state board of health.—The state board of health, through its duly au-

thorized representatives, is hereby authorized and empowered to enforce the provisions of this article. Any person who shall hinder or prevent any representative of the state board of health in the performance of his duty hereunder shall be guilty of a violation of this article.

Every place where mattresses are made, remade, renovated or sold, or where material, which is to be used in the manufacture of mattresses, is mixed, worked, or stored, shall be inspected by duly authorized representatives of the state board of health.

Any representative of the state board of health may order off sale, and so tag, any mattress which is not made and tagged as required by this article, or which is tagged with a tag containing a statement false or misleading, and such mattress shall not be sold until such defect is remedied and a representative of the state board of health has reinspected same and removed the "off sale" tag.

Any person supplying material to a mattress manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The mattress manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the state board of health.

When an authorized representative of the state board of health has reason to believe that a mattress is not tagged or filled as required by this article, he shall have authority to open a seam of such mattress to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such mattress, and he shall have power to seize and hold for evidence any such records and any mattress or mattress material which in his opinion is made, possessed, or offered for sale contrary to this article, and shall have power to take a sample of any mattress or mattress material for the purpose of examination or for evidence. (1937, c. 298, s. 6.)

§ 130-274. Licenses.—No person, except for his own personal use or the use of his immediate family, and blind persons operating under the direction of the state commission for the blind, shall manufacture mattresses until he has secured a license therefor from the state board of health upon payment of an annual inspection fee of twenty-five dollars ($25.00), and in case such mattresses are manufactured from previously used material he shall also secure and pay for the additional license required under § 130-269. The licenses so issued shall be valid until the end of the calendar year in which issued, or until voided for violation of this article, and shall at all times be kept conspicuously posted in the place of business.

The state health officer may revoke and void the aforesaid license and the sterilizing license issued under § 130-269 of any person convicted a second time for violating this article; and such person shall not thereafter make, remake, renovate, or sell a mattress for a period of six months after such revocation, and then only after he has paid the required fees for new licenses. (1937, c. 298, s. 7.)

§ 130-275. Violation of article. — Any person who fails to comply with any provision of this article, or who counterfeits the stamp provided in § 130-272, shall be guilty of a violation of this article. Each stamp so counterfeited and each mattress made, renovated, or sold contrary to this article shall be a separate violation. (1937, c. 298, s. 8.)

§ 130-276. Issue of warrants.—If any person submits reasonable proof of any violation of this article to any law enforcement officer, or to a representative of the state board of health, it shall be the duty of said officer or representative of the state board of health to swear out a warrant against the offender. (1937, c. 298, s. 9.)

§ 130-277. Penalty.—A person who violates this article shall, upon conviction thereof, be fined not more than fifty dollars ($50.00), or imprisoned in the county jail not to exceed thirty days. (1937, c. 298, s. 10.)

§ 130-278. Blind persons exempt.—In the cases where mattresses are manufactured or renovated in a plant or place of business owned solely by blind persons in which place of business not more than one sewing assistant is employed in the manufacture or renovation of mattresses, neither the payment of the license fees nor the use of stamps shall be required, and mattresses made by such blind persons may be sold by any dealer without the stamps being affixed. (1937, c. 298, s. 11.)

Art. 26. Transportation of Foodstuffs.

§ 130-279. Sanitation of cars.—It shall be unlawful for any carrier transporting food intended for human consumption to transport the same knowingly in cars or other vehicles which have been defiled by livestock or by human beings without having first put said car or vehicle in a sanitary condition.

It shall be unlawful for any person to defile any railroad car by urinating therein or by passing therein excreta.

Any person, firm, or corporation who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. (1925, cc. 114, 213.)

Chapter 131. Public Hospitals.

Art. 1. Orthopedic Hospital.

§ 131-1. Board of trustees; term of office; organization and powers.—The governor shall appoint a board of trustees, consisting of nine members, for the North Carolina Orthopedic Hospital, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have been appointed, and the term of office of each shall begin from the date of the selection of the site. The governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make by-laws for the government of the same. (1917, c. 199, s. 4; C. S. 7254.)

§ 131-2. Authorized to accept donations.—The board of trustees of the North Carolina Orthopedic Hospital are hereby authorized and empowered to accept gifts, grants, donations, devises, and bequests of money, lands, goods and other property for and on behalf of said institution. (1927, c. 188, s. 1.)

§ 131-3. Establishment of school for patients.—There is hereby created and established in the North Carolina Orthopedic Hospital at Gastonia a school for patients who are between the ages of six and twenty-one years which shall be operated for the period of twelve months in each year, or such period during each year as such board of trustees may deem advisable, under the direction and supervision of the county board of education of Gaston county.

A principal and the necessary number of teachers in said school shall be allotted to said school by the state school commission and shall be elected by the trustees of the North Carolina Orthopedic Hospital, upon the recommendation of the county superintendent of public instruction of Gaston county, which teachers shall hold certificates according to standards prescribed by the state board of education for teachers in the public schools of the state.

The state school commission is hereby authorized to purchase such equipment and supplies as it deems necessary to carry out the purposes of this section. (1939, c. 186.)

Art. 2. Hospitals in Counties, Townships, and Towns.

§ 131-4. Establishment of public hospitals; election, tax, and bond issue.—Any county, township, or town may establish a public hospital in the following manner:

1. Petition presented.—A petition may be presented to the governing body of any county, township, or town, signed by two hundred resident freeholders of such county, township, or town, one hundred and fifty of whom, in the case of a county, shall not be residents of the city,

town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, or to be thereafter selected by the governing body of such county, township or town, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.

2. Election ordered.—Upon the filing of such petition the governing body of the county, township, or town shall order a new registration and shall submit the question to the qualified electors at the next general election to be held in the county, township, or town, or at a special election called for that purpose, first giving ninety days' notice thereof by publication once a week for four successive weeks beginning ninety days before the day of said election in one or more newspapers published in the county, township, or town, if any be published therein, and by posting such notice, written or printed, in each township of the county, in case of a county hospital, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the county, township, or town. The election shall be held at the usual places in such county, township or town for electing officers, the election officers shall be appointed by the Board of county commissioners and the vote shall be canvassed in the same manner as in elections for officers for such county, township, or town.

No action to question the validity of any such election shall be brought or maintained after the expiration of sixty days from the canvassing of said vote, and after the expiration of said period it shall be conclusively presumed that said election has been held in accordance with the requirements of this section, unless within said period such action is instituted.

3. Tax to be levied.—The tax to be levied under such election shall not exceed one-fifteenth of one cent on the dollar for a period of time not exceeding thirty years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings. (1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1; 1923, c. 244, s. 1; 1929, c. 247, ss. 1, 2, 4; C. S. 7255.)

Cross References.—As to power of county to establish hospitals and tuberculosis dispensaries, see § 153-9, subsection 24. As to power of municipalities to establish and regulate hospitals, etc., see §§ 160-230 and 160-232.

Editor's Note.—By amendment Public Laws 1923, ch. 244, sec 1, the provision in the first paragraph for soliciting a location after presenting the petition, was added, and in paragraph 3 the time for the bonds to run was extended from twenty to thirty years. See 1 N. C. Law Rev. 273.

§ 131-5. Election on tax levy; collection and application of funds.—The governing body of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one-fifteenth of one cent on the dollar for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a ..... cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this article, and for no other purposes whatever. (1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2; C. S. 7256.)

§ 131-6. Curative statute.—All elections heretofore called or held under the provisions of this article, as amended, where notice has been given in accordance with § 131-4, and the election officers have been appointed either in compliance with § 131-4 or by the County Board of Elections, are hereby validated and declared to be in accordance with the requirements of the statute on said subject. (1929, c. 247, s. 3.)

§ 131-7. Trustees; term of office; qualification and election.—Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The trustees shall hold their offices until the next following general election, when seven hospital trustees shall be elected and hold their offices, two for two years, two for four years, three for six years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be practicing physicians. (1913, c. 42, s. 3; 1917, c. 98, s. 2; 1917, c. 268; C. S. 7257.)

Local Modification.—Alamance: 1943, c. 379, s. 1; Yancey: 1929, c. 117.

§ 131-8. Officers elected by trustees; compensation. — The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. The treasurer of the county, township, or town in which such hospital is lo-

cated shall be treasurer of the board of trustees. The treasurer shall receive and pay out all moneys under the control of said board, as directed by it, but shall receive no compensation from such board. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of all the trustees present at a meeting of the board. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7258.)

§ 131-9. Trustees to have control, and to make regulations.—The board of hospital trustees shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose. (1913, c. 42, s. 4; C. S. 7259.)

§ 131-10. Power of board to appoint superintendent and assistants.—The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and they shall in general carry out the spirit and intent of this article in establishing and maintaining a county, township, or town public hospital with equal rights to all and special privileges to none. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7260.)

§ 131-11. Meetings of board; reports required.—The board of hospital trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the county, township, or town a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the year; and they shall at such time certify the amount necessary to maintain and improve the hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for such hospital, unless the same are purchased by competitive bidding. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7261.)

§ 131-12. Vacancies filled. — Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the governing body of the county, township, or town and be filled in like manner as original appointments, appointees to hold office until the next following general election, when such vacancies shall be filled by election in the usual manner. (1913, c. 42, s. 5; 1917, c. 268; C. S. 7262.)

Local Modification.—Alamance: 1943, c. 379, s. 2.

§ 131-13. Deposit and payment of funds.—All money received for such hospital shall be deposited in the treasury of the county, township, or town to the credit of the hospital fund, and paid out only upon warrants drawn by the auditor, or other proper officer, of such county, township, or town upon the properly authenticated vouchers of the hospital board. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7263.)

§ 131-14. Regulations as to bond issue.—Whenever any county, township, or town in this state shall have provided for the appointment and election of hospital trustees, and voted a tax for a term not exceeding thirty years for hospital purposes, as authorized by law, the county, township, or town may issue bonds in anticipation of the collection of such tax in such sums and amounts as the board of hospital trustees shall certify to the governing body of such county, township, or town to be necessary for the purposes contemplated by such tax, but such bonds in the aggregate shall not exceed the amount which might be realized by said tax, based on the amount which may be yielded on the property valuation of the year in which the tax is voted. Such bonds shall mature in thirty years from date and shall be in sums not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not exceeding five per cent per annum, payable annually or semiannually; the bonds shall be payable at pleasure of county, township, or town after five years, and each of said bonds shall provide that it is subject to this condition, and shall not be sold for less than par, and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this article, and be numbered consecutively and redeemable in the order of their issuance. The governing body shall have the power and option of issuing, instead of long-term bonds, as above provided for, serial bonds in such forms and denominations as said governing body may determine, subject to the restrictions of this section. Said serial bonds may be issued as one issue or divided into two or more separate issues, and in either case may be issued all at one time or in blocks from time to time, and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No installments shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. Said bonds, if said governing body shall elect to issue serial bonds instead of long-term bonds, may be either coupon bonds or registered bonds, and if issued in coupon form may be registerable as to principal, or as to both

principal and interest, and shall be substantially in the form provided for county bonds as aforesaid, and likewise subject to changes that will conform them to the provisions of this article. (1913, c. 42, s. 6; 1917, c. 268; 1923, c. 244, ss. 3, 4; C. S. 7264.)

Editor's Note.—By amendment Public Laws 1923, ch. 244, sec. 3 and 4, the tax term and time in which bonds should mature was raised from twenty to thirty years. The provision at the end of the section for issuing serial bonds was added by this amendment.

§ 131-15. Condemnation of land.—If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of law for the condemnation of land for railroads. (1913, c. 42, s. 7; 1917, c. 268; C. S. 7265.)

Cross Reference.—As to condemnation proceedings, see §§ 40-11 et seq.

§ 131-16. Plans to be approved; advertisement for bids.—No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1913, c. 42, s. 8; C. S. 7266.)

§ 131-17. Additional appropriation. — In the counties, townships, or towns exercising the rights conferred by this article, the governing body may appropriate each year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established. (1913, c. 42, s. 10; 1917, c. 268; C. S. 7267.)

§ 131-18. Power to accept donations.—Any person, firm, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such hospital shall have the right to vest title of the property so donated in said county, township, or town, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise, or bequest of such property. (1913, c. 42, s. 13; 1917, c. 268; C. S. 7268.)

§ 131-19. Persons entitled to benefit of hospital. — Every hospital established under this article shall be for the benefit of the inhabitants of such county, township, or town, and of any person falling sick or being injured or maimed within its limits; but every person who is not a pauper shall pay to such board of hospital trustees, or such officers as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board, such hospital always being subject to such reasonable rules and regulations as the board may adopt, in order to render the use of the hospital of the greatest benefit to the greatest number. The board may exclude from the use of such hospital all persons who shall wilfully violate such rules and regulations; the board may extend the privileges and use of such hospital to persons residing outside of such county, township, or town, upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1913, c. 42, s. 11; 1917, c. 268; C. S. 7269.)

§ 131-20. All persons subject to hospital regulations.—When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe. (1913, c. 42, s. 12; C. S. 7270.)

§ 131-21. Municipal jurisdiction extended.—The jurisdiction of the city, town, or village in or near which a public hospital is located shall extend over all lands used for hospital purposes outside the corporate limits, if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such public hospital. (1913, c. 42, s. 9; C. S. 7271.)

§ 131-22. Conditions and privileges of physicians to practice in public hospitals to be determined by the trustees.—The board of trustees of such hospitals shall determine the conditions under which the privileges of practice within the hospital may be available to physicians, and shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital. (1913, c. 42, s. 14; 1925, c. 177; C. S. 7272.)

Editor's Note.—Prior to the amendment Public Laws 1925, ch. 177, this section provided that no discrimination should be made and that a patient might employ his own physician.

§ 131-23. Training school for nurses. — The board of trustees of such county, township, or town public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses. (1913, c. 42, s. 15; 1917, c. 268; C. S. 7273.)

§ 131-24. Room for examination of insane persons.—The board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county, provided that such public hospital is located at the county-seat. (1913, c. 42, s. 16; C. S. 7274.)

§ 131-25. Charity patients determined. — The board of hospital trustees shall have the power to determine whether or not patients presented at the public hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves. (1913, c. 42, s. 18; C. S. 7275.)

§ 131-26. Department for tuberculous patients. —The board of trustees are authorized to provide as a department of the public hospital, but not necessarily attached thereto, suitable accommodations and means for the care and treatment of

persons suffering from tuberculosis, and to formulate such rules and regulations for the government of such persons, and for the protection from infection of other patients and of nurses and attendants in such public hospital, as they may deem necessary; and it shall be the duty of all persons in charge of or employed at such hospitals, or residents thereof, to faithfully obey and comply with all such rules and regulations. The board of hospital trustees shall, if practicable, employ as head nurse to be placed in charge of the public tuberculosis sanatorium one who has had experience in the management and care of tuberculous person. (1913, c. 42, s. 17; C. S. 7276.)

§ 131-27. Plans for county and municipal tubercular sanatoria.—Any county or town desiring to erect a sanatorium or hospital, shack, tent, or other structure in which it is intended to keep persons suffering with tuberculosis shall first submit to the state board of health for its approval or rejection the plans of said sanatorium, hospital, shack, tent, or other structure, and it shall be unlawful for any county or town to begin the erection of any structure referred to above without the consent or approval of the state board of health.

Any person, firm, or corporation failing, neglecting, or refusing to comply with the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1917, c. 216, ss. 1, 2; C. S. 7277.)

§ 131-28. Nonresident tuberculous patients. — The governing body of any county, township, or town where no suitable provision has been made for the care of indigent tuberculous residents may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department of such hospital, upon such reasonable terms as may be agreed upon. (1913, c. 42, s. 19; 1917, c. 268; C. S. 7278.)

Art. 3. County Tuberculosis Hospitals.

§ 131-29. Power to establish.—Any county within the state shall have power and authority at any time to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1917, c. 99, s. 1; C. S. 7279.)

Proceedings under Conflicting Local Act Invalid. — Where the county commissioners have proceeded under a special local act, which was later held to be unconstitutional, to submit to its electorate the question of erecting and maintaining a tuberculosis hospital, to issue $150,000 in bonds therefor, and levy an additional tax of eight cents on the $100 valuation of its property for maintenance, their action thus taken cannot be sustained under the provisions of the general law, ch. 131, this section et seq., authorizing an expenditure for the purpose of not exceeding $100,000, and a maintenance tax not to exceed five cents. Proctor v. Board, 182 N. C. 56, 108 S. E. 360, cited and distinguished. Armstrong v. Board, 185 N. C. 405, 117 S. E. 388.

§ 131-30. Election for bond issue; special tax.— The board of county commissioners of any county in the state may, by majority vote of the board, or upon petition of one-fourth of the freeholders of the county shall, after thirty days notice at the courthouse door and publication in one or more newspapers published in the county, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people of the county whether there shall be issued and sold bonds to an amount not to exceed two hundred and fifty thousand dollars, to bear interest at such rate as the board may fix and to be payable, both principal and interest, when and where they may decide, the proceeds of the bonds to be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. If the majority of the qualified voters at said election shall vote in favor of the issuing of such bonds, then the bonds shall be issued and sold by the board and a special tax shall be levied to pay the interest and to provide a sinking fund to pay the bonds at maturity. The board of commissioners are also authorized to levy a special annual tax not to exceed ten cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis. The question of levying such special tax shall be submitted to the qualified voters of such county at an election to be held as hereinbefore provided. In the event the board of commissioners shall order a special election to determine the will of the people of the county upon the question of the issuance of the bonds or the levy of the special maintenance tax as herein provided, they may order a new registration of the qualified voters of the county for said election, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published in said county at least thirty days before the close of the registration books. If both questions are submitted at the same election, only one registration need be ordered. The published notice of registration shall state the days on which the books will be open for registration of voters and the places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before election. The Saturday before the election shall be challenge day. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. (1917, c. 99, s. 2; 1919, c. 159, s. 2; Ex. Sess. 1924, c. 47; 1925, c. 75; 1927, c. 34, s. 2; 1929, c. 164; 1937, c. 197; 1939, c. 290; C. S. 7280.)

Editor's Note.—By amendment, Ex. Sess. 1924, ch. 47, the provision for holding special election was added. By Public Laws 1925, ch. 75, the bond limit was raised from one hundred thousand to two hundred and fifty thousand.

In Public Laws of 1927, ch. 34, sec. 1 and 2 the same amendment as was made in 1925, that is raising the bond limit from one hundred thousand to two hundred and fifty thousand was made without reference to the amendment of 1925. Evidently the Legislature overlooked the amendment of 1925 in making the amendment of 1927.

The 1937 amendment increased the maximum tax rate authorized in the fourth sentence from five to eight cents. The 1939 amendment which increased this rate to ten cents, provides: "This amendment shall in no way be construed as affecting the right of the governing body of any county or city in the state to continue to levy any tax heretofore approved by a vote of the people in accordance with the provisions of chapter ninety-nine Public Laws of one thousand nine hundred seventeen and acts amendatory thereof."

§ 131-31. Board of managers; term of office; compensation. — For each hospital so established, the board of county commissioners shall, by a majority vote, elect a board of managers to consist of five members, of whom one shall be a member of said board of commissioners and shall be chairman of said board of managers. None of the remaining four members of said board of managers shall be a member of the board of commissioners. The chairman of said board of managers shall be elected for a term of two years, and the other members of said board of managers shall be elected for terms of four years each: Provided, that at the first election of said board of managers the chairman shall be elected for a term equal to the unexpired portion of his term as a member of the board of commissioners, and of the remaining members of said board of managers one member shall be elected for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years: Provided, also, that any vacancy in said board, occurring at any time, shall be filled by the board of commissioners for the unexpired term. In all counties having a health officer, such health officer, in addition to the five elected members, shall be ex officio a member of such board of managers. Women shall be eligible to said board of managers. The compensation of the members of said board of managers shall be the same as that of the members of the board of commissioners: Provided, that in counties in which the chairman of the board of commissioners receives a fixed salary, and the remaining members of said board are compensated upon the basis of per diem and mileage, the compensation of the members of the board of managers shall be equal to that of the members of the board of commissioners, paid upon a per diem and mileage basis. The chairman of the board of managers shall be entitled to the same compensation as other members of said board, in addition to his compensation as a member of the board of commissioners. The county health officer, however, shall not receive compensation as a member of said board of managers: Provided, that this section shall not affect the present term of office of any member of a board of managers elected prior to the passage of this section, but as to such members this section shall become effective as their present terms of office, respectively, shall expire. (1917, c. 99, s. 4; 1925, c. 313, s. 1; C. S. 7282.)

Editor's Note.—The provisions as to the membership of one of the commissioners, and the proviso as to per diem compensation are new with Public Laws 1925, c. 313, sec. 1.

§ 131-32. Powers of board; title to property.— Authority in regard to the purchase of lands, election and maintenance of buildings, selection of officers, employees, and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers. No one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers. All property, both real and personal, pertaining to such hospital, shall be vested in the county: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the county in trust according to the terms of such donation, devise, or bequest. Provided, that the board of commissioners, in their discretion, either may appoint the board of managers following the official determination of the election, in which event said board of managers shall have the sole authority as to the selection of a site for such hospital, the purchase of lands therefor, and the erecting and equipping of the buildings for such hospital; or the said board of commissioners may defer the appointment of said board of managers until such hospital is constructed, in which event said board of commissioners shall, themselves, select the site for such hospital, purchase lands therefor, erect and equip, or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained in accordance with this article. (1917, c. 99, s. 5; 1925, c. 313, s. 2; C. S. 7283.)

Editor's Note.—By amendment, Public Laws 1925, ch. 313, the provision for appointment of a board of managers, their powers and the powers of the board of commissioners in regard to the appointment was added.

§ 131-33. Contract power; regulations for admission.—The board of county commissioners, or the board of managers, according to the authority vested in them by the board of county commissioners or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the county maintaining such hospital shall be kept for less than actual cost. The county commissioners of any county may, instead of erecting the institution in the county where the vote is taken, use a part or all of the funds in erecting and maintaining a building or buildings at the state sanatorium at Montrose, or the county commissioners may in their discretion erect and maintain a tuberculosis hospital in the county where the bonds are issued, and may also use part of the funds to erect and maintain a building or buildings at Montrose, as they may deem best. Before erecting any building or buildings at Montrose the county commissioners shall make due arrangements and enter into the necessary contract or contracts with the board having charge of the state sanatorium at Montrose. And the board having in charge the state sanatorium at Montrose is hereby authorized and empowered to make contracts with any county in the state, specifying the terms upon which such building or buildings may be erected and making such arrangements as it may deem wise for the maintenance of such buildings and the care and support of such county patients. In case the board of commissioners of any county, or the people of any county, do not decide to issue

bonds for the erection of such hospital, but do decide to levy the special tax provided for in § 131-30, they may make arrangements with the board having in charge the State Sanatorium at Montrose for the maintenance and care of tubercular patients of such county. (1917, c. 99, s. 6; 1919, c. 159, s. 3; 1921, c. 178; 1925, c. 313, s. 3; C. S. 7284.)

Art. 4. Joint County Tuberculosis Hospitals.

§ 131-34. Authorization.—Any group of counties within the State of North Carolina shall have power and authority at any time hereafter to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1925, c. 154, s. 1.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-35. Vote on bond issue.—The boards of commissioners of each such group of counties in North Carolina may, by majority vote of said boards, or upon petition of five per cent (5%) of the freeholders of said counties, shall, after thirty days notice at the courthouse door of each of the counties and publication in one or more newspapers published in each of said counties, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people in each of the counties in the group whether there shall be issued and sold bonds to an amount not to exceed two hundred thousand dollars ($200,000) for each county in the group, to bear interest at such rate as said boards may fix and to be payable, both principal and interest, when and where they may decide. The proceeds of said bonds shall be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. If the majority of the qualified voters in each county of the group at said election shall vote in favor of the issuing of said bonds, then said bonds shall be issued and sold by said boards and a special tax shall be levied to pay the interest on said bonds and provide a sinking fund to pay said bonds at maturity. Said boards of commissioners are hereby also authorized to levy a special annual tax not to exceed five cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for said hospital for tuberculosis. (1925, c. 154, s. 2; 1929, c. 164.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-36. Board of managers.—For each hospital so established there shall be elected a board of managers, consisting of two members from each county in the group and of one member at large. The two members from each county shall be elected by a majority vote of their respective board of county commissioners, and the one member at large shall be elected from any one of the counties in the group at a meeting of and by a majority vote of the combined boards of commissioners of the several counties in the group. The member at large shall hold office for two years and the other members shall hold office for four years where there are only two counties in the group, and for six years where there are more than two counties in the group, unless sooner removed for cause by the combined boards of commissioners of the several counties in the group: Provided, that the commissioners of all the counties of the group at a joint meeting shall determine the length of the term of office of the various members of the board of managers first elected; one member to serve one, two, three and four years, respectively, if there are only two counties in the group; one member to serve one, two, three, four, five and six years, respectively, if there are three counties in the group; one member to serve for one, two, three and four years, respectively, and two members to serve for five and six years, respectively, where there are four counties in the group; one member to serve for one year, and one for two years, and two members for three, four, five and six years, respectively, where there are five counties in the group: Provided, also, that any vacancies in such board may be filled by the boards of county commissioners for the unexpired term, unless the vacancy is for the office of member at large, in which case the vacancy shall be filled for the unexpired term by the commissioners of all the counties of the group at a joint meeting. In all counties having health officers, such health officers shall, in addition to the other members, be ex officio members of such board of managers. Women shall be eligible for election to such board of managers. The compensation for such board shall be the same as that of the county commissioners. (1925, c. 154, s. 4.)

§ 131-37. Authority of board.—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers; no one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers; all property, both real and personal, pertaining to such hospital shall be vested jointly in the counties of the group: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the counties in the group in trust according to the terms of such donation, devise, or bequest. (1925, c. 154, s. 5.)

§ 131-38. Purchasing property; charges.—The boards of county commissioners of the group, or the board of managers, according to the authority vested in them by the boards of county commissioners of the group or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each

particular case: Provided, that no person who is not a bona fide resident of the counties maintaining such hospital shall be kept for less than actual cost. (1925, c. 154, s. 6.)

Art. 5. County Tuberculosis Hospitals; Additional Method of Establishment.

§ 131-39. Additional method of establishing; election.—The board of commissioners for each county in the State shall have power to cause to be held in their county an election wherein this article shall be submitted to the qualified voters of said county for their approval or disapproval. Said election shall be in all respects as nearly as may be, held and conducted conformably to the rules for the election of members of the General Assembly. The said board of commissioners shall provide registration and polling books, and shall publish due notice of said election. They shall cause a new registration of voters to be made for said election, and shall publish due notice of the time and place for such registration to be made, and of the time when challenges of such registered voters may be made, all of which shall conform as near as may be, to the general laws regulating the election of members of the General Assembly. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). If in said election a majority of the voters of said county registered for said election vote for said county tubercular hospital, then this article and the following provisions thereof shall thenceforth be in full force and effect in said county; but if in said election a majority of the said registered voters shall not vote for said county tubercular hospital, then the provisions of this article shall be in no further force and effect in said county. (1927, c. 208, s. 1; 1929, c. 164.)

§ 131-40. Appointment of trustees; vacancies; terms of office.—In the event said election shall have been carried in favor of said county tubercular hospital, the board of commissioners for the county in which election shall have been held shall within thirty days after a declaration of such result of such election, appoint a board of trustees for said county tubercular hospital, consisting of twelve residents of said county, three of whom shall be physicians regularly practicing in said county, and three others of said trustees shall be women. Said trustees shall be appointed in four classes, one class to serve for one year, another for two years, another for three years, and the other for four years; thereafter as their successors are appointed or elected, the term of office of such successors, except unexpired vacancies, shall be for four years. The successors of such trustees shall be appointed by the chairman of the board of commissioners for said county, the county superintendent of health, the Clerk of the Superior Court of said county, and the mayor of the municipality constituting the county seat of said county acting jointly, and by a majority vote. Vacancies in the offices of such trustees shall be filled by the same body of public officers last mentioned. (1927, c. 208, s. 2.)

§ 131-41. Meeting for qualification and organization; expenditures; care of property.—These said trustees shall within ten days after their appointment meet and qualify by taking the oath of civil officers, and organize their board by the election of one of their members as chairman, and one as secretary, and by the election of such other officers as may be necessary. The treasurer of the county for which said trustees are appointed shall be treasurer of the said board of trustees, and such treasurer shall receive and pay out all moneys under the control of said board as directed by it, but shall receive no compensation from said board, and no trustee shall receive any compensation whatsoever for services performed as such trustee. Said board of trustees shall make and adopt such by-laws, rules and regulations for their own guidance and the government of the said hospital, as it may deem proper, not inconsistent with this article. It shall have the control of the expenditure of all moneys collected to the credit of the hospital, including the proceeds from the sale of such bonds, hereinafter mentioned, and said board of trustees shall have the supervision, care and custody of the grounds, buildings and rooms purchased, constructed, leased or set apart for the purposes of such hospital, and they may employ such assistants, including a superintendent and matron and such other employees as they may deem necessary for the operation of said hospital, insofar as funds available for such purposes will permit. (1927, c. 208, s. 3.)

§ 131-42. Counties to issue bonds.—The board of commissioners for any county in which this article shall have been approved as aforesaid shall issue bonds of said county in an amount not to exceed the principal sum of two hundred fifty thousand ($250,000.00) dollars, for the purpose of purchasing a site, constructing the necessary buildings, and equipping said hospital with the necessary equipment. Such bonds shall be payable at such time or times not to exceed forty years from the date thereof, and at such place or places and bear such rate of interest not to exceed six per cent per annum and be of such denominations as the board of commissioners for said county may in its discretion determine. Said bonds shall be sold by the said board of commissioners at public or private sale at not less than par, as said board may determine. Said bonds shall be signed by the chairman of the said board of commissioners, and bear the impressed seal of the said board, attested by the clerk of the said board; the interest coupons shall bear the lithographed or engraved facsimile of the signature of the said clerk of said board. The proceeds of the sale of said bonds as received shall be at once deposited by the said board of commissioners with the treasurer of said county, to the credit of said board of trustees for said county tubercular hospital; the official name of said board of trustees shall be "Board of Trustees for the .....County Tubercular Hospital," the name of the county for which said board is appointed to be inserted in the blank space. (1927, c. 208, s. 4.)

§ 131-43. Special tax for bonds.—The board of commissioners for any county issuing bonds under this article shall annually levy an ad valorem tax on the taxable property in such county suf-

ficient to pay the interest on said bonds so issued, and provide a sinking fund for the payment of principal thereof, as the same may become due. Said board of commissioners shall further levy annually an additional tax not exceeding five cents on the hundred dollars on taxable property in said county, for the purpose of providing funds sufficient when supplementing other income of said hospital, for the necessary maintenance and operation of said hospital. Said board of commissioners for such county shall also annually levy a sufficient tax to provide a sum equivalent to that expended out of moneys raised by taxes for the maintenance of said hospital, which funds so to be provided shall be disbursed by the board of commissioners for such county in the care of indigent residents of said county ill with diseases other than tuberculosis in other hospitals in such county. (1927, c. 208, s. 5; 1943, c. 543.)

Editor's Note.—The 1943 amendment substituted in the tenth line "hundred dollars" for "dollar."

§ 131-44. Hospital erected for benefit of residents.—The hospital established under this article shall be for the benefit of the residents of the county in which it is situated who are or become sick with tuberculosis, but every such resident admitted to said hospital who is not a pauper, shall pay to such board of trustees of said hospital, or such other officers as it may designate, reasonable compensation for occupancy and attendance within said hospital, the amount thereof to be fixed by said board of trustees, and in the event a patient in said hospital is not able to pay in full, charges for treatment, but can pay some part thereof, arrangement may be made accordingly by said board of trustees in its discretion and as it deems right and just. (1927, c. 208, s. 6.)

§ 131-45. This article cumulative of existing powers.—The powers conferred by this article are conferred in addition to and not in substitution for the existing powers of counties. Any county may at its option proceed either under this article or under any other act conferring similar powers upon such county. (1927, c. 208, s. 7.)

Art. 6. Joint County and Municipal Tuberculosis Hospitals.

§ 131-46. Appropriations from revenue producing enterprises for construction and equipment.—(a) The board of commissioners of any county and/or the board of commissioners or aldermen of any municipality in such county are hereby authorized and empowered to appropriate in their discretion out of funds not derived from taxes, but from revenue producing enterprises owned by said counties and/or towns or municipalities therein, not to exceed fifty thousand dollars ($50,000.00) of said funds so derived, for the purpose of building and equipping tuberculosis hospitals for the treatment of tuberculosis patients in said counties, towns or municipalities.

(b) The board of commissioners of any county and/or the board of commissioners or aldermen of any town or municipality are hereby authorized and empowered to appropriate in their discretion, from funds not derived from taxation, such sums as may be deemed necessary by said board or boards for the maintenance of tuberculosis hospitals. (1939, c. 293, s. 1.)

§ 131-47. Determination of name of hospital.—The name of any hospital established under the provisions of this article shall be determined by the board of managers to be hereinafter provided for. (1939, c. 293, s. 2.)

§ 131-48. Boards of managers for hospitals.—(a) For the governing and management of such hospitals, there shall be created a board of five managers. One of such board shall be elected by the county commissioners from its membership. One member of such board shall be elected by the town commissioners from its membership. The remaining three members of the board of managers shall be elected by joint vote of the boards of county and town commissioners: Provided, however, two of such remaining three members shall be licensed physicians elected by said boards of commissioners from a list of at least five nominations made by the county medical society, if there be one: Provided, further, if any such hospital be a sole enterprise of a county, or city or town, then the entire membership of the board of managers shall be elected by the board of commissioners of the governmental unit conducting such enterprise.

(b) The board of managers shall make a monthly report to the board of county and/or town commissioners and shall, on or before the first day of June of each year, file a budget with the county and/or town accountant. (1939, c. 293, s. 3.)

§ 131-49. Officers, etc.—(a) The said board of managers shall, after their appointment, meet and elect their chairman, together with a secretary and treasurer, and such other officers, employees and attendants as it may deem necessary for the administration and government of patients. The chairman of the board, as chairman, shall hold office for two years. The said secretary and treasurer, before entering upon his duties, shall give bond to the board of commissioners of the county and/or the board of commissioners of the town in an amount fixed by the said board of managers, conditioned for the faithful discharge of his official duties. The said secretary and treasurer, in the discretion of the said managers, shall be allowed and paid an amount as the said managers shall deem adequate compensation for his services as secretary and treasurer. The said board of managers, subject to the approval of governing bodies of the governmental unit maintaining such hospital, shall adopt such by-laws, rules and regulations for the governing of said tuberculosis hospital as may be expedient and in conformity with law. The said board of managers shall have control of all monies and expenditures collected by and placed to the credit of said managers of said tuberculosis hospital. All monies shall be paid out by the secretary and treasurer upon authenticated requisition of the board of managers through its president. With the consent of the said board of commissioners of the county and/or the board of commissioners of the town the said board of managers may establish, erect and maintain a tuberculosis hospital upon real estate secured or obtained by gift or purchase. The said board of managers may fix the compensation for all officers, employees and assistants and shall have power to remove such officers, employees or

assistants whenever it is deemed advisable by said board of managers. The title to all property, both real and personal, given, conveyed or devised, shall be held by the county and/or town building the said hospital: Provided, however, that any donations, bequests or devises made for the use of such hospital shall be held by the county and/or town in trust according to the terms of such donations, devises or bequests. The board of managers shall have power to make contracts, to formulate, change and alter rules and regulations and government of patients and to do all things reasonable, incidental and necessary in the operation of a tuberculosis hospital.

(b) The board of commissioners of the county and/or the board of commissioners of the town or municipality may defer the appointment of said board of managers until such hospital is constructed, in which event the said board of commissioners of the county and/or the board of commissioners of the town or municipality shall itself select the site for such hospital, purchase lands therefor, erect and equip or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained. (1939, c. 293, s. 4.)

§ 131-50. Terms of office of members elected from local boards; county health officer to be ex-officio member of board.—Membership on the board of managers of members of the board elected from boards of town or county commissioners shall coincide with their term of office as such commissioners; but shall not exceed two years. The remaining three members of the board of managers shall be elected for a term of four years each. In all counties having a health officer, such health officer, in addition to the five elective members, shall be ex-officio member of such board of managers, but shall have no vote except in case of a tie. Women shall be eligible to the board of managers. The members of the board of managers shall receive no compensation. Any vacancy in said board occurring at any time shall be filled by the board or boards of commissioners making the original appointment. (1939, c. 293, s. 5.)

§ 131-51. Contracts between local units as to prorating expenses.—Counties and towns or municipalities may contract and bargain with each other with respect to prorating between said counties, towns or municipalities the expense of the erection of tuberculosis hospitals or the maintaining thereof. (1939, c. 293, s. 6.)

Art. 7. State Sanatorium for Tuberculosis.

§ 131-52. Directors of state sanatorium for tuberculosis.—The body politic and corporate existing under the name and style of the "North Carolina Sanatorium for the Treatment of Tuberculosis" shall be controlled and managed by a board of directors appointed as provided for in §§ 131-62, 131-63, and 131-64, who shall serve until their successors are appointed and qualified according to law. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 1; 1925, c. 306, ss. 12, 13, 14; 1935, c. 91, ss. 2, 3, 4, c. 138, ss. 1, 2; C. S. 7172.)

Cross Reference.—As to effect on prior law, see note to sec. 130-12.

See sections 131-61 et seq., and note to § 131-62.

Editor's Note.—Prior to the amendment, Public Laws 1923, ch. 96, control was in the board of health. By this amendment a board of directors composed of nine members was created. This board was appointed in three classes at intervals of two years, the term being six years. By amendment Public Laws, 1925, ch. 306, sec. 12 it was provided that the board be appointed all in the same year, and the term was fixed at four years.

§ 131-53. Powers of directors; election of officers.—The North Carolina sanatorium for the treatment of tuberculosis is hereby empowered and authorized to elect and employ such officials and to pay such fees and salaries (provided the appropriation is not exceeded) as the directors shall find necessary for the proper management and maintenance of the institution; the directors shall determine the qualifications for admission of those applying as patients to the institution; the directors shall make all such by-laws and regulations for the government of the said institution as shall be necessary, among which shall be such as shall make the institution as nearly self-supporting as shall be consistent with the purpose of its creation; and the directors shall do such other things as seem reasonably necessary and incident to the proper management and maintenance of the institution. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 2; C. S. 7173.)

§ 131-54. Indigent patients; recovery of charges from those able to pay.—The said directors in determining the qualifications for admission for those applying as patients to the institution and in making by-laws and regulations for the governing therein shall not provide or make any by-law, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patient, shall be received without regard to their indigent condition; but the directors of said institution shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such by-laws and regulations as shall most equitably carry out the directions contained in § 131-53. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said directors are authorized and empowered to institute an action in the name of the said Sanatorium in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars ($200), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the

provisions contained in § 131-60. Provided, that nothing herein contained shall permit the admission of indigent patients to the North Carolina sanatorium for the treatment of tuberculosis, established under §§ 131-52 et seq., nor to the North Carolina sanatorium for the treatment of tuberculosis, established under §§ 131-61 to 131-75, unless and until the person applying for admission to either of said institutions shall have acquired a settlement in this state, and no settlement shall be deemed to have been acquired by such applicant until he or she has resided continuously within this state for a period of three years prior to the application for admission thereto. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332.)

Cross Reference.—As to care of tubercular prisoners, see §§ 130-226 et seq.

Editor's Note.—The 1925 amendment added the first proviso, and the 1939 amendment added the second.

§ 131-55. Bureau for tuberculosis; register of tuberculous persons.—The directors shall equip, operate, and maintain a bureau for tuberculosis, located in their office in Raleigh, to which bureau the reports of cases of tuberculosis, as hereinafter provided, shall be made; and the bureau of tuberculosis shall keep a register of all persons in this state known to be afflicted with tuberculosis. The bureau shall have exclusive control of such register and shall not permit the inspection thereof, nor disclose any of its personal particulars, except to representatives of municipal or county governments, the state government, or organizations, orders, churches, or corporations interested in and contemplating making financial provision in the institution for the care and treatment of afflicted citizens or members of their respective organizations, orders, churches, or corporations. (Ex. Sess. 1913, c. 40, s. 3; C. S. 7174.)

§ 131-56. Bureau to maintain correspondence school.—The bureau of tuberculosis shall develop and maintain a correspondence school with those of the state's tuberculous population, to the end that the tuberculous population of this state shall be properly advised and directed both as to methods for obtaining cures and as to methods for preventing the spread of the disease to other persons. (Ex. Sess. 1913, c. 40, s. 4; C. S. 7175.)

§ 131-57. Cases of tuberculosis reported to bureau.—All physicians and the executive officers of every private or public hospital, institution for the treatment of disease, or dispensary shall report, on blank forms and in accordance with the instructions of the bureau of tuberculosis, the names and other particulars of all persons afflicted with tuberculosis whom they are called upon to examine or treat or who are to be examined or treated in the hospital, institution, or dispensary of which he or she is the executive head, within seven days after the disease is recognized by such physician or executive officer. Any violation of this section shall be a misdemeanor and subject to a fine of not less than ten dollars nor more than one hundred dollars, and the judge, in addition to imposing the said fine, may, upon the evidence produced in the trial or upon such further evidence as may be produced before him, find and cause to be entered upon the records of the court that the physician deliberately and falsely diagnosed the disease, tuberculosis, as some other disease in order to avoid the requirements of this section, and the North Carolina board of medical examiners upon such record shall revoke the license of such physician. Nothing in this section shall abrogate the rights and powers of municipalities and counties to require the reporting of cases of tuberculosis by physicians to the local authorities; but municipalities and counties may, when desired, in lieu of such reports by physicians, call upon the bureau of tuberculosis for notification of cases of tuberculosis reported to the bureau from the municipality or county. (Ex. Sess. 1913, c. 40, s. 5; C. S. 7176.)

§ 131-58. Directors may receive gifts for sanatorium.—The directors shall be empowered to receive or accept the gifts or donations for the benefit of the state sanatorium, and the directors shall, in their discretion, use the same for carrying out the purpose for which the sanatorium is established. (1907, c. 964, s. 14; Ex. Sess. 1913, c. 40, s. 6; C. S. 7177.)

§ 131-59. Pay of directors.—Each director shall be entitled to receive, as compensation and expenses, the sums authorized in the biennial appropriations acts. (1907, c. 964, s. 15; Ex. Sess. 1913, c. 40, s. 7; C. S. 7178.)

§ 131-60. Indigent tuberculous to be treated at state sanatorium.—Any city or town in the state of North Carolina, through its board of aldermen, town council, or other governing body, and any county in the state, through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in, and who is a bona fide citizen of, said city, town, or county, at the North Carolina sanatorium for the treatment of tuberculosis, and pay therefor to the North Carolina sanatorium for the treatment of tuberculosis an amount which shall not be more than one dollar per day per patient. (1915, c. 181, s. 1; C. S. 7179.)

Art. 8. Western North Carolina Sanatorium.

§ 131-61. Tubercular sanatorium established in western North Carolina.—There shall be established in western North Carolina in the manner hereinafter set out a sanatorium for the treatment of persons afflicted with tuberculosis. (1935, c. 91, s. 1.)

§ 131-62. Control of both tubercular sanatoriums vested in one board.—Control of said sanatorium and the control of the "North Carolina Sanatorium for the Treatment of Tuberculosis" established under the provisions of §§ 131-52 et seq., shall be vested in a board of directors composed of twelve members to be appointed by the governor of North Carolina and approved by the state senate of the session of the general assembly of one thousand nine hundred and thirty-five. (1935, c. 91, s. 2, c. 138, s. 1.)

Editor's Note.—Section 3 of the Public Laws of 1935, from whence this section was codified, provided that sections 131-52 and 131-53 et seq., relating to the number, appointment, organization, etc., of the North Carolina sanatorium for the treatment of tuberculosis were repealed insofar as in conflict with the present law, "it being the intent and purpose of this act to place the control and management of the 'North Carolina Sanatorium for the Treatment of Tuberculosis' and the 'Western North Carolina

Sanatorium for the Treatment of Tuberculosis' under the board of directors herein provided for."

Section 4 of the new act also provided for the appointment of the committee who shall recommend to the board of directors a site for the new hospital.

§ 131-63. Terms of directors; ex-officio director. —The said board of directors shall be divided into three classes of four directors each, the first class to serve for a period of two years, the second class for a period of four years and the third class for a period of six years, and at the expiration of the terms of the several classes, shall be appointed for a period of six years. The secretary of the North Carolina state board of health shall be ex-officio a member of the board of directors. (1935, c. 91, s. 3, c. 138, s. 2.)

§ 131-64. Vacancy appointments. — In case of a vacancy or vacancies in the board of directors for any cause, their successor or successors shall be appointed by the governor, and their appointment will be reported to the next succeeding session of the senate of the general assembly of North Carolina for confirmation. (1935, c. 91, s. 4.)

§ 131-65. Directors incorporated. — The said board of directors shall be, and they are hereby constituted a body politic and corporate, under the name and style of the "western North Carolina sanatorium for the treatment of tuberculosis," and upon them, as such, are hereby conferred all the duties, powers, privileges and obligations incident to bodies corporate. (1935, c. 91, s. 5.)

§ 131-66. Organization of directors; acquisition of site; appropriation.—Said board of directors are hereby given full power and authority to meet and organize and from their number select a chairman to purchase a site or sites in western North Carolina, to purchase, renovate, remodel or erect buildings and provide such apparatus and equipment as may be necessary to establish said sanatorium and prepare it for the reception of patients. (1935, c. 91, s. 6.)

§ 131-67. Superintendent. — The board of directors shall have the power to elect a superintendent and prescribe his duties. The said superintendent shall be a skilled physician, trained and experienced in the treatment of tuberculosis, of good moral character, and good business habits, and otherwise qualified to discharge the duties of his office. He shall hold office for a period of two years from and after the date of his election, unless sooner removed therefrom by the board for incompetence or misconduct in office, and shall keep a record of his transactions and duly enter the same in a book or books for that purpose. (1935, c. 91, s. 7.)

§ 131-68. Subordinate officers and employees. —Said superintendent shall employ such subordinate officers and employees of said sanatorium as may be necessary, and fix their compensation, subject to the approval of said board, and within the appropriation made to said institution; the said superintendent shall have the power to discharge any of the employees for incompetence or misconduct in office, and his proceedings in regard to any act of this character shall be reported to the said board of directors. (1935, c. 91, s. 8.)

§ 131-69. Reports of superintendent; board meetings; reports to legislature. — The superintendent shall make monthly reports to the chairman of the board of directors, clearly setting forth the conditions and workings of the institution, and upon receipt of said report, said chairman shall have the authority to convene said board if, in his discretion, he deems it necessary to do so. Said superintendent shall make a detailed report of the conditions and workings of the institution every three months to the board of directors, and he shall annually make a detailed report to the governor of North Carolina. The board of directors shall be required to hold meetings of their board every three months or oftener if the chairman of said board shall call them together, and the said board shall be required to make biennial reports of the conditions and workings of the hospital to the governor and general assembly. (1935, c. 91, s. 9.)

§ 131-70. Executive committee.—The board of directors shall at their first meeting select from their number an executive committee composed of the chairman of said board and two other members, who, in the absence of the board of directors, shall have the direction of the affairs of said hospital. The successors to the members of the executive committee and the manner and time of their election shall be provided by the by-laws and regulations made for the said institution. (1935, c. 91, s. 10.)

§ 131-71. By-laws and regulations.—The board of directors shall make all by-laws and regulations for the government of said institution as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purpose of its creation. (1935, c. 91, s. 11.)

§ 131-72. Gifts and grants from governments or agencies; bond issues.—In addition to the powers generally granted to bodies corporate in North Carolina, the "western North Carolina sanatorium for the treatment of tuberculosis" shall have and is hereby granted authority to receive gift or grant from the United States government or any other agency or government, and shall have the right by vote of the board of directors, approved by the treasurer of the state of North Carolina, to issue bonds of said institution payable solely out of the receipts or revenues of any undertaking engaged in or undertaken by said board for which said bonds were issued, but shall not have the right to pledge any property of the institution or to make said bonds an obligation of said institution further than the revenue derived from the projects for which the bonds were issued, and said bonds so issued shall not be a charge upon the general property of the western North Carolina sanatorium for the treatment of tuberculosis, nor any obligation of the State of North Carolina. (1935, c. 91, s. 12.)

§ 131-73. State treasurer as treasurer of sanatorium.—The treasurer of the State of North Carolina shall be ex-officio treasurer of said corporation and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds

of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1935, c. 91, s. 13.)

§ 131-74. Gifts and donations for benefit of sanatorium.—The said board of directors shall be empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1935, c. 91, s. 16.)

§ 131-75. Pay of directors.—Each member of the board of directors shall be entitled to receive as compensation and expenses the sums fixed by the biennial appropriations acts. (1935, c. 91, s. 17.)

Art. 9. Eastern North Carolina Sanatorium.

§ 131-76. Establishment of Eastern North Carolina sanatorium for treatment of tuberculosis.—There shall be established in eastern North Carolina, in the manner hereinafter set out, a sanatorium for the treatment of persons afflicted with tuberculosis, to be known as the "Eastern North Carolina Sanatorium for the Treatment of Tuberculosis." (1939, c. 325, s. 1.)

§ 131-77. Control of sanatorium by board of directors.—The control of said sanatorium authorized by the provisions of this article shall be vested in the board of directors appointed by the governor of North Carolina under the provisions of § 131-62 and their successors in office. (1939, c. 325, s. 2.)

§ 131-78. Powers of directors as to erection, organization and operation, etc., of sanatorium.—The said board of directors are hereby given full power and authority, subject to the provisions of this article, to erect, organize, operate, supervise, manage and maintain the said Eastern North Carolina sanatorium for the treatment of tuberculosis, and there is hereby conferred upon the said board with respect to such sanatorium the same duties, powers, privileges, authority and obligations which the said board now has in connection with the operation and management of the North Carolina sanatorium for the treatment of tuberculosis and the Western North Carolina sanatorium for the treatment of tuberculosis, including the power to elect a superintendent and prescribe his duties, and to do all things needful in connection with the erection, operation, management and control of such sanatorium. (1939, c. 325, s. 3.)

Cross Reference.—As to bonds for construction of Eastern North Carolina sanatorium, see article 6, paragraph 35, of Chapter 142.

§ 131-79. By-laws and regulations.—The said board of directors shall make all by-laws and regulations for the government of said sanatorium as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purposes of its creation. (1939, c. 325, s. 5.)

§ 131-80. State treasurer to act as ex-officio treasurer of sanatorium.—The treasurer of the State of North Carolina shall be ex-officio treasurer of said sanatorium and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1939, c. 325, s. 6.)

§ 131-81. Gifts and donations.—The said board of directors are empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1939, c. 325, s. 12.)

§ 131-82. Compensation of directors. — Each member of the board of directors while engaged in attending to the affairs of said sanatorium shall be entitled to receive as compensation the sums fixed by the biennial appropriations acts. (1939, c. 325, s. 13.)

Art. 10. Funds of Deceased Inmates.

§ 131-83. Applied to debts due by such inmates to such hospitals or institutions.—Whenever any funds shall be placed or deposited with the officials of any state hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such state hospital or other charitable institution or leaves such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the board of directors or trustees of such state hospital or other charitable institution are hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in their hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said state hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid out and applied as may be by law required. (1933, c. 352, s. 1.)

Art. 11. Sanatorium for Tubercular Prisoners.

§ 131-84. Establishment of sanatorium; power and authority of directors.—There shall be established at, or as near to as feasible, the North Carolina sanatorium for the treatment of tuberculosis, a sanatorium for the treatment of tubercular prisoners or convicts. The board of directors of the North Carolina Sanatorium for the treatment of tuberculosis shall have the same authority and power over said sanatorium as they have over the North Carolina sanatorium for the treatment of tuberculosis. (1923, c. 96; 1923, c. 127, s. 2; C. S. 7220(a).)

Editor's Note.—This act was reviewed in 1 N. C. Law Rev. 269.

§ 131-85. Reports from county physicians or health officers; history of case, etc.—The county physician or county health officer of the various counties of the state who has examined any prisoner, or convict upon the public roads, and has pronounced him to be affected with tuberculosis, is required to report such case to the

board of directors of the North Carolina sanatorium for the treatment of tuberculosis, giving a history of the same and such other facts as the board of directors of the North Carolina sanatorium for the treatment of tuberculosis may determine in its rules and regulations. (1923, c. 127, s. 3; C. S. 7220(b).)

§ 131-86. Physician at state prison and convict camp.—The physician in charge of the state prison or any particular convict camp of state prisoners shall make similar reports under similar rules and regulations to the board of directors of the North Carolina sanatorium for the treatment of tuberculosis of all state prisoners who upon examination by him have been determined to be affected with tuberculosis. (1923, c. 127, s. 4; C. S. 7220(c).)

§ 131-87. Examination by directors of sanatorium; transfer to sanatorium.—The board of directors of the North Carolina sanatorium for the treatment of tuberculosis, upon receiving such reports, shall examine into the condition of these prisoners or convicts, and, if it is determined that such condition justifies it, shall direct their transfer from either county authorities, if a county prisoner, or the state prison, if a state prisoner, to the sanatorium herein provided. The cost of such transfer, if it is a county prisoner, shall be paid by the county from which he is transferred; if a state prisoner, the cost shall be paid by the state prison. If a tuberculous prisoner is thus transferred to the sanatorium, the county from which he is sent shall, upon notice from the sanatorium that the prisoner has recovered or is in such condition that it would be safe to return him to the county, within five days after such notice, send for such prisoner and return him to the county from which he was committed. Any failure on the part of the county to send for such prisoner as herein provided after such notice shall render the county liable for the expenses of maintaining the prisoner. (1923, c. 127, s. 5; 1927, c. 127; C. S. 7220(d).)

§ 131-88. Care and safekeeping of convicts.—In addition to the authority to make rules and regulations hereinbefore conferred upon the board of directors of the North Carolina sanatorium for the treatment of tuberculosis, it is further authorized to make such rules and regulations as in its judgment may seem wise in relation to the care and safe-keeping of the prisoners and convicts so transferred to the state sanatorium for tubercular prisoners. (1923, c. 127, s. 6; C. S. 7220(e).)

§ 131-89. Administration of article; rules and regulations.—The administration of this article is given exclusively to the board of directors of the North Carolina sanatorium for the treatment of tuberculosis, which board is expressly authorized and empowered to make such rules and regulations not inconsistent with this article as it may deem wise: first, as to the determination of whether a particular convict is suffering with tuberculosis, and second, whether or not the disease is in such a stage as to require special treatment. (1923, c. 127, s. 1; C. S. 7220(f).)

Art. 12. Hospital Authorities Law.

§ 131-90. Short title.—This article may be referred to as the "Hospital Authorities Law." (1943, c. 780, s. 1.)

§ 131-91. Finding and declaration of necessity.—It is hereby declared that conditions resulting from the concentration of population in various cities and towns of the state having a population of more than seventy-five thousand inhabitants require the construction, maintenance and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various cities and towns of the state having a population of more than seventy-five thousand inhabitants, there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the state and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities and towns; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that adequate hospital and medical facilities and care be provided in such concentrated centers of population in order to care for and protect the health and public welfare; and the necessity in the public interest for the provision hereinafter enacted is hereby declared as a matter of legislative determination. (1943, c. 780, s. 2.)

§ 131-92. Definitions. — The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "hospital authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than seventy-five thousand inhabitants (according to the last Federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) "Municipality" shall mean any county, city, town or incorporated village, other than the city as defined above, which is located within or partially within the territorial boundaries of an authority.

(6) "Commissioner" shall mean one of the

members of an authority appointed in accordance with the provisions of this article.

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the state of North Carolina.

(9) "Federal Government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Hospital project" shall include all real and personal property, buildings and improvements, offices, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to provide adequate hospital facilities and medical care for concentrated centers of population, including persons of low income. The term "hospital project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this article.

(12) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(13) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(14) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(15) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a hospital project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority. (1943, c. 780, s. 3.)

§ 131-93. Creation of authority.—If the council of any city in the state having a population of more than seventy-five thousand according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate hospital facilities and medical accommodations from the operations of private enterprises in the city and said surrounding area; and/or

(2) That the public health and welfare, including the health and welfare of persons of low income in the city and said surrounding area, require the construction, maintenance or operation of public hospital facilities for the inhabitants thereof; the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, eighteen commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an application signed by them, which shall set forth (without any detail other than the mere recital): (1) That the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (2) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the hospital authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location and the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries or more than one city such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certi-

ficate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1943, c. 780, s. 4.)

§ 131-94. Appointment, qualifications, and tenure of commissioners.—An authority shall consist of eighteen commissioners appointed by the mayor and he shall designate the first chairman.

One third of the commissioners who are first appointed shall be designated by the mayor to serve for terms of four years, one third to serve for terms of eight years, and one third to serve for terms of twelve years respectively from the date of their appointment. Thereafter, the term of office shall be three years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of a vacancy or vacancies in the membership of the board by expiration of term of office or otherwise, the remaining members of the board shall submit to the mayor nominations for appointments. The mayor may successively require any number of additional nominations, and shall have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1943, c. 780, s. 5.)

§ 131-95. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the state and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1943, c. 780, s. 6.)

§ 131-96. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any hospital project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any hospital project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1943, c. 780, s. 7.)

§ 131-97. Removal of commissioners. — The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating wilfully any law of the state or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such wilful violation.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon said commissioner if mailed to him at his last known address as same appears upon the records of the authority.

A commissioner shall be deemed to have acquiesced in a wilful violation by the authority of a law of this state or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1943, c. 780, s. 8.)

§ 131-98. Powers and authority.—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into hospital, medical and health conditions and into the means and methods of improving such conditions; to determine where inadequate hospital and medical facilities exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city and area, including persons of low income in such city and area; to prepare, carry out and operate hospital projects; to provide and operate out-

patient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers; to provide teaching and instruction programs and schools for medical students, internes, physicians and nurses; to provide and maintain continuous resident physician and interne medical services; to appoint an administrator, a superintendent or matron, and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees; to adopt by-laws for the conduct of its business; to adopt necessary rules and regulations for the government of the authority and its employees; to enter into contracts for necessary supplies, equipment or services incident to the operation of its business; to appoint such committees or subcommittees as it shall deem advisable, and fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospital and all departments thereof; to accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations; to determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital; to establish and maintain a training school for nurses; to make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, the hospital; to determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves; to maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases; to provide for the construction, reconstruction, improvement, alteration or repair of any hospital project or any part thereof; to take over by purchase, lease or otherwise any hospital project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a hospital project, or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or a government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital projects and to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital project and to establish and revise the rents or charges therefor; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific hospital project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state. (1943, c. 780, s. 9.)

§ 131-99. Eminent domain. — The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of

the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Sections 40-11 to 40-29.

(b) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government or to any religious or charitable corporation may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1943, c. 780, s. 10.)

§ 131-100. Zoning and building laws. — All hospital projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital project is situated. (1943, c. 780, s. 11.)

§ 131-101. Types of bonds.—The authority shall have power and is hereby authorized from time to time in its discretion to issue for the purpose only of constructing, furnishing and equipping new buildings or additions to existing buildings:

(a) Bonds on which the principal and interest are payable exclusively from the income and revenues of the project constructed, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipment thereof, provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated hospital project or projects, and if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues from such designated hospital project or projects.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the state. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute. (1943, c. 780, s. 12.)

§ 131-102. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semiannually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds shall be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York, or in the city of Chicago, Illinois, and; provided that if no bid is received upon such notice which is a legal bid and legally acceptable under such notice, then and in that event the bonds may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accured interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1943, c. 780, s. 13.)

§ 131-103. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations herein imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital project or any part thereof, or with respect to limitations on its right to undertake additional hospital projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant as to the use of any or all of its property, real or personal.

(11) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any hospital project or projects or parts thereof; (c) any moneys held for the payment of the costs of operation and maintenance of any such hospital projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and (e) any moneys held for any other reserve or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(14) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(15) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(16) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(17) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(18) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(19) To covenant to surrender possession of all or any part of any hospital project or projects the revenue from which has been pledged or mortgaged for the purpose of constructing, furnishing, and equipping new buildings or additions to existing buildings as provided for in this article upon the happening of any event of default (as defined in the contract) and to vest in an obligee the right without judicial proceeding to take possession and to use, operate, manage and control such hospital projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(20) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(21) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(22) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government of any purchaser of the bonds of the authority may reasonably require.

(23) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the state and no consent or approval of any judge or court shall be required thereof; and provided that the authority may not pledge or mortgage the revenue from any project excepting one newly constructed, furnished and equipped in whole or in part with funds derived or to be derived from the sale of bonds secured by such pledge or mortgage. (1943, c. 780, c. 14.)

§ 131-104. Remedies of an obligee of authority. —An obligee of the authority shall have the right in addition to all other rights which may be con-

ferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority. (1943, c. 780, s. 15.)

§ 131-105. Additional remedies conferrable by mortgage or trust indenture.—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital project of the authority or any part or parts thereof, constructed, equipped and furnished in whole or in part from funds derived or to be derived in whole or in part from the sale of bonds secured by the pledge or mortgage of the revenues from such property. If such receiver be appointed, he may enter and take possession of such hospital project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1943, c. 780, s. 16.)

§ 131-106. Remedies cumulative. — All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1943, c. 780, s. 17.)

§ 131-107. Limitations on remedies of obligee.—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. (1943, c. 780, s. 18.)

§ 131-108. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any hospital project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a hospital project, to take over or lease or manage any hospital project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such hospital project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the coöperation of the federal government in the construction, maintenance and operation of any hospital project which the authority is empowered by this article to undertake. (1943, c. 780, s. 19.)

§ 131-109. Security for funds deposited by authorities.—The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the state of a market value equal at all times to the amount of such deposits or (2) by any securities in which trustees, guardians, executors, administrators and others acting in a fiduciary capacity may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1943, c. 780, s. 20.)

§ 131-110. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1943, c. 780, s. 21.)

§ 131-111. Reports.—The authority shall at least once a year file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1943, c. 780, s. 22.)

§ 131-112. Certificate of public convenience and necessity prerequisite to exercise of power of eminent domain; powers of utilities commission.—Notwithstanding any finding of public convenience and necessity, either in general or specific,

by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall as near as may be follow the proceedings now provided by law for obtaining such a certificate under the Motor Vehicle Carrier Act, and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1943, c. 780, s. 23.)

§ 131-113. Exemption from the Local Government Act, and from the County Fiscal Control Act.—The authority shall be exempt from the operation and provisions of sections 159-1 et seq., and 160-409 to 160-412, known as the "Local Government Act," and the amendments thereto and from sections 153-114 to 153-141, known as the "County Fiscal Control Act, and the amendments thereto." (1943, c. 780, s. 24.)

§ 131-114. Appropriations by city and county.—The governing body of any city or county in which the authority is located may appropriate each year, not exceeding five per cent of its general fund for the improvement, maintenance or operation of any public hospital or hospital project constructed, maintained, or operated by or to be constructed, maintained or operated by an authority, and moneys so appropriated and paid to a hospital authority by a city or municipality shall be deemed a necessary expense of such city or municipality. (1943, c. 780, s. 25.)

§ 131-115. Conveyance, lease or transfers of property by a city or municipality to an authority.—Any city or municipality in order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within the territorial boundaries of which such city or municipality is wholly or partly located, any real, personal or mixed property including, but not limited to, any existing hospital or hospital project as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital project, and in connection with any such transaction the authority involved may accept such lease, transfer, assignment and conveyance and bind itself to the performance and observation of any agreements and conditions attached thereto. (1943, c. 780, s. 26.)

§ 131-116. Article controlling.—In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling, provided that nothing in this article shall prevent any municipality from establishing, equipping, and operating a hospital or hospitals or improving or extending existing hospitals and hospital facilities under the provisions of its charter or any general law other than this article. (1943, c. 780, s. 28.)

Local Modification.—Craven and city of New Bern, 1943, c. 780, s. 29.

Chapter 132. Public Records.

Sec.
132-1. Public records defined.
132-2. Custodian designated.
132-3. Destruction of records regulated.
132-4. Disposition of records at end of official's term.
132-5. Demanding custody.
132-6. Inspection and examination of records.
132-7. Keeping records in safe places; copying or repairing; certified copies.
132-8. Assistance of state department or archives and history.
132-9. Violation of chapter a misdemeanor.

§ 132-1. Public records defined. — Public records comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business. (1935, c. 265, s. 1.)

§ 132-2. Custodian designated. — The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ 132-3. Destruction of records regulated.—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with § 121-4, without the consent of the state department of archives and history. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars nor more than five hundred dollars. (1935, c. 265, s. 3; 1943, c. 237.)

Editor's Note.—The 1943 amendment substituted "state department of archives and history" for "North Carolina historical commission."

§ 132-4. Disposition of records at end of official's term. — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the state department of archives and history, all records, books, writings, letters and

documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of ten days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 4; 1943, c. 237.)

Editor's Note.—The 1943 amendment substituted "state department of archives and history" for "North Carolina historical commission."

§ 132-5. Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for ten days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 5.)

§ 132-6. Inspection and examination of records.—Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.—In so far as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with non-combustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7.)

§ 132-8. Assistance of state department of archives and history.—The state department of archives and history shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. (1935, c. 265, s. 8; 1943, c. 237.)

Editor's Note.—The 1943 amendment substituted "state department of archives and history" for "North Carolina historical commission."

§ 132-9. Violation of chapter a misdemeanor.—Any public official who refuses or neglects to perform any duty required of him by this chapter shall be guilty of a misdemeanor and upon conviction fined not more than twenty dollars for each month of such refusal or neglect. (1935, c. 265, s. 9.)

Chapter 133. Public Works.

Sec.
133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.
133-2. Drawing of plans by material furnisher prohibited.
133-3. Specifications to carry competitive items.
133-4. Violation of chapter made misdemeanor.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.—It shall be unlawful for any person, firm or corporation to employ on any city, county or state work, supported wholly or in part with public funds, any architect, engineer, designer or draftsman, who is in any way connected with the sale or promotion of or in the manufacture of any material or items used in the construction of such works, or who is a stockholder, officer, partner, or owner of any manufacturing concern, or of any sales organization, engaged in the manufacture or sale of such material, or items, which may be used in the construction of such works. (1933, c. 66, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited.—It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, state, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or state work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that there are not that many items in competition, then as many items as are available shall be specified. (1933, c. 66, s. 3.)

§ 133-4. Violation of chapter made misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this state shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars. (1933, c. 66, s. 4.)

Chapter 134. Reformatories.

Art. 1. Stonewall Jackson Manual Training and Industrial School.

Art. 2. State Home and Industrial School for Girls.

Art. 3. The Industrial Farm Colony for Women.

Art. 4. Reformatories or Homes for Fallen Women.

Art. 5. Eastern Carolina Industrial Training School for Boys.

Art. 6. Morrison Training School.

Art. 1. Stonewall Jackson Manual Training and Industrial School.

§ 134-1. Incorporation; certain powers.—The Stonewall Jackson Manual Training and Industrial School is hereby created a corporation, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1907, c. 509, s. 1; 1907, c. 955; 1925, c. 306, s. 1; 1943, c. 776, s. 12; C. S. 7313.)

Editor's Note.—No material change was made in this section by the Public Laws 1925, except the omission of the names of certain individual trustees.

Prior to the 1943 amendment this section related to the board of trustees of the school as a body corporate.

Constitutional.—This article is constitutional and committing a child to the institution is not imprisonment as for the punishment of crime, but is a paternal restraint exercised by the state for the protection of society and for the interest of the child. In re Watson, 175 N. C. 340, 72 S. E. 1049.

Detention Cannot Be for Punishment.—The punishment for vagrancy cannot exceed thirty days under our statute, and a legislative act which provides for a longer detention of a child in a reformatory for that offense, if merely for the purpose of punishment, would be violative of section 14 of the Bill of Rights. In re Watson, 157 N. C. 340, 72 S. E. 1049.

§ 134-2. Purpose of the school.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent children of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal children under the age of sixteen years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1907, c. 509, s. 2; 1907, c. 955, s. 1; C. S. 7314.)

§ 134-3. Power to purchase land and locate school.—The board of trustees shall select a suitable place outside of and away from any city, town, or village, for the location of such school, and they are empowered to purchase, at some suitable and convenient place in this state, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1907, c. 509, ss. 2, 15; C. S. 7315.)

§ 134-4: Repealed by Session Laws 1943, c. 776, s. 12.

§ 134-5. Application of funds; account required.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation, and maintenance of the school for the training and the moral and industrial development of such delinquent children, and in securing homes for them; and in case the trustees receive or are allowed any state aid for said school, it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1907, c. 509, s. 3; C. S. 7317.)

§ 134-6. Trustees to employ superintendent and assistants, and make regulations.—The board of trustees shall have the management and control

of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such reformatory under the provisions of this article, and not inconsistent therewith. (1907, c. 509, s. 8; C. S. 7318.)

§ 134-7. Treasurer and superintendent to give bond. — The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the state of North Carolina, in such sums as may be named by the governor and approved by the state treasurer. (1907, c. 509, s. 7; C. S. 7319.)

§ 134-8. Powers of superintendent.—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is intrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child, and the trustees shall have the right at any time to discharge the superintendent for cause. (1907, c. 509, s. 9; C. S. 7320.)

§ 134-9. Governor to visit reformatory. — It shall be the duty of the governor of the state to visit the reformatory at least once in each year, and oftener if he deem it necessary, and to make such suggestions to the board of trustees as he may deem wise and for the best interests of the school or reformatory. (1907, c. 509, s. 10; C. S. 7321.)

§ 134-10. Courts may commit offenders to reformatory. — The judges of the superior courts, recorders, or other presiding officers of the city or criminal courts of this state, shall have authority, and it shall be their duty, to sentence to the school all persons under the age of sixteen years convicted in any court of this state of any violation of the criminal laws: Provided, that such judge or other of said officers shall be of the opinion that it would be best for such person, and the community in which he may be convicted, that he should be so sentenced. Any commitment under this article, whether by judge or court, as hereinbefore provided, shall be full, sufficient, and competent authority to the officers and agents of the school for the detention and keeping therein of the child so committed. (1907, c. 509, ss. 11, 17; 1907, c. 955, s. 1; C. S. 7322.)

In General.—The act creating the Stonewall Jackson Training School is "for the training and moral development of the criminally delinquent children of the State," and the superintendent is "intrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may, under the law, impose upon his own child," and in its general scheme and purposes is for the benefit of a child therein detained. Hence, the provisions in the act that the child committed thereto must be "convicted" and "sentenced" by the court, construing the act as a whole, does not mean that detention therein is an imprisonment as a punishment for a crime, but that the "conviction" is merely evidence that the child needs the care and nurture of the State, and that the sentence is an order of detention. In re Watson, 157 N. C. 340, 72 S. E. 1049.

It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statute be construed to permit such sentence, the power of the court to impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. State v. Smith, 213 N. C. 299, 195 S. E. 819.

§ 134-11. Governor may transfer prisoners to reformatory.—The governor of the state may by order transfer any person under the age of sixteen years from any jail, chain-gang, or penitentiary in this state to such reformatory. (1907, c. 509, s. 12; C. S. 7323.)

§ 134-12. Department first established; sexes separated. — The board of trustees shall first establish and maintain such departments of the manual training school as shall be adapted to the use of such class of boys as in the discretion of the board may be most in need of such care and training and will probably be most benefited thereby. When both sexes are admitted, the males and females shall be kept in separate apartments or buildings. (1907, c. 509, ss. 17, 18; C. S. 7324.)

§ 134-13. Industrial training provided. — There shall be established and conducted on such lands as may be owned in connection with the school such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1907, c. 509, s. 4; C. S. 7325.)

§ 134-14. General instruction and training given. —The officers of the school shall receive and take into it all children committed thereto by competent authority, or received therein as aforesaid, and shall cause all such children in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The children shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1907, c. 509, ss. 5, 14; C. S. 7326.)

§ 134-15. Ungovernable inmates removed.—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the governor of the state, and he may order such inmate to the state's prison or to the jail or chain-gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1907, c. 509, s. 13; C. S. 7327.)

§ 134-16. Trustees to receive gifts for cottages.—The board of trustees of the Stonewall Jackson training school are hereby empowered to receive specific gifts from individuals or other sources for the exclusive purpose of erecting and equipping cottages on the grounds of the institution under such rules and regulations as may be fixed by the said board of trustees. (Ex. Sess. 1920, c. 48, s. 1; C. S. 7328(a).)

§ 134-17. Boys from counties making gifts; designation of cottage. — When such gifts, suffi-

cient to erect or to erect and equip a cottage sufficient to accommodate thirty boys, are received from individuals or other sources from any given county of the state, the trustees of the Stonewall Jackson training school may enter into an obligation to receive and maintain in the institution only according to their fixed rules and regulations for entrance, maintenance and discharge, a number of boys from the said county equal to the number which may be accommodated in such building. Such cottage may be designated..... county cottage. (Ex. Sess. 1920, c. 48, s. 2; C. S. 7328(b).)

§ 134-18. Cottages erected by two or more counties.—Should two or more counties desire to combine for the purpose of erecting such buildings, the same may be done under like conditions as stated in § 134-17, and such cottage may be known by the names of the counties so combining. (Ex. Sess. 1920, c. 48, s. 3; C. S. 7328(c).)

§ 134-19: Repealed by Session Laws 1943, c. 543.

§ 134-20. Contributions from public funds; bond issues.—It shall be lawful for county commissioners or the governing bodies of cities and towns to contribute from the public funds such amounts as they may deem proper for the purpose stated in §§ 134-17 and 134-18, and such funds may be lawfully devoted from any public funds of said bodies or secured by bond issue under such rules of issue as may be ordained by said boards of county commissioners or governing bodies of towns and cities. (Ex. Sess. 1920, c. 48, s. 4; C. S. 7328(e).)

§ 134-21. Cherokee Indians admitted. — The governing authorities of the Stonewall Jackson Training School at Concord and the state home and industrial school for girls at Samarcand are hereby authorized and directed to make proper provisions for admitting delinquent boys and girls respectively of the Cherokee Indian Race of Robeson county to these institutions under the same rules and regulations as are now provided for admitting delinquent boys and girls of the white race: Provided, however, that the boys and girls so admitted shall be separated from the white inmates of the said institutions. (1933, c. 490, s. 1.)

Editor's Note.—Section 2 of Public Laws of 1933, chapter 490, provided for an appropriation for carrying out the purpose of this section. This appropriation was extended and enlarged by Public Laws 1935, chapter 316.

Art. 2. State Home and Industrial School for Girls.

§ 134-22. Incorporation and name.—A corporation to be known and designated as the State Home and Industrial School for Girls is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organizations and existence as hereinafter set forth. (1917, c. 255, s. 1; 1937, c. 147, s. 1; C. S. 7329.)

Editor's Note.—The 1937 amendment changed the name of the institution by omitting the word "women."

§ 134-23: Repealed by Session Laws 1943, c. 776, s. 13.

§ 134-24. Power to purchase land and erect buildings.—The board of managers is authorized to secure by gift or purchase suitable real estate within the state, not less than fifty acres, at such place as the board may deem best, and with the money or other property which the corporation may have received for that purpose, either by donations from individuals or by appropriation from the state, the board shall proceed to erect on such real estate buildings suitable for carrying out the purposes for which the corporation is created. (1917, c. 255, s. 3; C. S. 7331.)

§ 134-25. Power of control.—The board of managers shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of managers shall constitute a board of parole of the institution and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1917, c. 255, s. 4; C. S. 7332.)

§ 134-26. Appointment of officers; compensation; by-laws.—The board of managers shall appoint from among its members a president, a secretary, and a treasurer, who shall hold office for one year from the date of appointment; and if the board deem it proper to do so, the office of secretary and treasurer may be combined in one. The board shall also appoint a superintendent, who shall be a woman of experience and training. The board shall fix the compensation of the superintendent and all officers and employees of the institution, and shall prescribe the duties of each. The board shall further adopt such by-laws as, in the judgment of the board, may be necessary, fixing the time and place of the meetings of the board and making such other provisions as may be necessary for the proper management of the institution. (1917, c. 255, s. 5; C. S. 7333.)

§ 134-27. Persons committed to the reformatory; time of detention.—Any girl who may come or be brought before any court of the state, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: Provided, such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution: and provided further, that before sentencing such person to confinement in the institution the court shall ascertain whether the institution is in po-

sition to care for such person; and it shall be at all times within the discretion of the board of directors as to whether the board will receive any person in the institution. No commitment shall be for any definite term, but any person so committed may be paroled or discharged at any time after her commitment by the board of managers, but no inmate shall in any case be detained longer than three years: Provided, that when any girl under twenty-one years of age shall have been committed to the institution the trustees shall have the sole right and authority to keep, restrain and control her until she is twenty-one years old, or until such time as they shall deem proper for her discharge, under such proper and humane rules and regulations as may be adopted by the trustees. When any such person shall come before any court for the purpose of confessing guilt or for trial, the court shall, as far as feasible and as far as consistent with public policy, give a private hearing, and in all respects avoid unnecessary publicity in connection with the proceedings before the court. (1917, c. 255, ss. 6, 12; Ex. Sess. 1921, c. 69; 1937, c. 147, s. 2; C. S. 7334.)

Editor's Note.—The provision allowing the restraining of girls under twenty-one was added by Ex. Sess. 1921, c. 69. The 1937 amendment struck out the words "or woman" formerly appearing as the third and fourth words of this section.

§ 134-28. Delivery of inmates to institution; expenses.—It shall be the duty of the county authorities of the county from which any girl or woman is sent to the home, or the city authorities, if any girl or woman is ordered to be sent to the home by any city court, to see that such girl or woman is safely and duly delivered to the home, and to pay all the expenses incident to her conveyance and delivery to the home. (1919, c. 122; C. S. 7335.)

§ 134-29. Voluntary application for admission; care of children.—In addition to caring for such persons as may be committed to the institution by order of court, the board of managers may, in their discretion, receive into the institution any such person who may have in writing confessed herself guilty of any offense or any wayward conduct and may in writing express her desire to become an inmate of the institution; but the board shall not admit any such person unless upon examination of such person, freely and voluntarily held under the direction of the board, the board shall conclude that confinement in the institution will probably aid in the reformation of such person. Any person becoming an inmate of the institution under the provisions of this section shall be subject to the same rules and regulations as those who have been committed by order of court, and shall be detained for such time as the board, in its judgment, may deem best, not exceeding, however, the term of three years. And it shall further be the duty of the board of managers to make suitable provision for the care and maintenance of children born in the institution, and also of the infant children that any woman may have when she is committed to the institution. (1917, c. 255, s. 7; C. S. 7336.)

§ 134-30. Law as to juvenile delinquents applied.—The provisions of the chapter pertaining to the reclamation and training of juvenile delinquents shall apply to young girls, and any court before whom a young girl is brought pursuant to the provisions of said chapter may be by order of court placed in the institution herein established, and shall be subject to all the provisions of law relating thereto: Provided, however, that no girl shall be admitted to the institution under this provision without the previous consent of the board of managers. (1917, c. 255, s. 8; C. S. 7337.)

§ 134-31. Discharge on parole; arrest for escape or violation of parole.—The board of managers may conditionally discharge any person at any time, and if any such person shall violate any condition of her parole or shall violate any condition upon which she has been discharged, or if any inmate escape from the institution, the board of managers may cause any such person to be rearrested and returned to the institution and be detained therein for the unexpired portion of her term, dating from the time of her parole, conditional discharge, or escape. The board of managers is empowered to issue to any person designated by the board a commitment signed by the president and attested by the secretary, and having attached thereto the common seal of the corporation, by the terms of which commitment such person may be authorized and empowered to apprehend any such person who may have violated her parole or any condition of her discharge or that may have escaped, and carry such person back to the institution. Such commitment shall briefly state the reason for the issuance of the same, and the person designated to execute the same may execute it in any county in the state. (1917, c. 255, s. 9; C. S. 7338.)

§ 134-32. Industrial training; compensation; power to punish.—The board of managers is authorized and empowered to establish and maintain within the institution an industrial school, and shall provide for the safe-keeping and employment of the inmates for the purpose of teaching each of them a useful trade or profession and improving her mental and moral condition. If the board of managers sees fit, they may pay each inmate reasonable compensation for labor performed, after deducting such sum as they may deem reasonable for necessary expenses of her maintenance and discipline. To secure the safe-keeping, obedience, and good order of the inmates, the superintendent shall have the same power as to such inmates as keepers of jails and other penal institutions possess as to persons committed to their custody. (1917, c. 255, s. 10; C. S. 7339.)

§ 134-33. Unlawful acts of inmates and others; escape; prostitution, etc.—It shall be unlawful:

(a) For any inmate of the state home and industrial school for girls and women to escape from said school, or for any person to aid and abet any inmate to escape therefrom;

(b) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said school to escape therefrom;

(c) For any person to transport, or to offer to transport, in automobile or other vehicle or conveyance, any inmate of said school to or from any place: Provided, this shall not apply

to the superintendent and teachers of said school, or to employees acting under the superintendent and teachers thereof;

(d) For any person to engage in, or to offer to engage in prostitution with any inmate of said school;

(e) For any person to receive, or to offer to receive any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(f) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable her to conceal her identity. (Ex. Sess. 1920, c. 40, s. 1; C. S. 7343(a).)

§ 134-34. "Inmate" and "prostitution" defined.—The term "inmate" as used in § 134-33 shall be construed to include any and all girls committed to, or received into said state home and industrial school for girls under the provisions of this article; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse. (Ex. Sess. 1920, c. 40, s. 2; C. S. 7343(b).)

§ 134-35. Punishment for violation of section 134-33.—Any person who shall knowingly and willfully violate any one of the provisions of § 134-33 shall be guilty of a misdemeanor, shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (Ex. Sess. 1920, c. 40, s. 3; C. S. 7343(c).)

Art. 3. The Industrial Farm Colony for Women.

§ 134-36. Name and establishment.—A State institution for women, to be known as the Industrial Farm Colony for Women, is hereby established. (1927, c. 219, s. 1.)

§ 134-37: Repealed by Session Laws 1943, c. 776, s. 14.

§ 134-38. Located in healthful section. — The board of directors is authorized to use for the purpose of said institution, any site already owned by the State, when approved by the Governor and Council of State. Such land shall be located in a healthful section of the State and shall have natural drainage and adequate natural water supply. It shall also include woodland and arable land to the end that, as far as practicable, the food for the inmates may be produced on such land. The farm must also be accessible by rail or road to all sections of the State. (1927, c. 219, s. 3.)

§ 134-39. Plans for buildings.—The directors shall cause to be prepared plans and specifications for remodeling or erecting on such site necessary buildings for a suitable plant for the institution. The directors shall furnish and equip the same ready for use. Contracts shall be made by the directors and those calling for an expenditure of over five hundred dollars shall be duly advertised and competitive bids received thereon, but whenever possible convict labor shall be used, the compensation for such to be agreed upon by the directors and State Highway and Public Works Commission. When such buildings have been prepared and equipped, and the necessary staff of officers has been organized, the directors shall make announcement that the institution is ready for the reception of inmates. (1927, c. 219, s. 4.)

§ 134-40. Authority of directors.—The directors shall have control of the institution; determine the policy of the same and make necessary rules for the discipline, instruction, mental and physical examination and treatment of the inmates and for the labor of the inmates; cause to be kept proper records, including those of inmates; hold regular meetings, at least quarterly, at said institution and audit the accounts of the superintendent quarterly. They shall report biennially to the Governor the general and financial condition of said institution, with such recommendations as they desire to make. (1927, c. 219, s. 5.)

§ 134-41. Power to appoint and remove.—The directors shall appoint and remove at their discretion, a superintendent of said institution who shall be a woman of liberal education and special training and who has had experience in institutional management or social work, not of their number, and who, before entering upon the duties of her office, shall be sworn to a faithful performance of her duties. The superintendent shall receive such compensation as shall be fixed by the directors and shall reside at said institution. (1927, c. 219, s. 6.)

§ 134-42. Management of institution. — The superintendent shall manage such institution and have control over the inmates thereof, and shall make rules and regulations for the administration of said institution, subject to the approval of the board of directors. The superintendent shall, also, subject to the approval of the board of directors, determine the number, select, appoint and assign duties of all subordinate officers of said institution, who shall be women, as far as practicable, and shall be sworn to a faithful performance of their duties. As soon as the size of the institution demands it, a resident woman physician shall be employed. The superintendent may remove any officer appointed by her. (1927, c. 219, s. 7.)

§ 134-43. Women subject to committal. — Women sixteen years of age and older belonging to the following classes and who are not eligible for admission to Samarcand may be committed by any court of competent jurisdiction to said institution, and not otherwise; persons convicted of, or who plead guilty to the commission of misdemeanors, including prostitution, habitual drunkenness, drug-using, disorderly conduct. The board of directors may in its discretion receive and detain as an inmate of the institution any woman or girl, not otherwise provided for, who may be sentenced by any court of the United States within this state: Provided, that no woman who has been adjudged epileptic or insane by a competent authority, or is of such low mentality or is so markedly psychopathic as to prevent her from profiting by the training program of the institution, shall be admitted. Immediately upon commitment, a careful physical and mental examination by a competent physician and a psychologist shall be made of each person

committed. The court imposing sentence upon offenders of either class shall not fix the term of such commitment except as hereinafter provided. Commitment to said institution shall be made within one week after sentence is imposed, by the sheriff when sentenced by the Superior Court, and by a police officer when sentence is imposed by any city, town or inferior court, but no offender shall be committed to such institution without being accompanied by a woman in addition to the officer. The expenses of such commitment shall be paid the same as commitments to other penal institutions in the State. The trial court shall cause a record of the case to be set with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this article, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment. (1927, c. 219, s. 8; 1937, c. 277.)

Cross Reference.—As to admission of Cherokee Indians, sec § 134-21.

Editor's Note.—The 1937 amendment added the proviso to the second sentence.

§ 134-44. Parole.—Any inmate of the institution may, upon recommendation of the board of directors to the Governor, be allowed to go on parole under the following conditions: That she is in good physicial condition, has ability to earn an honest living, has a satisfactory institutional record, based on the merit system, and a proper home to which she may go, or that suitable employment has been secured in advance. Each person paroled or discharged from said institution shall be given, if the superintendent deems it best, suitable clothing, transportation expenses and a sum of money not exceeding thirty dollars. Authority is conferred on said board of directors to establish such rules and regulations as it may deem necessary, setting forth the conditions upon which inmates may be discharged or recommended for parole, and to enforce such rules and regulations. (1927, c. 219, s. 9.)

§ 134-45. Effect of parole.—While upon parole, each inmate of said institution shall remain in the legal custody and under the control of the board of directors, and subject at any time to be taken to said institution for any reason that shall seem sufficient to said board. Whenever any paroled inmate of said institution shall violate her parole and be returned to the institution, she may be required to serve the unexpired term of her maximum sentence, including the time she was out on parole or any part thereof, in the discretion of the board of directors, or she may be paroled again if said board of directors shall so recommend. The request of said board of directors or of any person authorized by the rules of said board, shall be sufficient warrant to authorize any officer of said institution or any officer authorized by law to serve criminal process within the State, to return any inmate on parole into actual custody; and it shall be the duty of police officers, constables and sheriffs to arrest and hold any paroled inmate when so requested, without any written warrant, and for the performance of such duty, the officer performing the same, except officers of said institution, shall be paid by the board of directors of said institution out of the institution funds such reasonable compensation as is provided by law for similar services in other cases. (1927, c. 219, s. 10.)

§ 134-46. Escape of inmate.—If any inmate shall escape from said institution or from any keeper or officer having her in charge or from her place of work while engaged in working outside the walls of said institution, she shall be returned to said institution when arrested, and may be disciplined in such manner as the board of directors may determine. Any person who shall advise, induce, aid or abet any woman committed to the State Industrial Farm or to the charge or guardianship of the directors of said institution to escape from said farm, or from the custody of any person to whom such women shall have been entrusted by said directors or by their authority, shall be fined not more than five hundred dollars or imprisoned not more than one year, and any woman who shall have so escaped may, whether the limit of her original sentence shall have expired or not, be arrested and detained without warrant, by any officer authorized to serve criminal process, for a reasonable time to enable the superintendent or a director of said farm, or a person authorized in writing by the superintendent of said farm or said directors and provided with the mittimus by which such woman was committed, or with a certified copy thereof, to take such woman for the purpose of returning her to said institution, and the officer arresting her shall be paid by the State a reasonable compensation for her arrest and keeping. Any woman lawfully committed to said institution who shall escape therefrom may be imprisoned in said institution for not more than one year from the expiration of the term for which she was originally committed. Prosecutions under this article may be instituted in any county in which such woman may be arrested. (1927, c. 219, s. 11.)

§ 134-47. Recommendation for discharge. — If it shall appear to said board of directors, that any inmate on parole, although not having completed her maximum term, has maintained a satisfactory parole record, and will continue to lead an orderly life if discharged, said board may recommend to the Governor that such inmate be discharged from said institution. (1927, c. 219, s. 12.)

§ 134-48. General and industrial training.—The board of directors, in making rules and regulations for the government of said institution, shall make provision for a system of general and industrial training, including useful trades and home economics, and for proper recreation facilities. (1927, c. 219, s. 13.)

Art. 4. Reformatories or Homes for Fallen Women.

§ 134-49. Counties and cities authorized to es-

tablish reformatories.—In all cities that have a population of over twenty thousand people the governing body of such city and the board of county commissioners of the county in which the city is situated are authorized and empowered to establish jointly a reformatory or home for fallen women. (1917, c. 264, s. 1; C. S. 7344.)

§ 134-50. Power to purchase land, erect buildings, and maintain the institution. — The said city and county are authorized jointly to purchase a tract of land, not exceeding one hundred acres, for the use of such reformatory or home, the title to which shall be vested jointly in the city and county, and the reformatory shall be managed jointly by such city and county. The city and county are authorized to build such buildings and improvements on the land so purchased, to keep and maintain such reformatory or home for fallen women, and to make all necessary appropriations for buildings and keeping and caring for the inmates thereof: Provided, however, the cost of said buildings shall not exceed the sum of forty thousand dollars, and the maintenance and upkeep and operating expenses per annum shall not exceed the sum of twenty thousand dollars. (1917, c. 264 s. 1; 1919, c. 33; 1925, c. 176; C. S. 7345.)

Editor's Note.—By amendment, Public Laws 1925, c. 176, the cost allowed for the building was raised from twenty thousand dollars to forty thousand dollars, and the cost of operating was raised from ten thousand dollars to twenty thousand dollars.

§ 134-51. Board of directors elected; officers; regulations. — The governing body of the city, at its annual election of officers for the city in May, shall elect for the term of two years two men as directors for such institution, and the board of county commissioners shall, in the same year, at their meeting in May, elect two men as directors for such institution to serve for two years. The mayor of the city and the chairman of the board of county commissioners shall be ex officio members of such board with equal right to vote, and the six directors shall have entire management and control of such reformatory for fallen women. The board shall elect one of their number president, and also elect a secretary and treasurer, and they shall have and exercise the usual powers incident to such officers. They shall make such rules and regulations as they see fit for the government and management of such institution. The directors shall take an oath to perform their service faithfully, and they shall continue as directors until their successors are duly elected and qualified. (1917, c. 264, s. 1; C. S. 7346.)

Local Modification.—Mecklenburg: 1931, c. 253.

§ 134-52. Advisory board of women.—The directors are authorized to appoint as an advisory board not more than twenty-five nor less than twelve discreet women to supervise and attend to the actual running of such institution. The advisory board of women shall be appointed for such term, not exceeding four years, as the directors may in their discretion think best. (1917, c. 264, s. 1; C. S. 7347.)

§ 134-53. Special tax authorized.—To assist in carrying out the provisions of this article the county commissioners and governing body of the city shall each levy annually a tax not exceeding two cents on each one hundred dollars valuation of real and personal property in such city and county respectively. The tax shall be levied and collected in the same manner as the other county and city taxes are collected. This fund shall be used exclusively for the purposes contemplated and set forth in this article, and shall be kept separate from all other funds. (1917, c. 264, s. 2; C. S. 7348.)

§ 134-54. Employment of superintendent and assistants; rules and regulations.—The board of directors shall have the management and control of the institution and shall have authority to employ superintendents and such other assistants as they may deem necessary; to fix their salaries, to define their duties, and to discharge any employee; and to make any and all rules and regulations as they may deem necessary for the management and conducting of the institution under the provisions of this article and not inconsistent therewith. (1917, c. 264, s. 5; C. S. 7349.)

§ 134-55. Power of superintendent.—The superintendent of the institution employed by the board of directors shall have the right to require obedience from all the inmates of the institution, and to use such lawful measures as may be necessary to enforce the same to the same extent as the superintendent of any other penal institution in this state is empowered in like case. (1917, c. 264, s. 6; C. S. 7350.)

§ 134-56. Physician employed.—For the purpose of treating the inmates of the institution for the whiskey, drug, or other habit or disease, the directors shall employ a competent physician or physicians to attend and treat said inmates. (1917, c. 264, s. 14; C. S. 7351.)

§ 134-57. Purpose of home; persons to be admitted.—The reformatory or home shall be conducted for the correction of fallen women, and for the moral and industrial training of criminally delinquent women and girls, by teaching them useful trades and domestic science, etc.; and the directors may, in their discretion, receive into the institution such women or girls as shall be committed thereto by the judge or other presiding officer of any superior or recorder's court held anywhere in the state of North Carolina within that judicial district in which county the reformatory is now or may hereafter be situated, as hereinafter provided: Provided, that the reasonable cost of maintaining any woman or girl committed to such institution from any county other than that in which such reformatory shall be located shall be borne by the county from which such person shall have been committed. (1917, c. 264, s. 3; C. S. 7352.)

§ 134-58. Right of directors to control inmates.—The board of directors shall have the sole right to keep, restrain, and control the persons committed or otherwise received into the institution as hereinafter provided, during the term of their commitment thereto, under such proper and humane rules and regulations as may be adopted by the directors. (1917, c. 264, s. 4; C. S. 7353.)

§ 134-59. Power of courts to commit persons to

reformatory. — When the institution is ready to receive and care for inmates, the board of directors shall notify the clerks of the courts hereinbefore specified; and the judges or other presiding officers of the superior, recorders', county, or other courts having like criminal jurisdiction, in that judicial district in which the reformatory is now or may hereafter be situated and established, shall have authority to sentence to the reformatory for fallen women for a term of not less than thirty days nor more than one year all those women who are convicted in their several courts of drunkenness or the drug habit, where it appears that they are habitual drunkards or drug fiends; and the judges or other presiding officers of such courts shall have authority to sentence to the "Reformatory for Women" for a term of not less than thirty days nor more than three years all female persons convicted in the said courts of any violation of the criminal laws of this state prohibiting and punishing fornication and adultery, keeping a house of ill-fame, or a bawdy-house, or disorderly house, or violating the criminal laws of this state as to chastity or vagrancy: Provided, that such judge or other presiding officer as aforesaid shall be of the opinion that it would be best for such persons and the community in which such persons may be convicted hereunder. The order of commitment of such judge or other presiding officer as hereinbefore provided shall be full, sufficient, and competent authority to the officers and agents of the institution for the detention and keeping therein of the persons so committed: Provided, that nothing herein shall authorize a justice of the peace to impose a sentence of longer than thirty days: Provided further, that judges and recorders holding courts in counties other than that in which the reformatory is located shall have power to commit such persons to the institution on the conditions heretofore set forth in this article. (1917, c. 264, s. 7; 1919, c. 302; C. S. 7354.)

§ 134-60. Clerk of superior court may commit in certain cases.—The clerk of the superior court shall have power and authority to commit to the institution for treatment any female person found by such clerk to be a habitual drunkard or habitually addicted to the drug habit, as such clerk is now authorized by law to commit to the hospital for the insane or to a private hospital, persons adjudged to be of unsound mind, and to that end such clerk of the court shall have all the power and authority conferred upon him by law with reference to insane persons. (1917, c. 264, s. 15; C. S. 7355.)

§ 134-61. Voluntary application for admission. —Any person fulfilling the requirements as to sex and age as hereinbefore provided may, upon written application to the directors, setting forth that the applicant wishes to reform and the term for which such applicant wishes to be detained, be admitted to such institution, in the discretion of the board of directors; and any inmate so admitted shall be subject to the same restraint, control, and treatment as persons committed thereto, and such applications signed by the applicants shall be full and sufficient authority for the detention and control of the applicants in the institution for and during the full term as set out in the application: Provided, that the directors may, in their discretion, discharge any inmate so admitted at any time. (1917, c. 264, s. 8; C. S. 7356.)

§ 134-62. Instruction and training to be given. —The officers of the institution shall take into the reformatory or home all persons committed thereto by competent authority, and shall cause all such persons to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities, and to be taught such useful trades and occupations as the board may direct; and such persons shall perform such labor as the principal and other superintending officers may order, subject to the discretion of the board of directors. All inmates of the institution shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and be industrious. (1917, c. 264, s. 11; C. S. 7357.)

§ 134-63. Industrial training; assistance to discharged inmates.—There shall be established and conducted on such lands as may be owned in connection with the institution such useful pursuits as the board of directors may deem expedient, so as to keep regularly at work all able-bodied inmates thereof, and as far as may be practicable the board of directors shall assist the inmates, when paroled or discharged, in procuring suitable homes and honorable and respectable employment. (1917, c. 264, s. 12; C. S. 7358.)

§ 134-64. Discharge on parole; rearrest for escape or violation of parole.—The board of directors of the institution may detain therein, under the rules and regulations adopted by them, any person legally committed thereto, according to the terms of sentence and commitment; and with the approval and concurrence of the governor of the state first had and obtained, may conditionally parole or discharge such person at any time prior to the expiration of the term of commitment. If, however, any inmate shall escape or be conditionally paroled, or be conditionally discharged from the institution as aforesaid, and violate and break the condition of her parole or conditional discharge, the board of directors may, by and through their superintendent, cause her to be arrested and returned to the institution, to be detained therein for the unexpired portion of the commitment, dating from the time of escape or parole or conditional discharge. The superintendent of the institution, or any employee thereof under his control and direction, may rearrest, without a warrant, any inmate of the institution who may have escaped therefrom, in any county of this state, and shall forthwith convey her back to the institution from which she escaped; and a justice of the peace or any judicial officer may cause an escaped inmate from the institution to be rearrested and held in custody until she can be returned to the institution as in case of the first commitment thereto. Any person conditionally paroled or conditionally discharged from the institution may be also rearrested and returned thereto upon a warrant issued by the chairman of the board of directors, the warrant specifying briefly the reason for such rearrest and return, and such warrant of rear-

rest shall be directed and delivered to a person employed by the board of directors, and may be executed by such person in any county of this state where the paroled or conditionally discharged inmate may be found. (1917, c. 264, s. 13; C. S. 7359.)

§ 134-65. Ungovernable inmates removed.—If it shall appear to the board of directors that any inmate of the institution is or becomes ungovernable, or is exerting an unwholesome influence over any other inmate of the institution, it shall be their duty to certify the same to the governor of the state, and he thereupon may order such inmate to the state's prison or to the county jail or to the workhouse in the county in which the inmate was convicted and sentenced, where such person shall serve out her unexpired term of imprisonment. (1917, c. 264, s. 10; C. S. 7360.)

§ 134-66. Reports to be made by directors; inspection by grand jury.—The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. It shall be the duty of the grand jury to personally visit and inspect such institutions once every six months, and report to the court the conditions prevailing therein. (1917, c. 264, s. 9; C. S. 7361.)

Art. 5. Eastern Carolina Industrial Training School for Boys.

§ 134-67. Corporation created; name; powers.—A corporation to be known and designated as the eastern Carolina industrial training school for boys is hereby created, and as such corporation and under said name it may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified. (1923, c. 254, s. 1; C. S. 7362(a).)

§ 134-68: Repealed by Session Laws 1943, c. 776, s. 15.

§ 134-69. Establishment and operation of school; boys subject to committal; control; term of detention.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent white boys of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1923, c. 254, s. 3; 1937, c. 116; C. S. 7362(c).)

Editor's Note.—Prior to the 1937 amendment the age limit was eighteen years.

§ 134-70. Selection of location; power and size of purchase.—The board of trustees shall select a suitable place outside of and away from any city, town or village for the erection of such school, such location to be in the eastern part of North Carolina not farther west than twenty miles west of the main line of the Atlantic Coast Line Railroad, and said board of trustees is empowered to purchase, at some suitable and convenient place, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1923, c. 254, s. 4; C. S. 7362(d).)

§ 134-71. Receipts expended for school; accounting and reports.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation and maintenance of the school for the training and the moral and industrial development of such delinquent boys, and in securing homes for them; and it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1923, c. 254, s. 6; C. S. 7362(f).)

§ 134-72. Bonds of superintendent and treasurer.—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the state of North Carolina, in such sums as may be named by the governor and approved by the state treasurer. (1923, c. 254, s. 7; C. S. 7362(g).)

§ 134-73. Enforcement of discipline; discharge of superintendent.—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is entrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child; and the trustees shall have the right at any time to discharge the superintendent for cause. (1923, c. 254, s. 8; C. S. 7362(h).)

§ 134-74. Transfer by order of governor.—The governor of the state may by order transfer any boy under the age of eighteen years from any jail, chain-gang or penitentiary in this state to such school. (1923, c. 254, s. 10; C. S. 7362(j).)

§ 134-75. Work to be conducted.—There shall be established and conducted on such lands as may be owned in connection with the school, such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1923, c. 254, s. 11; C. S. 7362(k).)

§ 134-76. Boys to be received; subjects of instruction.—The officers of the school shall receive and take into it all boys committed thereto by competent authority, or received therein as aforesaid, and shall cause all such boys in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The boys shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to

the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1923, c. 254, s. 12; C. S. 7362(l).)

§ 134-77. Management and control of school; rules and regulations.—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such school under the provisions of this article and not inconsistent therewith. (1923, c. 254, s. 13; C. S. 7362(m).)

§ 134-78. Certificate for removal from school; order of removal.—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the governor of the state, and he may order such inmate to the state prison or to the jail or chain-gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1923, c. 254, s. 14; C. S. 7362(n).)

Art. 6. Morrison Training School.

§ 134-79. Creation of corporation; name; powers.—A corporation, to be known and designated "The Morrison Training School," is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of negro boys which may be received by said corporation. (1921, c. 190, s. 1; 1937, c. 146; C. S. 5912(a).)

§ 134-80: Repealed by Session Laws 1943, c. 776, s. 11.

§ 134-81. Powers of board; board of parole.—The board shall undertake as expeditiously as possible the business of selecting a location and preparing for the opening and maintenance of the Morrison Training School. The board shall have power to appoint and dismiss at will a superintendent and other employees, to make such rules for its own meetings and guidance as it deems necessary; have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein, and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall constitute a board of parole of the institution, and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe, and to retake them upon failure to comply with any requirement of parole. (1921, c. 190, s. 3; 1943, c. 776, s. 11; C. S. 5912(c).)

Editor's Note.—The 1943 amendment repealed the former first sentence relating to the organization of the board of trustees.

§ 134-82. Delinquents committed to institution; cost; age limit.—Delinquent negro boys, under the age of sixteen years, may be committed to the institution by any juvenile, state, or other court having jurisdiction over such boy, but no boy shall be sent to the institution until the committing agency has received notice from the superintendent that such person can be received. The cost of sending inmates shall be paid by the county or municipality sending the same, as the case may be. In special cases where the public good would seem to be subserved thereby the board shall have the right, upon the request of any court of proper jurisdiction, to receive an inmate above the age of sixteen, but this shall be a matter wholly within the discretion of the board. When any commitment to the institution is made, it shall not be for any specified time, but may continue or terminate at the discretion of the board, not to exceed the age of majority of the inmate. (1921, c. 190, s. 4; C. S. 5912(d).)

Sentence of Death on 15-Year-Old Valid.—It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statutes be construed to permit such sentence, the power of the court to impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. State v. Smith, 213 N. C. 299, 195 S. E. 819.

§ 134-83. Selection of location of institution; title.—The location of the institution shall be recommended by the board of trustees and approved by the governor. In the event the location selected is upon property now owned by the state or any other state institution, then the governing body in whom the title is vested is hereby directed and authorized to transfer title to the board of trustees of the Morrison Training School, and turn over to them all or such portions of the said property as the governor may direct, without compensation, as the governor may deem proper for the best interests of the state. (1921, c. 190, s. 5; C. S. 5912(e).)

§ 134-84. Apportionment of admissions; private or municipal contributions.—In receiving inmates of the institution, the trustees shall distribute such admissions as near as may be in relation to the negro population of the several counties until all the maintenance appropriation from the state is exhausted. If after such maintenance fund is exhausted it be found possible to provide housing space and control for additional inmates, then the trustees may receive such additional number of inmates as can be cared for upon the payment by private persons or municipal or county authorities of the actual cost of the maintenance of such inmates. County and municipal authorities are hereby given authority to pay such sums in their discretion. (1921, c. 190, s. 6; C. S. 5912(f).)

Art. 6A. State Training School for Negro Girls.

§ 134-84.1. Creation and name.—An institution, to be known and designated as State Training School for Negro Girls, is hereby created, and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1943, c. 381, s. 1.)

§ 134-84.2. Under control of North Carolina board of correction and training.—The said institution shall be under the control of the North Carolina board of correction and training, and wherever the words "board," "directors" or "board of directors" are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina board of correction and training, and said board shall exercise the same powers and perform the same duties with respect to the State Training School for Negro Girls as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1943, c. 381, s. 2.)

§ 134-84.3. Authority to secure real estate and erect buildings.—The board of directors, with the approval of the governor and council of state, is authorized to secure by gift or purchase suitable real estate within the state at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased nor any commitments made for the erection or permanent improvement of any buildings involving the use of state funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the general assembly; but this prohibition shall not prevent the directors from purchasing or improving real estate from funds that may be donated for the purpose. (1943, c. 381, s. 3.)

§ 134-84.4. Operation of institution before permanent quarters established.—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the governor and council of state, is authorized and empowered to enter into an agreement with any other state institution or agency for the temporary use of any state-owned property which such other state institution or agency may be able and willing to divert for the time being from its original purpose; and any other state institution or agency, which may be in possession of real estate suitable for the purpose of the State Training School for Negro Girls and which is not occupied or needed by said institution or agency, is hereby authorized to turn such real estate over to the directors of the State Training School for Negro Girls upon such terms as may be mutually agreed upon. (1943, c. 381, s. 4.)

§ 134-84.5. Powers and duties of board of directors.—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of directors shall constitute a board of parole of the institution and shall have the power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1943, c. 381, s. 5.)

§ 134-84.6. Superintendent of institution.—The board of directors shall appoint a superintendent of the institution, who shall be a woman of professional social work training and experience and who shall meet the personnel standards, established by the state board of charities and public welfare, and may fix the compensation of the superintendent, subject to the approval of the budget bureau, and may discharge the superintendent at any time for cause. (1943, c. 381, s. 6.)

§ 134-84.7. Committal and delivery of girls to institution; no inmate detained after becoming of age.—Any negro girl under the age of sixteen years, who may come or be brought before any juvenile court of the state or other court of competent jurisdiction, and may be found by such court to be in need of institutional training, may be committed by such court to the institution for an indefinite period: Provided, that such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of the institution: Provided, further, that before committing such person to the institution, the court shall ascertain whether the institution is in a position to care for such person; and that it shall be at all times within the discretion of the board of directors as to whether the board will receive any person into the institution. No commitment shall be for any definite term, but any person so committed may be conditionally released or discharged by the board of directors at any time after commitment, but in no case shall any inmate be detained in the institution for a period longer than such time at which she may attain the age of twenty-one years. It shall be the duty of the county authorities of the county from which any girl is sent to the institution or the city authorities, if any is ordered to be sent to the institution by any city court, to see that such girl is safely and duly delivered to the institution, and to pay all the expenses incident to her conveyance and delivery to the institution. (1943, c. 381, s. 7.)

§ 134-84.8. Conditional release of inmates; final discharge.—The superintendent shall have power to grant a conditional release to any inmate of the institution under the rules adopted by the board of directors, and such conditional release may be terminated at any time by the written revocation of the superintendent, which written revocation

shall be sufficient authority for any officer of the school or peace officer to apprehend any inmate named in such written revocation, in any county of the state, and to return such inmate to the institution. Final discharge of any inmate of the institution may be granted by the superintendent under rules adopted by the board of directors at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate shall arrive at her twenty-first birthday. (1943, c. 381, s. 8.)

§ 134-84.9. Contract to care for certain girls within federal jurisdiction.—The board of directors shall have power and they are hereby authorized, shall it be deemed necessary, to enter into a contract with the office of the United States attorney general or such necessary federal agency, to keep, restrain, control, care, and train any negro girl under the age of sixteen years, being a citizen of the state of North Carolina, who may come within the jurisdiction of the several federal courts and who may fall within the classification hereinbefore set forth. Any such contract made under the authority and provisions of this article shall be for a period of not more than two years, and shall provide payments by the office of the United States attorney general or such necessary federal agency to the institution for the care of any persons coming within the provisions of this article, which shall be not less than the current estimated cost per capita at the time of the execution of the contract, and all such financial provisions of any contract shall first, before the execution of said contract, have the approval of the budget bureau of North Carolina. Any payments received under the contract authorized by this article shall be deposited in the state treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1943, c. 381, s. 9.)

Art. 7. Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ 134-85. Conditional release. — The superintendent of the State Home and Industrial School for Girls, of the Stonewall Jackson Manual Training and Industrial School, of the Eastern Carolina Industrial Training School for Boys, and of the Morrison Training School for Negro Boys, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the state, and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1.)

§ 134-86. Final discharge.—Final discharge of any inmate of any institution enumerated in § 134-85 may be granted by the superintendent of such institution, under rules adopted by the board of directors or managers, at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate arrives at his or her twenty-first birthday. (1937, c. 145, s. 2.)

Art. 8. Care of Persons under Federal Jurisdiction.

§ 134-87. Certain correctional institutions to make contracts with federal agencies for the care of persons under federal jurisdiction.—The governing boards of the Stonewall Jackson Manual Training and Industrial School, Morrison Training School for Negro Boys, Eastern Carolina Training School, the State Home and Industrial School for Girls, and the State Industrial Farm Colony for Women may contract with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency for the care, keeping, correction, training, education, and supervision of delinquent children or other persons under the jurisdiction, custody, or care of the Federal courts or of the said office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency, as authorized by the terms of the Federal Juvenile Delinquency Act of one thousand nine hundred thirty-eight, and may receive, accept, hold, train, and supervise such persons as may be received from said courts or department under the rules and regulations of the several and respective institutions as prescribed or as may hereafter be established by the said governing boards, provided, however that such contracts or subsequently established rules of care, procedure, and training, of those committed to said institutions, first shall have been approved by the State Board of Charities and Public Welfare. (1939, c. 166, s. 1.)

§ 134-88. Term of contract. — Any contract made under the authority and provision of this article shall be for a period of not more than two years, and shall be renewable from time to time for a period of not to exceed two years. (1939, c. 166, s. 2.)

§ 134-89. Approval by N. C. Budget Bureau; payments received under contracts.—Any contracts entered into under the provisions of this article by the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency with any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract shall, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contracts authorized by this article shall be deposited in the State

Treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1939, c. 166, s. 3.)

Art. 9. Board of Correction and Training.

§ 134-90. Unified board of directors for reformatory institutions.—The following institutions of this state, to-wit: The Stonewall Jackson Manual Training and Indusrial School, the Eastern Carolina Industrial Training School for Boys, the Industrial Farm Colony for Women, the State Home and Industrial School for Girls, the Morrison Training School, and the State Training School for Negro Girls, created by house bill number two hundred and seventeen, shall be under the management of one board of directors composed of nineteen members, eighteen of whom shall be appointed by the governor, no two of which eighteen shall be residents of the same county. The board of directors shall be known and designated as "North Carolina Board of Correction and Training."

In order that the western, central and eastern section of the state shall have equal representation on said board, the governor shall name two women and four men from each of said sections of the state on said board. The members of the board of directors appointed by the governor shall be divided into six classes of three directors each, the first class to serve for a period of one year, the second class to serve for a period of two years, the third class to serve for a period of three years, the fourth class to serve for a period of four years, the fifth class to serve for a period of five years, the sixth class to serve for a period of six years, and at the expiration of their respective terms of office all appointments shall be for a term of six years, except such as are made to fill unexpired terms. The commissioner of public welfare shall be an ex officio member of said board of directors. The governor shall transmit to the senate at the next session of the general assembly, for confirmation, the names of the persons appointed by him. All acts done by members of the board of directors after appointment and before confirmation of appointment by the general assembly shall be of the same force and effect and as valid as if the appointment of said members had been confirmed by the general assembly. Ten directors shall constitute a quorum, except where three are by law engaged to act for special purposes.

In case of a vacancy or vacancies in the board of directors for any cause, his or her successor or successors shall be appointed by the governor and the appointment shall be reported to the next succeeding session of the senate of the general assembly of North Carolina for confirmation.

Members of the board shall serve for terms as prescribed above, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board for cause whenever in his opinion it is to the best interest of the state to remove such person. (1943, c. 776, s. 1.)

§ 134-91. References to governing bodies of institutions construed to refer to unified board which succeeds to powers and duties; management of institutions; disbursement of appropriations; reports to governor.—Wherever in §§ 134-1 to 134-84, inclusive, or in any other laws of this state, the words "board of directors," "board of trustees," "board of managers," "directors," "trustees," "managers," or "board" are used with reference to the governing body or bodies of the institutions enumerated in § 134-90, the same shall mean the unified board of directors provided for in said § 134-90, and it shall be construed that the unified board of directors of the said institution shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions herein mentioned and said powers and duties shall be exercised and performed as to each of the institutions by the unified board of directors herein provided for; and the said board shall be responsible for the management of the said institutions and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, subject to the provisions of the executive budget act, and said board shall make an annual report to the governor, and oftener if called for by him of the condition of each of the said institutions and shall make biennial reports to the governor, to be transmitted by him to the general assembly, of all moneys received and disbursed by each of said institutions. (1943, c. 776, s. 2.)

§ 134-92. Building committee.—It shall be the duty of the board of directors herein provided for to select and appoint from its number a building committee, who shall be specially charged with the duty of supervision of the buildings to be built or repaired from appropriations made to said institutions by the general assembly of this state. (1943, c. 776, s. 3.)

§ 134-93. Meetings of board. — The board of directors shall convene four times a year, and said meetings shall be held successively at each of the institutions enumerated in § 134-90 at a time to be fixed by such board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (1943, c. 776, s. 4.)

§ 134-94. Organization of board; chairman and secretary.—The said board of directors is hereby authorized and given full power to meet and organize and from their number select a chairman and to elect a secretary who may or may not be a member of the board. (1943, c. 776, s. 5.)

§ 134-95. Reports of superintendents of included institutions.—The superintendent of each of said institutions shall make monthly reports to the general superintendent of correction and training in such manner and detail as the board of directors may prescribe. (1943, c. 776, s. 6.)

§ 134-96. Executive committees.—The board of directors shall at their first meeting select from their number for each of said institutions an executive committee of at least three members. The duties of the executive committees shall be prescribed by the board. (1943, c. 776, s. 7.)

§ 134-97. By-laws. — The board of directors shall make all necessary by-laws and regulations for the government of each of said institutions. (1943, c. 776, s. 8.)

§ 134-98. Commissioner of correction. — The board of directors is hereby authorized and given full power to employ a commissioner of correction for the institutions enumerated in § 134-90 and prescribe his duties, and fix his salary, subject to the approval of the director of the budget. The said commissioner shall be a person of demonstrated executive ability and shall have had special education, training and experience in welfare and correctional work, or work along substantially similar lines, such as to render such person in all respects qualified to discharge the duties of such position, and he shall be a person of good character. He shall be employed for a period of two years from and after the date of his selection, unless sooner removed therefrom by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no office except that he shall serve as secretary to the board of directors, if the board so orders.

The board of directors shall provide the said commissioner with such stenographic and clerical assistance as it may deem necessary. The salary of said commissioner and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions herein mentioned and on such pro rata basis as the board of directors shall in their judgment fix and determine. Upon the request of the board of directors the state board of public buildings and grounds shall provide suitable office space in the city of Raleigh for said commissioner. (1943, c. 776, s. 9.)

§ 134-99. General business manager. — The board of directors is hereby authorized and given full power to employ a general business manager for the institutions enumerated in § 134-90 and to fix his salary, subject to the approval of the director of the budget. Subject to the supervision, direction and control of the board of directors, the said general business manager shall perform the duties set out in this section and all other duties which the board of directors may prescribe. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. Under the direction of said board, said general manager shall have full supervision over the fiscal management and over the management and control of the physical properties and equipment of the institutions enumerated in said § 134-90. All personnel or employees of said institutions engaged in any aspect of the business management or supervision of the properties or equipment of any of said institutions shall be responsible to and subject to the supervision and direction of said general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The said general business manager shall be employed for a period of two years from and after the time of his selection, unless sooner removed by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

The board of directors shall provide the said general business manager with such stenographic and clerical assistance as it may deem necessary. The salary of said business manager and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions hereinbefore mentioned and on such pro rata basis as the board of directors shall in its judgment fix and determine. Upon the request of the board of directors, the state board of public buildings and grounds shall provide suitable office space in the city of Raleigh for said general business manager in conjunction with the office space provided for the commissioner of correction hereinbefore provided for. (1943, c. 776, s. 10.)

§ 134-100. Compensation of members of board. —The members of the board of directors shall be paid the sum of seven dollars ($7.00) per day and actual expenses while engaged in the discharge of their official duties. (1943, c. 776, s. 16.)

Chapter 135. Retirement System for Teachers and State Employees.

§ 135-1. Definitions.—The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the teachers' and state employees' retirement system of North Carolina as defined in § 135-2.

(2) "Public school" shall mean any day school conducted within the state under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the state.

(3) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of department of public instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the state. In all cases of doubt, the board of trustees, hereinafter defined, shall determine whether any person is a teacher as defined in this chapter.

(4) "Employee" shall mean all full-time employees, agents or officers of the state of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided, that the term "employee" shall not include any justice of the supreme court or any judge of the superior court.

(5) "Employer" shall mean the state of North Carolina, the county board of education, the city board of education, the state board of education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the state, or any other agency of and within the state by which a teacher or other employee is paid.

(6) "Member" shall mean any teacher or state employee included in the membership of the system as provided in §§ 135-3 and 135-4: Provided, that no member shall be entitled to participate under the provisions of this chapter as to that part of the compensation in excess of three thousand dollars ($3,000.00) received by such member during any year.

(7) "Board of trustees" shall mean the board provided for in § 135-6 to administer the retirement system.

(8) "Medical board" shall mean the board of physicians provided for in § 135-6.

(9) "Service" shall mean service as a teacher or state employee as described in subsections three or four of this section.

(10) "Prior service" shall mean service rendered prior to the date of establishment of the retirement system for which credit is allowable under § 135-4; provided, persons now employed by the state highway and public works commission shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to one thousand nine hundred and thirty-one and subsequent to one thousand nine hundred and twenty-one.

(11) "Membership service" shall mean service as a teacher or state employee rendered while a member of the retirement system.

(12) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 135-4.

(13) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

(14) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with § 135-7, subsection two.

(15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8.

(16) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in money.

(17) "Average final compensation" shall mean the average annual earnable compensation of a teacher or employee during his last five years of service, or if he had less than ten years of service, then his average earnable compensation for his total service.

(18) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(19) "Pensions" shall mean payments for life derived from money provided by the state of North Carolina, and by county or city board of education. All pensions shall be payable in equal monthly installments.

(20) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(21) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(22) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(23) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(24) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest. (1941, c. 25, s. 1; 1943, c. 431.

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 508.

The 1943 amendment struck out the phrase "where such employment has been continuous" which formerly appeared at the end of subsection (10). The amendatory act provided: "All persons who have heretofore been retired under this system, as well as those who may hereafter be retired, whose status is affected by this change in the law shall be entitled to the benefit of this act."

For temporary act permitting highway patrolmen to transfer membership from law enforcement officers' benefit and retirement fund to teachers' and state employees' retirement system, see Session Laws 1943, c. 120.

Chapter Is Valid.—It is the verdict of the general assembly embodied and expressed in this and the following sections that the retirement plan has a definite relation to the just and efficient administration of the public school system which brings it within the scope of constitutional authority. Under the mandatory provisions of the retirement act, the public policy thus expressed is applied to the entire public school system and its administration at the hands of every administrative unit within it. Bridges v. Charlotte, 221 N. C. 472, 481, 20 S. E. (2d) 825.

If the retirement plan has that relation to the public school system which the legislative policy supposes it to have, the act is sufficiently invested with a public purpose and the tax is valid, and is a constitutional and valid expression of the legislative will, both generally and in its application to the local administrative units with which it deals. Id.

Purpose of Chapter.—The purpose of this and the following sections is to provide benefits on retirement for the teachers in the public school system of the state and for state employees. It is based not only upon the principle of justice to poorly paid state employees, but also upon the philosophy that a measure of freedom from apprehension of old age and disability will add to the immediate efficiency of those engaged in carrying on a work of first importance to society and the state. Bridges v. Charlotte, 221 N. C. 472, 477, 20 S. E. (2d) 825.

§ 135-2. Name and date of establishment.— A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for teachers and state employees of the state of North Carolina. The retirement system so created shall be established as of the first day of July, one thousand nine hundred and forty-one.

It shall have the power and privileges of a corporation and shall be known as the "Teachers' and State Employees' Retirement System of North Carolina," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1941 c. 25, s. 2.)

§ 135-3. Membership.—The membership of this retirement system shall be composed as follows:

(1) All persons who shall become teachers or state employees after the date as of which the retirement system is established.

(2) All persons who are teachers or state employees on February 17, 1941, or who may become teachers or state employees on or before July first, one thousand nine hundred and forty-one, except those who shall notify the board of trustees, in writing, on or before January first, one thousand nine hundred and forty-two, that they do not choose to become members of this retirement system, shall become members of the retirement system.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. (1941, c. 25, s. 3.)

§ 135-3.1. Membership of highway patrolmen. —Every person who is employed in the future as a state highway patrolman shall automatically become a member of the teachers' and state employees' retirement system unless such person shall, within fifteen days after his employment, furnish the executive secretary of the board of trustees, teachers' and state employees' retirement system, sufficient evidence that such person has become a member of the law enforcement officers' benefit and retirement fund, in which event such person shall not be entitled to membership in the teachers' and state employees' retirement system. (1943, c. 120, s. 6.)

§ 135-4. Creditable service. — (1) Under such rules and regulations as the board of trustees shall adopt, each member, who was a teacher or state employee at any time during the five years immediately preceding the establishment of the system and who becomes a member during the first year of operation of the retirement system, shall file a detailed statement of all North Carolina service as a teacher or state employee rendered by him prior to the date of establishment for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the board of trustees may use for the purpose of this chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this system became operative as the records show the member actually received.

(4) Upon verification of the statements of service, the board of trustees shall issue prior service certificates certifying to each member the period of service prior to the establishment of the retirement system, with which the member is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the teacher or state employee again become a member, such teacher or state employee shall enter the system as a teacher or state employee not entitled to prior service credit except as provided in § 135-5, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate.

(6) Teachers and other state employees who entered the armed services of the United States after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who

return to the service of the state within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. (1941, c. 25, s. 4; 1943, cc. 200, 783.)

Editor's Note.—The first 1943 amendment substituted "five years" for "year" in line four of subsection (1). The second 1943 amendment added subsection (6).

§ 135-5. Benefits. — (1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five years shall be retired at the end of the year unless the employer requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the year.

(c) Any member in the service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years: Provided, that with the approval of his employer and the board of trustees, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Service Retirement Allowances.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years by twice the contributions which he would have made during such prior service had the system been in operation and he contributed thereunder.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Re-Examination of Beneficiaries Retired for Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the retirement system.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on ac-

count of his service since his last restoration had he entered service at the time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be a teacher or state employee except by death or retirement under the provisions of this chapter, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such persons as he shall have nominated by written designation, duly executed and filed with the board of trustees.

(7) Election of Optional Allowance.—With the provision that no optional selection shall be effective in case the beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provisions that:

Option 1. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement. (1941, c. 25, s. 5.)

The retirement payment provided by this section constitutes delayed compensation in consideration of services rendered. It is compensation for public services. Its purpose is to induce experienced and competent teachers to remain in service and thus promote the efficiency and effectiveness of the educational program. Bridges v. Charlotte, 221 N. C. 472, 486, 20 S. E. (2d) 825 (con. op.).

§ 135-6. Administration.—(1) Administration by Board of Trustees; Corporate Name; Rights and Powers; Tax Exemption. — The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of the chapter are hereby vested in a board of trustees which shall be organized immediately after a majority of the trustees provided for in this section shall have qualified and taken the oath of office.

The board of trustees shall be a body politic and corporate under the name "board of trustees teachers' and state employees' retirement system"; and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the state or any political subdivision thereof, and shall not be subject to income taxes.

(2) Membership of Board; Terms.—The board shall consist of seven members, as follows:

(a) The state treasurer, ex-officio;

(b) The superintendent of public instruction, ex-officio;

(c) Five members to be appointed by the governor and confirmed by the senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the state; one to be a general state employee, and three who are not members of the teaching profession or state employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(3) Compensation of Trustees.—The trustees shall be paid seven dollars ($7.00) per day during session of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(4) Oath.—Each trustee other than the ex-officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the retirement system. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the secretary of state.

(5) Voting Rights.—Each trustee shall be entitled to one vote in the board. Four affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(6) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the adminstration of this chapter.

(7) Officers and Other Employees, Salaries and Expenses.—The state treasurer shall be ex-officio chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the director of the budget.

(8) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system, and for checking the experience of the system.

(9) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

(10) Legal Adviser.—The attorney general shall be the legal adviser of the board of trustees.

(11) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(12) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(13) Immediately after the establishment of the retirement system the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection fourteen, paragraphs (a) and (b) of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(14) In the year one thousand nine hundred and forty-three, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation, the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; and

(b) Certify the rates of contributions payable by the state of North Carolina on account of new entrants at various ages.

(15) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter. (1941, c. 25, s. 6; 1943, c. 719.)

Editor's Note.—The 1943 amendment added the second sentence of subsection (6).

§ 135-7. Management of funds.—(1) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in § 135-8, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon the investment of state sinking funds, and subject to like terms, conditions, limitations and restrictions, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(2) Regular Interest Allowance.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three per centum and a maximum of four per centum, with the latter rate applicable during the first year of operation of the retirement system.

(3) Custodian of Funds; Disbursements; Bond of Secretary.—The state treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Deposits to Meet Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the retirement system, on deposit with the state treasurer of North Carolina.

(5) Personal Profit or Acting as Surety Prohibited.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the board shall, directly or indirectly, for himself

or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1941, c. 25, s. 7.)

§ 135-7.1. Purchase of notes obtained from loans made from state literary fund.—The state board of education is hereby authorized, in its discretion, to sell notes, obtained from loans made from the state literary fund, to the board of trustees of the teachers' and state employees' retirement system of North Carolina. The board of trustees of the teachers' and state employees' retirement system of North Carolina is hereby authorized, in it discretion, to purchase from the state board of education notes obtained by said board from loans made from the state literary fund. (1943, c. 603.)

§ 135-8. Method of financing.—All of the assets of the retirement system shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(a) Each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum of his earnable compensation. The employer also shall deduct four per centum of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the state from salaries other than the appropriations from the state of North Carolina. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if a teacher or state employee was not a member on the first day of the payroll period.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the state, in which any teacher receives compensation from sources other than appropriations of the state of North Carolina shall deduct from the salaries of these teachers paid from sources other than state appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from state funds, and remit this amount to the state retirement system. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the state appropriation shall pay to the state retirement system the same per centum of the salaries that the state of North Carolina pays and shall transmit same to the state retirement system monthly: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (c) of this section in excess of the amount to be paid to the retirement system on the basis of the state salary schedule and term. In case the salary is paid in part from state funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from state funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the retirement system the same per centum that would be required if the salary were provided by the state of North Carolina.

(d) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom as provided in this chapter. Such amounts so deposited shall become a part of his accumulated contributions in the same manner as if said contributions had not been withdrawn.

(e) Subject to the approval of the board of trustees, any member, who is on leave of absence on account of military service or for any other purpose which might tend to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the retirement system on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this

chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension Accumulation Fund shall be made as follows:

(a) On account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the earnable compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for state employees, and the accrued liability contribution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one-hundredths per centum (1.59%) of the salary of other state employees.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate.

(d) The total amount payable in each year to the pension accumulation fund shall be not less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the year then current.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.

(f) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.

(g) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the retirement system the contributions payable by such member as provided in this chapter, and the employer shall draw his warrant for the amount so deducted, payable to the teachers' and state employees' retirement system of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collections of employers' contributions shall be made as follows:

(a) Upon the basis of each actuarial valuation

provided herein the board of trustees shall annually prepare and certify to the budget bureau a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation and expense funds, as provided under subsections (three) and (five) of this section, and these funds shall be handled and disbursed in accordance with chapter one hundred, Public Laws of one thousand nine hundred and twenty-nine, and amendments thereto [§ 143-1 et seq.], known as The Executive Budget Act.

(b) Until the first valuation has been made and the rates computed as provided in subsection (three) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths per centum (5.51%) of the payroll of all teachers and three and sixteen one-hundredths per centum (3.16%) for other state employees.

(c) The auditor shall issue his warrant to the state treasurer directing the state treasurer to pay this sum to the board of trustees, from the appropriations for the teachers' and state employees' retirement system.

(d) Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the state of North Carolina shall pay the board of trustees of the state retirement system such rate of their respective salaries as are paid those of other employees.

(e) Each employer shall transmit monthly to the state retirement system on account of each employee, who is a member of this system, an amount sufficient to cover the normal contribution and the accured liability contribution of each member employed by such employer for the preceding month. (1941, c. 25, s. 8, c. 143; 1943, c. 207.)

Editor's Note.—The 1943 amendment inserted in the second sentence of subdivision (c) of subsection (1) the words "and shall transmit the same to the state retirement system monthly." It also inserted subdivision (e) of said subsection and added paragraph (e) at the end of the section.

Local Unit Contribution.—Where a local unit assumes the burden of supplementing state support for the schools, the provision of subsection (1) (c) of this section that the local unit make its contribution and the taxing authority provide the necessary funds is mandatory. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825, holding no vote necessary to tax to meet deficiency in previously authorized tax.

§ 135-9. Exemption from taxes, garnishment, attachment, etc.—The right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created by this chapter, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided. (1941, c. 25, s. 9.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 519.

§ 135-10. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the county jail not exceeding twelve months, or both such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1941, c. 25, s. 10.)

§ 135-11. Application of other pension laws.—No other provision of law in any other statute which provides wholly or partly at the expense of the state of North Carolina for pensions or retirement benefits for teachers or state employees of the said state, their widows, or other dependents shall apply to members or beneficiaries of the retirement system established by this chapter, their widows or other dependents. (1941, c. 25, s. 11.)

§ 135-12. Obligation of maintaining reserves and paying benefits.—The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 135-8, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this chapter, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said fund. (1941, c. 25, s. 12.)

§ 135-13. Certain laws not repealed; suspension of payments and compulsory retirement.—Nothing in this chapter shall be construed to repeal or invalidate any of the provisions of chapter four hundred and eighty-three of the Public Local Laws of one thousand nine hundred and nineteen, or chapter three hundred and eighty-five of the Public-Local Laws of one thousand nine hundred and twenty-one, as amended, relating to pensions for school teachers in New Hanover county. No payment on account of any benefit granted under the provisions of § 135-5, subsections (1)-(4) inclusive, shall become effective or begin to accrue until the end of one year following the date the system is established nor shall any compulsory retirement be made during such period. (1941, c. 25, s. 13.)

§ 135-14. Pensions of certain public school classroom teachers.—Any person who has been a classroom teacher in the public schools of North Carolina for a total of twenty or more years, and who was not teaching in the public schools of this state at the time of the enactment of the teachers' retirement system act, the same being this chapter, and whose cessation of employment as a teacher was not due to any dishonorable cause, shall be entitled to receive benefits under said retirement act for such services in the same

manner and to the same extent as such twenty years of prior service would have entitled such teacher had he or she been teaching in the public schools at the time said retirement act became effective, and had chosen to become a member of the retirement system, provided that (1) such former teacher was sixty-five years old or more on the 10th day of March, 1943, or is now by reason of physical disability unable to teach; and (2) such former teacher, in the opinion of the board of trustees of the teachers' and state employees' retirement system of North Carolina, is without adequate means of support, either by reason of lack of gainful employment, lack of income from property or inadequate support by husband or wife.

There is hereby appropriated from the general fund of the state such sum or sums as may be necessary to carry out the provisions of this section.

This section shall be administered by the board of trustees of teachers' and state employees' retirement system of North Carolina created under the provisions of section 135-2 and the provisions of this chapter shall be controlling in the administration of this section in all respects or provisions except as they may be modified by this section for the purposes of this section. (1943, c. 785.)

§ 135-15. Reemployment of retired teachers and employees.—(1) All employers within the meaning of this chapter are hereby authorized during the continuation of the present World War, and for six months after its termination, or at the termination of the school term in which such teachers shall be engaged, to reemploy any persons who have retired under the provisions of this chapter on account of age.

(2) No person reemployed under the authority contained in subsection (1) of this section shall remain in service for a longer period than six months after the termination of the present World War, or at the termination of the school term in which such teachers shall be engaged.

(3) Any employer, as defined in this chapter, employing a person who has retired under the provisions of this chapter on account of age, shall immediately notify in writing the executive secretary of the board of trustees, teachers' and state employees' retirement system, and said executive secretary shall immediately suspend all service retirement benefits to which such person is entitled during the period of such reemployment.

(4) During the period of reemployment no deductions shall be made from the compensation of the persons so reemployed, under the provisions of this chapter, and the employer shall not be required to make any contributions to the retirement system during said period of time on account of such person so reemployed.

(5) Upon the termination of the contract of reemployment on account of the lapse of time, or for any other reason, the person so reemployed shall be entitled to begin to receive the service retirement benefits to which such person was entitled, under the provisions of this chapter. (1943, c. 195.)

Chapter 136. Roads and Highways.

Art. 1. Organization of State Highway and Public Works Commission.

Art. 2. Powers and Duties of Commission.

Art. 1. Organization of State Highway and Public Works Commission.

§ 136-1. State highway and public works commission created.—A highway and public works commission is hereby created to be and continue an agency of the state government and to be known as the "State Highway and Public Works Commission." The said commission shall consist of a chairman and ten commissioners; the chairman and each of said commissioners shall be appointed by the Governor for a term of four years, the said terms to commence May first, one thousand nine hundred and forty-one, and continue until their successors are appointed and qualify: Provided, that the chairman or any commissioner appointed pursuant to this section may be removed by the Governor for cause. In case of the death, resignation, or removal from office of said chairman or any commissioner prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term. At the expiration of the term for which said chairman and commissioners are appointed, their successors shall be appointed for the term of four years each. The chairman shall devote his entire time and attention to the work of the commission, and shall receive as compensation not exceeding seven thousand five hundred dollars ($7,500.00) per annum, to be fixed by the Governor and the Advisory Budget Commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties. The said chairman shall be vested with all authority of the commission when the commission is not in session, and shall be the executive officer of the said commission and shall execute all orders, rules, and regulations established by said commission. The commissioners, except the chairman, shall each receive ten dollars ($10.00) per day while engaged in the discharge of the duties of their office and their actual traveling expenses. The commissioners shall be so selected that it will be physically possible to divide the state into ten divisions of substantially equal size on the joint bases of area, population and mileage; and said commissioners shall, on or before the first day of July, one thousand nine hundred and thirty-seven, designate the boundary lines of said divisions in such manner that each of said commissioners will be a resident of a separate division: Provided, however, that said division lines may be changed from time to time by a two-thirds vote of the commission and with the consent and approval of the board of county commissioners of the county or counties immediately affected thereby. Notwithstanding the provisions contained herein for the selection of commissioners in such manner as to make it physically possible to divide the State into ten divisions, it is the intent and purpose of this section that all of said commission and the chairman shall represent the State at large and not be representative of any particular division. It shall be the duty of the commission as a whole to select the road projects to be constructed or reconstructed which now or shall constitute a part of the primary highway system of the State. The intent and purpose of this section is that there shall be maintained and developed a state-wide highway system commensurate with the needs of the State as a whole and not to sacrifice the general statewide interest to the purely local desires of any division.

It shall be the duty of each commissioner to inform himself of the road needs of the particular division from which said commissioner is chosen and to report his findings from time to time to the commission. The commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, repair and maintenance of the highway system of the State, with due regard to farm-to-market roads and school bus routes.

Each member of the commission shall designate some time and place during each calendar month where he will be for the purpose of hearing such matters and things as may be presented to him by the governing bodies of the several counties of his district; and shall advise the chairmen of said governing bodies accordingly. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1.)

Editor's Note.—P. L. 1915, c. 113, s. 1 (Michie's Code, § 3573), established a state highway commission. The above section superseded that law by the establishment of a state highway and public works commission. The function of the state highway commission was declared to be "to assist the counties in developing a state and county system of highways." Prior to the Act of 1921 (§§ 136-45 et seq.), creating a state highway system, the primary control was in the counties and political subdivisions, and the state commission served in an advisory capacity. By that act the state highway commission, now the state highway and public works commission, has primary control.

The 1941 amendment changed the term of office from six to four years, inserted the second paragraph and made other changes.

Action May Be Maintained in Corporate Name.—The state highway and public works commission, as successor to the state prison department, has implied power to maintain an action in its corporate name on behalf of the state. State Highway, etc., Comm. v. Cobb, 215 N. C. 556, 2 S. E. (2d) 565.

§ 136-2. Headquarters; meetings; minutes.—The headquarters and main office of the said commission shall be located in Raleigh, and the commission shall meet in its main office at least once in each sixty days, or at such regular time as the commission may by rule provide, and may hold special meetings at any time and place within the state at the call of the chairman or the Governor or any three members of the commission.

The Governor and the State Treasurer shall

be privileged to attend any and all meetings of said commission in an advisory capacity, but they shall not have the authority to vote upon any question before said commission. The commission shall keep minutes of all its meetings, which shall at all times be open to public inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1.)

§ 136-3. When acting chairman may be designated.—The commission may, with the approval of the Governor, designate a member of the comsion or some other suitable person as acting chairman and confer upon the said acting chairman all authority of the chairman, or such restricted authority as the commission may by resolution determine to be exercised, in the event the chairman, on account of absence from the state, illness, or other cause, may be unable temporarily to discharge the duties of his office. (1935, c. 257, s. 1.)

§ 136-4. State highway engineer and other employees.—The State Highway and Public Works Commission shall employ a state highway engineer, who shall be a competent civil engineer, qualified by technical training as well as practical construction experience in highway work. The engineer shall hold office during the pleasure of the commission, but not to exceed a period of four years without reappointment. He shall receive an annual salary to be fixed by the commission, with the approval of the Governor and the Budget Bureau, payable in monthly installments, together with such actual and other necessary expenses as may be incurred in the official discharge of his duties. The engineer, before entering upon the discharge of the duties of his office, shall take an oath that he will faithfully and honestly execute the duties of his office. Said commission shall prescribe and fix the duties of the engineer, and shall provide the engineer with offices and sufficient equipment to discharge his duties as prescribed by the commission and this chapter. The commission shall employ such other engineers, clerks, and assistants as may be needed, and at such salaries and for such terms as appear necessary, and prescribe and fix their duties. In the discretion of the commission, such offices may be established in the construction districts as may be necessary to carry out the provisions of this chapter. (1921, c. 2, ss. 5, 6; 1933, c. 172, s. 17; C. S. 3846(g).)

§ 136-5. Oath of office of commissioners.—Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission shall take and subscribe to an oath of office before some person authorized to administer oaths that they will faithfully support the Constitution of the State of North Carolina and all laws enacted pursuant thereto and not inconsistent therewith, and that they will faithfully perform the duties of their respective offices. Said oaths shall be filed and preserved by the commission as a part of its permanent records. (1921, c. 2, s. 6; 1933, c. 172, s. 10; C. S. 3846(h).)

§ 136-6. Bonds of commissioners and engineer.—Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission and the State Highway Engineer shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of their respective offices and the full and proper accounting for all public funds and property coming into their possession or under their control. The premiums on said bonds shall be paid out of the state highway fund. (1921, c. 2, s. 6; 1933, c. 172, s. 17; C. S. 3846(h).)

§ 136-7. Employees of commission governed by classification filed with Budget Bureau; exceptions. — All employments by the State Highway and Public Works Commission and all changes in existing employment shall be in accordance with the classifications established in the report authorized by and adopted in conformance with Chapter three hundred fifty-five of the Public Laws of 1941, as said report is approved by the Governor and Advisory Budget Commission. The Assistant Director of the Budget shall certify the salary or wages of the particular employee within the range of the minimum and maximum established in the said report for such employment. The hourly maintenance and construction employees now or hereafter exempted from the Personnel Act shall not be placed under the Personnel Act, even if they are placed on a monthly basis of salary payment to facilitate operation under the State Employees and Teachers' Retirement Act, but they shall be paid according to the said salary schedule or classification as established. (1941, c. 355.)

§ 136-8. Revision of salary schedules.—The salary schedule provided for in § 136-7 may be amended from to time by order of the commission, subject to the approval of the governor and the advisory budget commission. (1929, c. 182, s. 1; 1933, c. 172, ss. 16, 17; 1943, c. 410.)

Editor's Note.—Prior to the 1943 amendment this section related to the maximum compensation that could be paid by the commission.

§ 136-9. Employment of counsel. — The state highway and public works commission may in its discretion, with the approval of the governor, employ any attorney or attorneys to advise them for the purpose of condemning land acquired by this chapter, making any contracts, and to do other legal work that the commission may believe necessary for carrying out this chapter, and compensation for all such services shall be paid out of the state highway fund. (1921, c. 2, s. 21; 1933, c. 172, s. 17; 1943, c. 410; C. S. 3846(k).)

Editor's Note.—The 1943 amendment inserted in line three the phrase "with the approval of the governor."

Cited in Rockingham County v. Norfolk, etc., R. Co., 197 N. C. 116, 117, 147 S. E. 832.

§ 136-10. Annual audits; report of audit to general assembly.—The books and accounts of the highway and public works commission shall be audited at least once a year by a certified public accountant to be designated by the auditor of the state, and the report of certified accountant shall be made a part of the report of the commission to the general assembly as herein provided. (1921, c. 2, s. 24; 1933, c. 172, s. 17; C. S. 3846(m).)

§ 136-11. Annual reports to governor. — The state highway and public works commission shall make to the budget bureau, or to the governor, a full report of its finances and the physical condition of the state's prison, prison camps, and other

buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the governor or directors of the budget may call for the same. (1933, c. 172, s. 11.)

§ 136-12. Reports to general assembly. — The highway and public works commission shall, on or before the tenth day after the convening of each regular session of the general assembly of North Carolina, make full printed, detailed report to the general assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the commission, and such other data as may be of interest in connection with the work of the commission. A full account of each road project shall be kept by and under the direction of the commission or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request. (1921, c. 2, s. 23; 1933, c. 172, s. 17; C. S. 3846(l).)

§ 136-13. Malfeasance of commissioners, employees, or contractors.—It shall be unlawful for any member or employee of the highway and public works commission to knowingly or fraudulently perform any act with intent to injure the state; or for any contractor or agent or employee of a contractor to conspire with a member or employee of the commission or with a state official to permit a violation of a contract with intent to injure the state; or for any contractor or agent or employee of any contractor to do any work on any state highway in violation of contract with intent to defraud the state. Any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the state prison not less than one year nor more than five years, and be liable to the state in a civil action instituted by the state on relation of the highway and public works commission, for double the amount the state may have lost by reason of the violation of this section. (1921, c. 2, s. 49; 1933, c. 172, s. 17; C. S. 3846(cc).)

§ 136-14. Members not eligible to other employment with commission; no sales to commission by employees.—No member of the Highway and Public Works Commission shall be eligible to any other employment in connection with said commission, and no member of said commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said commission. (1933, c. 172, s. 10.)

§ 136-15. Establishment of administrative districts.—The State Highway and Public Works Commission may establish such administrative districts as in their opinion shall be necessary for the proper and efficient performance of the duties of the commission. Such districts as may be established shall be without regard to the places of residence of the members of the Commission. The commission may from time to time change the number of such districts, or they may change the territory embraced within the several districts, when in their opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17.)

§ 136-16. Funds and property converted to State Highway Fund.—Except as otherwise provided, all funds and property collected by the State Highway and Public Works Commission shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; 1933, c. 172, s. 17; C. S. 3595.)

Art. 2. Powers and Duties of Commission.

§ 136-17. Seal; rules and regulations. — The State Highway and Public Works Commission shall adopt a common seal and shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the commission, and to make all necessary rules and regulations for carrying out the intent and purposes of this chapter. The commission shall succeed to all the rights, powers and duties heretofore vested in the State Highway Commission and the State Prison Department, and it is hereby empowered to make all necessary rules and regulations for carrying out such duties. (1933, c. 172, s. 2.)

§ 136-18. Powers of commission. — The said state highway and public works commission shall be vested with the following powers:

(a) The general supervision over all matters relating to the construction of the state highways, letting of contracts therefor, and the selection of materials to be used in the construction of state highways under the authority of this chapter.

(b) To take over and assume exclusive control for the benefit of the state of any existing county or township roads, and to locate and acquire rights of way for any new roads that may be necessary for a state highway system, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the commission may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a state highway system: Provided, all changes or alterations authorized by this subsection shall be subject to the provisions of §§ 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this chapter shall be construed to authorize or permit the commission to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless contract has already been entered into with the commission.

(c) To provide for such road materials as may be necessary to carry on the work of the state highway and public works commission, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owns a deposit of sand, gravel or other material, necessary for the construction of the system of state highways provided herein, has entered into a contract to furnish the commission any of such material, at

a price to be fixed by said commission, thereafter the commission shall have the right to condemn the necessary right of way under the provisions of chapter forty, to connect said deposit with any part of the system of state highways or public carrier.

(d) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the state highway and public works commission with other public bodies, corporations, or persons.

(e) To make rules, regulations and ordinances for the use of, and to police traffic on, the state highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the commission shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the commission may regulate parking upon any street which forms a link in the state highway system, if said street be maintained with state highway funds.

(f) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the state highway system, which information shall be a part of the public records of the state, and upon which information the state highway and public works commission shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(g) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the state highway system from date of acquiring said roads. The state highway and public works commission shall have authority to maintain all streets constructed by the commission in towns of less than three thousand population by the last census, and such other streets as may be constructed in towns and cities at the expense of the commission, whenever in the opinion of the commission it is necessary and proper so to do.

(h) To give suitable names to state highways and change the names of any highways that shall become a part of the state system of highways.

(i) To coöperate with municipal or county authorities, civic bodies and individuals in the proper selection, planting and protection of roadside trees, shrubs and vines for the beautification and protection of said highways.

(j) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, and other similar obstructions that may, in the opinion of the highway and public works commission, contribute to the hazard upon any of the said highways or in anywise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said commission shall require the removal of, or changes in, the location of telephone, telegraph, or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of the said commission. Any violation of such rules and regulations or non-compliance with such orders shall constitute a misdemeanor.

(k) To regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the state highway and public works commission, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the commission shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the commission shall have power to close to use and abandon such grade crossing and any other crossings adjacent thereto.

(l) The said state highway and public works commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction, improvement and maintenance of roads under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the secretary of agriculture or otherwise provided by federal acts, and to do all other things necessary to carry out fully the coöperation contemplated and provided for by present or future acts of congress, for the construction or improvement and maintenance of rural post roads. The good faith and credit of the state are further hereby pledged to make available funds necessary to meet the requirements of the acts of congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this state during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the state are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the commission and in order to enable it to meet the requirements of acts of congress with respect to federal aid funds apportioned to the state of North Carolina, the state treasurer is hereby authorized, with the approval of the governor and council of state, to issue short term notes from time to time, and in anticipation of state highway revenue, and to be payable out of state highway revenue for such sums as may be necessary to enable the commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000.00).

(m) The state highway and public works com-

mission is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the city of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(n) The state highway and public works commission shall have authority to provide roads for the connection of air ports in the state with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(o) The state highway and public works commission shall have authority to provide facilities for the use of water-borne traffic by establishing connections between the highway system and the navigable waters of the state by means of connecting roads and piers.

(p) The state highway and public works commission shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the commission, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the commission has agreed in writing to accept the property so acquired in exchange for that to be used by the commission, and when, in the opinion of the commission, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(q) The State Highway and Public Works Commission is hereby authorized and required to maintain and keep in repair roads sufficient to accommodate school busses leading from the State maintained public road to all schools and school buildings to which children are transported on school busses to and from their homes during the regular organized school year.

(r) To administer, through the Division of Prisons, the State Prison System.

(s) To coöperate with appropriate agencies of the United States in acquiring rights of way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to state highways. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; 1933, c. 517, s. 1; 1935, c. 213, s. 1, c. 301; 1937, c. 297, s. 2; 1937, c. 407, s. 80; 1941, c. 47; 1941, c. 217, s. 6; 1943, c. 410; C. S. 3846(j).)

Cross References.—As to authorizing use of county prisoners on roads not within state systems, see § 153-198. See "State Highway Laws and Practices," p. 10 et seq., by Mr. Charles Ross of the State Highway and Public Works Commission.

For statutes in the chapter on Motor Vehicles relating to the powers or functions of the State Highway and Public Works Commission, see the following: § 62-105, subsection (d) (recommendations to utilities commission regarding size and weight of vehicles that may be operated over highways); § 62-115 (free fares on motor vehicle carriers to designated employees of commission); § 62-119 (appropriations to utilities commission for enforcement of motor carriers law); §§ 20-212 to 20-215 (preparation of digest of traffic laws); § 20-116, subsection (e) (designation of light traffic roads); § 20-116, subsection (h) (designation of one of two routes for heavy or truck-line traffic); § 20-119 (special permits for vehicles exceeding maximum size or weight limits for seasonal operations); § 20-121 (prohibiting or restricting operation of vehicles for 90 days in any year to prevent damage to highways); § 20-122 (special permits authorizing operation of traction engines or tractors having movable tracks with transverse corrugation); § 20-141, subsection (d) (promulgating prima facie speed limits less than statutory limits); § 20-141, subsection (i) (designation of truck routes; speed limit for trucks operating on highways not so designated); § 20-143 (designation of grade crossings at which vehicles must stop); § 20-144 (fixing of lower speed limit on bridges where statutory limit is found to be unsafe); § 20-158 (designation of main-travelled highways by erection of stop signs).

As to power to determine the maximum load limit for bridges, see § 136-72.

Editor's Note.—The Act of 1929 added subsection (m) to this section. The first 1931 amendment added subsections (n) and (o), and the other 1931 amendment added the last sentence of subsection (l).

1933, ch. 172, changed "State Highway Commission," etc., to "State Highway and Public Works Commission," etc.

The second 1933 amendment added subsection (c) which was codified in Michie's Code of 1939 as subsection (p). This subsection was rewritten by ch. 301 of the 1935 laws. It was deleted by the codifiers in the Legislative Edition as superseded by provisos in § 20-116.

1935, ch. 213, sec. 1, added a proviso to subsection (g) which proviso was repealed by ch. 217, sec. 6 of the laws of 1941.

1937, ch. 297, sec. 2, added subsections (q) and (r). Subsection (q) is now codified in § 20-141, subsection (i), and § 20-116, subsection (h). Subsection (r) is now codified as subsection (p).

1941, ch. 47, added subsection (s) which is now codified as subsection (q).

1943, ch. 410 added new subsection (s).

Under Brown v. United States, 263 U. S. 78, 44 S. Ct. 92, 68 L. Ed. 171, and Dohany v. Rogers, 281 U. S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A. L. R. 434, it is likely that the taking of property for exchange purposes under the provisions of subsection (p) would be held to be for a public use. 15 N. C. Law Rev. 365.

Contract with County Commissioners.—In contemplation of the statute, the State Highway Commission is entrusted to construct and maintain a system of public highways and to contract in reference thereto, and a contract made between this board and the board of commissioners of a county wherein the latter is to advance certain moneys as a proportionate expense in the former's taking over and maintaining a particular highway to be repaid by the State Highway Commission from its funds is a valid and legal contract, supported by a sufficient consideration. Young v. Board, 190 N. C. 52, 128 S. E. 401.

Where the State Highway Commission has taken over the construction of a street and bridge within the incorporated limits of a town, the town is not thereby relieved of liability for an injury proximately caused by a dangerous condition of the street at the bridge when the town has had implied notice of such condition which had existed for several months, this section expressly excepting from its provisions streets in towns and cities. Pickett v. Carolina, etc., Ry., 200 N. C. 750, 158 S. E. 398.

Section Construed with Section 136-47.—This section giving the commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with section 136-47 thereof, the latter limiting the discretion conferred in the former, among other things, in respect to routes between county-seats, "principal towns," according to a map referred to and attached to the act; and as to those matters particularly mentioned in section 136-47, the discretion was taken away from the commission by express statutory provision. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465.

Broad Discretion in Changing Roads.—The statute, this section, subsec. (b), and section 136-45, give broad discretionary powers to the State Highway Commission in establishing, altering, and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886.

Right to Sue and Be Sued. — The statutes creating the State Highway Commission enumerate their powers and duties in the construction, maintenance, etc., of highways for public benefit, without either expressly or impliedly giving it the right to sue and be sued, but manifestly is an agency of the State for the purpose of exercising admin-

istrative and governmental functions. Carpenter v. Atlanta, etc., R. Co., 184 N. C. 400, 114 S. E. 693.

Use by Telephone and Telegraph Companies.—The state highway and public works commission has been granted exclusive control over the state highway system and may in its discretion authorize the use of a highway right of way by telephone and telegraph companies, and prescribe the manner and extent of such use, subject to the right of the owner of the servient estate to payment of compensation for the additional burden. Hildebrand v. Southern Bell Tel., etc., Co., 221 N. C. 10, 18 S. E. (2d) 827. See also, Hildebrand v. Southern Bell Tel., etc., Co., 219 N. C. 402, 14 S. E. (2d) 252.

The effect of this section is to give dominance to the easement acquired by the state. Under the terms thereof the highway commission has authority to control the uses to which the land embraced within the easement may be put. If it deems it wise or expedient so to do in the interest of the traveling public, it may altogether exclude the imposition of any additional easement or burden. It may not be held that the legislature intended thereby to declare that the construction and maintenance of a telephone line is a legitimate highway purpose and embraced within the easement acquired for highway use. The commission is merely authorized to do whatever is necessary to be done in order to make a safe, convenient, public way for travel, including the right, if necessary, to exclude the owner and others from using any part of the surface of the way for any permanent or private purpose. Hildebrand v. Southern Bell, Tel., etc., Co., 219 N. C. 402, 14 S. E. (2d) 252.

Except for the purpose of ingress and egress the owner of the fee uses the same, whether for building or cultivation, by permission and not as a matter of right. Id.

Grade Crossing. — The commissioners of a county are without power to order a grade crossing abandoned by the Commission reopened to the public, and this power is not given the county by § 136-67. Rockingham v. Norfolk, etc., R. Co., 197 N. C. 116, 147 S. E. 832.

Judicial Notice of Highway Ordinance.—An ordinance of the Highway Commission does not come within that class of legislative enactments of which the courts will take judicial notice. State v. Toler, 195 N. C. 481, 482, 142 S. E. 715.

Construction of New Roads.—Subsection (b) of this section does not authorize the commission to totally abandon an existing part of the highway system and construct an entirely new road in its place. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601.

But in view of this subsection the commission may construct new roads notwithstanding statute authorizing the commission "to take over for state maintenance additional roads heretofore maintained by the several counties." Board of Com'rs v. State Highway Com., 195 N. C. 26, 141 S. E. 539.

Applied in Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362.

Cited in Radford v. Young, 194 N. C. 747, 140 S. E. 806; State v. Henderson, 207 N. C. 258, 259, 176 S. E. 758.

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.—The State Highway and Public Works Commission is vested with the power to acquire such rights of way and title to such land, gravel, gravel beds, or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. The commission is also vested with the power to acquire such additional land alongside of the rights of way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes.

Whenever the commission and the owner or owners of the lands, materials, and timber required by the commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the commission is hereby vested with the power to condemn the lands, materials, and timber, and in so doing the ways, means, methods, and procedure of chapter 40, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages: Provided, that all actions for damages for rights of way or other causes shall be commenced within six months from the completion of each particular project.

In case condemnation shall become necessary the commission is authorized to enter the lands and take possession of the same, and also take possession of such materials and timber as is required by it prior to bringing the proceedings for condemnation, and prior to the payment of the money for the said property.

In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the commission to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action.

The state highway and public works commission shall have the same authority, under the same provisions of law hereinbefore provided for construction of state highways, for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways in the state of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right of way acquired or appropriated may, at the option of the commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the state highway and public works commission. The said commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the state highway and public works commission, payable out of the construction fund of said commission.

The action of the State Highway and Public Works Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States Government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Commission and in furtherance of the public interest.

When areas have been tentatively designated by the United States Government to be included within a Parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway and Public Works Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway and Public Works Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights of way on other property by the State Highway and Public Works Commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; C. S. 3846(bb).)

Editor's Note.—The Act of 1931 struck out the following from the first paragraph of this section: "Provided, that the right of condemnation provided for in this article shall not apply to gravel beds or bars, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime, or other earth, or mineral deposits or formations, in actual bona fide operation for commercial purposes by private enterprise."

The amendment of 1935 added the last paragraph of this section, as it stood prior to the amendment of 1937.

The 1937 amendment inserted the second sentence in the fifth paragraph.

The amendatory act ratified the acquirement of areas for Blue Ridge Parkway, prohibited cutting of timber from areas under consideration and provided compensation for temporary restraint.

See the discussion of this section by Mr. Charles Ross, General Counsel of the State Highway and Public Works Commission, in his pamphlet "State Highway Laws and Practices," page 6 et seq.

When Amendment Took Effect.—At the time of the relocation of the road in question and when this suit was instituted, the rule for the admeasurement of damages was as stated by the trial court in his charge, as prescribed by this section prior to the amendment. Lanier v. Greenville, 174 N. C. 311, 93 S. E. 850. But subsequent to the institution of the suit and before trial, the Legislature amended the law by adding: "And in all instances the general and special benefits shall be assessed as off-sets against damages," etc., ch. 160, sec. 6, Public Laws, 1923. Hence, the law as amended and in force at the time of trial should have been followed in determining the amount plaintiff was entitled to recover. Wade v. State Highway Comm., 188 N. C. 210, 211, 124 S. E. 193.

Procedure for Adjusting Claim Exclusive. — The State highway commission is charged with the duty of exercising certain administrative and governmental functions, and statutory method of procedure for adjusting and litigating claims against it is exclusive and may alone be pursued. Latham v. State Highway Comm., 191 N. C. 141, 131 S. E. 385.

The owner of land cannot maintain an action in tort against the State Highway Commission, an unincorporated governmental agency, for damages caused to his land for its having been taken by the commission for highway purposes, and is confined for his remedy to the provisions of the special proceedings of this section. McKinney v. North Carolina State Highway Comm., 192 N. C. 670, 135 S. E. 772.

Acquisition of Top Soil.—The state highway and public works commission is authorized by this section to acquire by condemnation top soil deemed necessary and suitable for road construction, "top soil" being included in the generic term "earth," and its power to acquire top soil is not limited to lands contiguous to the highway upon which it is to be used. State Highway, etc., Comm. v. Basket, 212 N. C. 221, 193 S. E. 16.

Lowering of Canal Bridge.—Petitioner constructed a canal across a county highway and thereafter maintained the bridge constructed over the canal. The state highway commission, upon taking over the highway, constructed a new bridge and later constructed a second new bridge which was some two and one-half inches lower than the first. Petitioner instituted a proceeding under this section to recover compensation upon his contention that the lowering of the bridge interfered with the use of the canal in floating his barge under the bridge. It was held that the use of the canal by petitioner was permissive and subject to the easement for highway purposes, and therefore petitioner was not entitled to recover compensation. Dodge v. State Highway, etc., Comm., 221 N. C. 4, 18 S. E. (2d) 706.

Negligence Causing Cave-In.—Where plaintiffs' building was damaged by a cave-in resulting from alleged negligence in excavation work incident to the construction of a highway overpass, plaintiffs were not relegated to a claim for damages against the highway commission as for a taking of their property under this section, and the demurrer of the contractor for the highway commission in plaintiffs' action in tort was properly overruled. Broadhurst v. Blythe Bros. Co., 220 N. C. 464, 17 S. E. (2d) 646.

Right to Just Compensation Where Evidence Is Insufficient to Show Taking Was for Private Purpose.—Where there was no evidence upon the record showing that the taking over of a road as part of the county system was for a private purpose sufficient to raise an issue of fact, plaintiff is remitted to his rights under this section for the recovery of just compensation. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513.

Measure of Damages for Property Injured.—The owner of a water mill which had a right of ingress and egress to his mill over the land of another and had constructed a bridge and maintained a ferry situated to command a large patronage can recover damages for the injury to his property by the building of a highway but not for profits from his mill which is too speculative. Riverside Milling Co. v. State Highway Comm., 190 N. C. 692, 130 S. E. 724.

Elements of Damage.—In proceedings to take land for a public highway, the measure of damages is the difference in the fair market value of respondent's land immediately before and immediately after the taking, the elements upon which the damages are predicated being the fair market value of the land taken and the injury to respondent's remaining land, less any general and special benefits accruing to respondent from the construction of the highway. State Highway, etc., Comm. v. Hartley, 218 N. C. 438, 11 S. E. (2d) 314.

Offsets Allowed.—In an action to recover damages resulting from the relocation of a public road through the lands of plaintiff, both the special and general benefits accruing to plaintiff by reason of the construction of the highway should be allowed as offsets against any damages which plaintiff might have sustained, and an instruction that limits offsets to special advantages that accrued to plaintiff is erroneous. Bailey v. State Highway, etc., Comm., 214 N. C. 278, 199 S. E. 25.

Power of Townships.—No such broad and explicit powers to acquire land and road materials by condemnation were given the road commission of Lovelady township, Burke County, by Pub. Loc. Laws 1915, ch. 426, as are given by this section to the state highway commission, and courts should not go beyond language of statute in construing it. Lowman v. Abee, 191 N. C. 147, 131 S. E. 277.

Applied in Calhoun v. State Highway, etc., Comm., 208 N. C. 424, 181 S. E. 271.

Cited in Greenville v. State Highway Commission, 196 N. C. 226, 227, 145 S. E. 31; Long v. Randleman, 199 N. C. 344, 154 S. E. 317; Switzerland Co. v. North Carolina State Highway, etc., Comm., 216 N. C. 450, 5 S. E. (2d) 327.

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the chairman of the State Highway and Public Works Commission such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Commission shall issue notice requiring the per-

son or company operating such railroad to appear before the Commission, at its office in Raleigh, upon a day named, which shall not be less than ten days or more than twenty days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Commission shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If it shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Commission shall thereupon order the construction of an adequate underpass or overpass at said crossing or it may in its discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said commission upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that one-half of the cost of the construction of such underpass or overpass or the installation of such safety device shall be borne by the Commission and one-half thereof by the railroad company operating such railroad, as provided in section (c) hereof, but in no instance shall the Commission bear any part of the cost of the maintenance of any structure or safety device so constructed or installed except in the maintenance of an overpass.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Commission, as may be agreed upon, and, in case of an underpass, the railroad company shall be responsible for one-half of the expense of all excavations through the existing railroad fill as well as one-half of the complete cost of the structure, including both the foundation and superstructure; and in case of an overpass, the railroad company shall be responsible for one-half of the entire cost of the bridge which will span the opening over the tracks of the railroad from abutment to abutment and including such abutments. And if a grade crossing or unsafe or inadequate underpass or overpass is not eliminated by an adequate overpass or underpass, the railroad company shall be responsible for one-half of the cost of installing gates, alarm signals or other approved safety devices. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Commission, and the commission shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Commission, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Commission such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Commission may provide.

(d) Within sixty days after the issuance of the order for construction of an underpass or overpass or the installation of other safety device as herein provided for, the railroad company against which such order is issued shall submit to the Commission plans for such construction or installation, and within ten days thereafter said Commission, through its chairman, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Commission by said railroad company within sixty days as aforesaid, the chairman of the Commission shall have plans prepared and submit them to the railroad company. The railroad company shall within ten days notify the chairman of its approval of the said plans or shall have the right within such ten days to suggest such changes and amendments in the plans so submitted by the chairman of the Commission as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Commission shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Commission, said commission is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said roadroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Commission shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Commission and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the commission shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Commission shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that

the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Commission may provide. If the Commission shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Commission, one-half of the cost of such construction shall upon the completion of said work be paid to such railroad company by the Commission. The Commission may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the commission by the railroad company. If the Commission shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Commission in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Commission to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Commission requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than one hundred dollars in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Commission shall be exclusive.

(g) From any order or decision so made by the Commission the railroad company may appeal to the Superior Court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the commission, but the railroad company shall proceed to comply with such order in accordance with its terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the rights or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the commission for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Commission shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In event the decision on appeal should be that the construction or installation was necessary but the cost thereof unreasonable, then the railroad company shall bear its proportion (not to exceed fifty per cent) of such cost as may be determined on appeal would have been reasonable to meet the necessity in the instant case. Upon said appeal from an order of the Commission, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section. (1921, c. 2, s. 19; 1923, c. 160, s. 5; 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; C. S. 3846(y).)

Elimination of Grade Crossings.—This section confers upon the highway commission the power to eliminate grade crossings. Mosteller v. Southern Ry. Co., 220 N. C. 275, 280, 17 S. E. (2d) 133.

Cited in Rockingham v. Norfolk, etc., R. Co., 197 N. C. 116, 117, 147 S. E. 832.

§ 136-21. Drainage of highway; application to court; summons; commissioners.—Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the State Highway and Public Works Commission, if said highway be a part of the State highway system, or the county commissioners, if said road is not under state supervision, may, by petition, apply to the Superior Court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Conservation and Development, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 4; 1933, c. 172, s. 17.)

§ 136-22. View by commissioners; report; judgment.—The commissioners, or a majority of them, one of whom must be the engineer aforesaid, shall, on a day of which each party is to be notified at least five days in advance, meet on the premises, and view the highway, or proposed highway, and also the lands which may be drained by the proposed canal, and shall determine and report what lands will be drained and benefited by the construction, enlargement or improvement

of such canal, and whether said drainage ought to be done exclusively by said highway authorities, and if they are of opinion that the same ought not to be drained exclusively at their expense, then they shall decide and determine the route of the canal, the dimensions and character thereof, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, the extent, area and identity of lands which shall be permitted to drain therein, and providing as far as possible for the effectual drainage of said highway, and the protection and benefit of the lands of all the parties; and they shall apportion the cost of the construction, repair and maintenance of said canal among said highway authorities and said landowners, and report the same to the court, which when confirmed by the clerk shall stand as a judgment of the court against each of the parties, his or its executors, administrators, heirs, assigns or successors. (1925, c. 85, s. 4.)

§ 136-23. Appeal.—Upon the entry of the judgment or decree aforesaid the parties to said action, or any of them, shall have the right to appeal to the Superior Court in term time under the same rules and regulations as apply to other special proceedings. (1925, c. 85, s. 5.)

§ 136-24. Rights of parties.—The parties to such special proceeding shall have all the rights which are secured to similar parties by article one of chapter one hundred fifty-six of this Code and shall be regulated by the provisions thereof and amendments thereto, in so far as the same are not inconsistent herewith. (1925, c. 85, s. 6.)

§ 136-25. Repair of road detour.—It shall be mandatory upon the state highway and public works commission, its officers and employees, or any contractor or subcontractor employed by the said commission, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said commission and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of state highway fund. (1921, c. 2, s. 11; 1933, c. 172, s. 17; C. S. 3846(s).)

§ 136-26. Closing of state highways during construction; injury to barriers, warning signs, etc. — If it shall appear necessary to the state highway and public works commission, its officers, or appropriate employees, to close any road or highway coming under its jurisdiction so as to permit of proper completion of work which is being performed, such commission, its officers or employees, may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, such commission, its officers or appropriate employees, or its contractor, under authority from such commission, may erect, or cause to be erected, suitable barriers or obstructions thereon; may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion thereof, is closed; and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a misdemeanor. (1921, c. 2, s. 12; 1933, c. 172, s. 17; C. S. 3846(t).)

Liability of Contractor for Injury.—Contractor constructing highway was not relieved, by an order of the state highway commission closing the road to travel, of liability for injuries in an automobile collision with an unlighted disabled truck left by defendant on the side of the highway, where on the part of the road where the accident happened barriers had been removed and to defendant's knowledge many people habitually traversed it. Thompson Caldwell Const. Co. v. Young, 294 Fed. 145.

§ 136-27. Connection of highways with improved streets; pipe lines and conduits; cost. — When any portion of the state highway system shall run through any city or town and it shall be found necessary to connect the state highway system with improved streets of such city or town as may be designated as part of such system, the state highway and public works commission shall build such connecting links, the same to be uniform in dimensions and materials with such state highways: Provided, however, that whenever any city or town may desire to widen its streets which may be traversed by the state highway, the commission may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the commission harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights of way, change of grade line, and interference with public-service structures. And the commission may require such city or town to cause to be laid all water, sewer, gas or other pipe lines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the state highway system shall be surfaced by order of the commission at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be specially assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improve-

ments, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c. 2, s. 16; 1923, c. 160, s. 4; 1933, c. 172, s. 17; C. S. 3846(ff).)

Local Modification.—Durham: 1925, c. 312; Town of Siler City: 1935 Pr. c. 143.

City Has Power to Condemn Land.—Under authority of this section a city has the power and authority to condemn land which is wholly within its limits for a street, and the fact that the state highway and public works commission has aided in the construction of the street within the city limits and relieved the city, is for the benefit of the city and in no way abridges the city's power and authority to condemn the land. Raleigh v. Hatcher, 220 N. C. 613, 619, 18 S. E. (2d) 207.

Construed with Local Act.—Chapter 56, article 9, of the acts of 1921 providing for local improvements of the streets of a city or incorporated town by a method of assessing the owners of abutting land, and this section, are to be construed together in pari materia. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71.

Same—Exercise of Power by City.—Where the State Highway Commission orders a connecting link to be hard-surfaced, and the municipality voluntarily agrees to make the improvement, it is not required, under chapter 56, article 9, that a petition of the abutting owners of land thereon be made. This section gives the governing body of the municipality power to make it an assessment district. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71.

This section applies only where the width of the street and the regular highway are the same. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212.

Power of City to Voluntarily Improve.—Where a city or incorporated town having three thousand inhabitants, or more, has a considerable portion of its streets hard-surfaced, the municipality may voluntarily assess and undertake the improvement of a street being a connecting link in the highway system. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71.

Invalid Assessment May Be Subsequently Validated. — Where an incorporated town, under authority of this section, levies an assessment against abutting property owners for street improvements in paving a strip on either side of a state highway running through the town, but such levies are made without a petition of the abutting owners as prescribed by section 160-82, the assessments are invalid but not void, and the Legislature has the power to validate the assessments by subsequent legislative act. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366.

Cited in Long v. Randleman, 199 N. C. 344, 154 S. E. 317.

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over one thousand dollars that the commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the state highway and public works commission, to a responsible bidder, the right to reject any and all bids being reserved to the commission.

No action shall be brought upon any bond given by any contractor of the commission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within six (6) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and performed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; 1925, cc. 260, 269; 1933, c. 172, s. 17; C. S. 3846(v).)

Editor's Note.—For temporary act amending this section with reference to emergency contracts, see Public Laws 1941, c. 4, extended by Session Laws 1943, c. 85. The Act of 1923 added a second paragraph to this section. The Act of 1925 struck out this paragraph and inserted the present one in lieu thereof.

Attention is directed to the reference in this section that the procedure pointed out in § 44-14 shall be followed. The practitioner is hereby referred to that section and the annotations placed thereunder.

Section Prospective.—This section falls within the rule of presumption that the effect of the statute is to be prospective only, in the absence of an expressed or clearly implied intent to the contrary. Overman & Co. v. Maryland Casualty Co., 193 N. C. 86, 136 S. E. 250.

"Other person," as used in this section, is not broad enough to take in any person having a claim against the contractor. The principle of ejusdem generis applies. Roper Lbr. Co. v. Lawson, 195 N. C. 840, 847, 143 S. E. 847.

Allegation of Compliance.—Where the complaint in an action on the bond given by a contractor for construction of a highway alleges that a statement of the claim against the surety on the bond was filed with the defendant surety company within six months after the project was completed, it is a sufficient allegation of compliance with the provisions of this section. Bank of Wadesboro v. Northwestern Casualty, etc., Co., 202 N. C. 148, 162 S. E. 236.

Immunity of Contractor from Liability for Defect.—One constructing a roadway under contract with state highway commission did not share the immunity given that body by this section against liability for damages resulting from defective condition of the highway. Thompson Caldwell Const. Co. v. Young, 294 Fed. 145.

Laborers, etc., Having No Statutory Lien.—The surety bond given to the State Highway Commission by a contractor for the construction of a highway under the provisions of this section contemplates the protection of laborers and materialmen who have no statutory lien. John L. Roper Lumber Co. v. Lawson, 195 N. C. 840, 143 S. E. 847.

Under this section bonds are construed liberally for the protection of those who furnish labor and materials in the prosecution of public works. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121, 123, citing Electric Co. v. Deposit Co., 191 N. C. 653, 132 S. E. 808.

Contract and Bond Are Construed Together in Favor of Surety.—In determining liability of surety on a contractor's bond for the building of a state highway, the contract and the bond of indemnity will be construed together strictly in favor of the surety. Roper Lbr. Co. v. Lawson, 195 N. C. 840, 143 S. E. 847.

Surety Is Chargeable with Notice of Factors Affecting Risk.—In entering into the contract the surety is chargeable with notice, not only of the financial ability and integrity of the contractor, but also with notice as to whether he possesses the plant, equipment, and tools required in undertaking the particular work, or will be compelled to rent and hire the same or some part thereof, all of which matters are factors to be considered in determining the risk

and upon which the surety fixes the premiums exacted for executing the bond. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121, 123.

Extent of Surety's Liability.—The surety on a contractor's bond for the building of a pubic road or highway is presumed to have acquainted itself with the character of the road contracted for by its principal, and the local conditions that would affect the cost of its construction, and where its bond includes payment by the contractor of labor and material to be employed or used therein, it is liable to one who has rented to the contractor a steam shovel, boiler, etc., necessary to the construction of the highway under local existing conditions. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121.

The renting of the machines in question was but the substitution of mechanical power for manual labor. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121, 122, citing Taylor v. Connett, 277 F. 945; Bricker v. Rollins, 178 Cal. 347, 173 P. 592; Hansen v. Remer, 160 Minn. 453, 200 N. W. 839; Multnomah County v. U. S. F. & G. Co., 92 Or. 146, 180 P. 104.

Materials and Supplies Protected by Surety's Bond.—Groceries and provisions furnished to the contractor and necessarily consumed in and about the construction of the work, foodstuffs for the horses and mules furnished to the contractor and necessarily consumed in and about the construction of the work, and gas and oil necessarily consumed in and about the construction of the work, and for which the contractor is liable, are protected by the surety's bond. Overman & Co. v. Maryland Cas. Co., 193 N. C. 86, 90, 136 S. E. 250.

Candies, cigars, cigarettes, tobacco, ginger ale and other soft drinks sold by a contractor at a laborer's camp in constructing a highway and charged in the pay roll against the laborers buying them, are not necessaries under the terms of the surety bond on the contract. Overman & Co. v. Maryland Cas. Co., 193 N. C. 86, 90, 136 S. E. 250.

Venue of Suit. — All action against the State Highway Commission and surety on contractor's bond given for the benefit of those performing labor or work upon a State highway since 10 March, 1925, is governed as to venue by ch. 260, Public Laws, 1925, which is prospective in effect. Independence Trust Co. v. Massachusetts etc., Ins. Co., 190 N. C. 680, 130 S. E. 547.

Laborers, etc., Having No Statutory Lien.—The surety bond given to the State Highway Commission by a contractor for the construction of a highway under the provisions of this section contemplates the protection of laborers and materialmen who have no statutory lien. John L. Roper Lumber Co. v. Lawson, 195 N. C. 840, 143 S. E. 847.

One action only shall be instituted against the bonding company. Cavarnos-Wright Co. v. Blythe Bros. Co., 217 N. C. 583, 8 S. E. (2d) 924.

Cited in Southern Surety Co. v. Plott, 28 Fed. (2d) 698; Overman & Co. v. Great American Indemnity Co., 199 N. C. 736, 155 S. E. 730; Gulf States Creosoting Co. v. Loving, 120 F. (2d) 195.

§ 136-29. Settlement of controversies between commission and awardees of contracts.—Upon the completion of any contract awarded by the state highway and public works commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty days from the time of receiving his final estimate, file with the state highway engineer a claim for such amount as he deems himself entitled to under the said contract; and the state highway engineer shall, within thirty days from the receipt of the said claim, pass upon the same and notify the contractor in writing of his decision. If the contractor desires to do so, he may, within thirty days from the receipt of the said decision of the state highway engineer, appeal in writing to the state highway and public works commission. Upon receipt of the said appeal, the chairman of the state highway and public works commission shall immediately appoint a committee of three members of the said commission, no one of whom shall be the commissioner from the division in which the said work was done; and the committee so appointed shall promptly set a time and place for the hearing of the said appeal. The committee or the claimant shall have power and authority to summon persons and papers and the committee shall make a complete investigation of all matters relating to the said appeal and the contract and the work out of which it grows, and determine all matters at issue in a fair and equitable manner according to their best judgment. The decision of the said committee shall be final and any amount which they may award the said contractor will be a valid claim against the state highway and public works commission; provided, however, an appeal may be had from the decision of the said committee to the superior court of Wake county under the same terms, conditions and procedure as appeals from the industrial commission, as provided in § 97-86. The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the state highway and public works commission and any contractor, and no provision in said contracts shall be valid that are in conflict herewith. (1939, c. 318.)

Editor's Note.—For comment on this enactment, see 17 C. Law Rev. 340.

§ 136-30. Uniform guide and warning signs on highways. — The state highway and public works commission is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this state and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the commission and shown on official maps issued by the commission. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.

The commission shall have the power to control all signs within the right-of-way of state highways.

The commission may erect proper and uniform signs directing persons to roads and places of importance. (1921, c. 2, ss. 9(a), 9(b); 1927, c. 148, s. 54; 1933, c. 172, s. 17; C. S. 3846(q), 3846(r).)

Editor's Note.—See 13 N. C. Law Rev. 101.

§ 136-31. Local traffic signs.—Local authorities in their respective jurisdictions shall cause appropriate signs to be erected and maintained, designating residence and business districts, highway and steam or interurban railway grade crossings and such other signs as may be deemed necessary to carry out the provisions of §§ 136-30 to 136-33. Local authorities shall erect appropriate signs giving notice of special local parking and other regulations. (1927, c. 148, s. 55.)

§ 136-32. Other than official signs prohibited.—No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of §§ 136-30 and 136-31, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or

signal bearing thereon any commercial advertising: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the State Highway and Public Works Commission or by any local authority referred to in § 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and punished in the discretion of the court. The commission may remove any signs erected without authority. (1921, c. 2, s. 9(b); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; C. S. 3846(r).)

§ 136-33. Injuring or removing signs. — Any person who shall deface, injure, knock down or remove any sign posted as provided in §§ 136-30 and 136-31 shall be guilty of a misdemeanor. (1927, c. 148, s. 57.)

§ 136-34. State Highway and Public Works Commission authorized to furnish road equipment to municipalities.—The State Highway and Public Works Commission is hereby authorized to furnish municipalities road maintenance equipment to aid such municipalities in the maintenance of streets for which no State highway funds are provided, upon such rental agreement as may be agreed upon by the State Highway and Public Works Commission and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the State Highway and Public Works Commission shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of said commission. (1941, c. 299.)

§ 136-35. Cooperation with other states and federal government.—It shall also be the duty of the State Highway and Public Works Commission, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. (1915, c. 113, s. 12; 1933, c. 172, s. 17; C. S. 3584.)

§ 136-36. Appropriations to cities and towns for maintenance, construction, and improvement of streets.—The money appropriated and provided for in the Appropriations Bill for the fiscal years one thousand nine hundred and forty-one and one thousand nine hundred and forty-two and one thousand nine hundred and forty-three from funds collected from the tax on gasoline and license fees on motor vehicles and such further sums as may be appropriated from time to time and allocated to cities and towns shall be spent for the maintenance, repair, improvement, construction, reconstruction, or widening of highways and streets in cities and towns, as provided in §§ 136-36 to 136-41. (1941, c. 217, s. 1.)

§ 136-37. Basis of apportionment between municipalities; annual certification of allocations. — Of such funds as may be appropriated from time to time for the maintenance, repair, improvement, construction, reconstruction or widening of highways and streets in cities and towns, one third shall be apportioned or allocated as between the several cities and towns by the state highway and public works commission upon the basis that the population of each city or town bears to the total population of all the cities and towns at the last preceding United States census and one third upon the basis that the mileage of streets which form a part of the state highway system in all the cities and towns and one third on the basis of relative need as between the various cities and towns as determined by the state highway and public works commission. Each year before the first day of June the state highway and public works commission shall certify an accurate account of such allocations to each city or town. (1941, c. 217, s. 2.)

§ 136-38. Use of funds recommended by local governing body; primary use; balance of funds.—Each year before the first day of July the governing body of each city and town shall recommend for the approval of the state highway and public works commission the use of such funds as are allocated to such city or town: Provided, that all of such funds so allocated to cities and towns shall be used first for the maintenance, repair, improvement, construction, reconstruction, or widening of the streets within said cities and towns which form a part of the state highway system until such streets shall be in a condition satisfactory to the state highway and public works commission and to the governing body of such city or town, after which, if there is any balance of funds remaining in the allotment to any city or town, such balance shall be used for the maintenance, repair, improvement, construction, reconstruction or widening of streets which form important connecting links to the state highway system or the county highway system or farm to market roads. Should any balance remain in the allotment to any city or town at the end of a fiscal year, such balance shall accrue to the credit of such city or town to be added to its allotment for the ensuing fiscal year. (1941, c. 217, s. 3.)

§ 136-39. Performance of work on streets; specifications.—The work of maintaining, repairing, improving, constructing, reconstructing, or widening such streets shall be performed by the state highway and public works commission, except that in the discretion of the commission it may contract with any city or town having adequate facilities that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such streets. In the event the work is performed by the city or town, it shall account quarterly to the state highway and public works commission for the use of the funds in such work; and in the event the work is performed by the state highway and public works commission, it shall account annually to the city or town for the use of the funds in such work. All work for which the funds herein provided for are spent shall be in accordance with the specifications of the state highway and public works commission. (1941, c. 217, s. 4.)

§ 136-40. Right of municipalities to construct, improve, etc., additional streets.—Neither the undertaking nor doing of any work upon streets in cities and towns by the state highway and public works commission shall deprive the cities or towns of the right to construct streets or to improve or

maintain them as they may deem necessary, in addition to the work done by the state highway and public works commission. (1941, c. 217, s. 4.)

§ 136-41. Enforcement of contracts between commission and municipalities.—All contracts entered into between the state highway and public works commission and the municipalities of the state under §§ 136-36 to 136-41 or other provision of the state highway law may be enforced by proper actions either in the superior court of the county in which said municipality exists or in Wake county. (1941, c. 217, s. 5.)

§ 136-42. Markers on highway; coöperation of commission.—The State Highway and Public Works Commission is hereby authorized to cooperate with the North Carolina Historical Commission in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17.)

§ 136-43. Expenditure of highway funds for erection of historical markers.—Whereas, the State of North Carolina is rich in points of historic interest, such as the first attempt at colonization on this continent, the efforts of the thirteen colonies to gain independence, Revolutionary and Civil War history, numerous birthplaces and graves of foremost North Carolinians who have played important roles in the history of the nation, as well as other historic shrines; and

Whereas, such facts are not generally known save to a few historians, and in many instances only to residents of the immediate territory; and

Whereas, no effective method has yet been adopted or provided for imparting knowledge of all these important facts to citizens of this and other states; and

Whereas, at the request and pursuant to a resolution of the Department of Conservation and Development, and the State Historical Commission, a group of five historians, one from each of the following named institutions of learning: Duke University, University of North Carolina, North Carolina State College, Wake Forest College and Davidson College, together with the State Historian, have agreed to serve as an advisory committee without expense to the state, and to designate such points of historic interest in the order of their importance, and to provide appropriate wording for their proper marking;

Now, therefore, in order to enable the Department of Conservation and Development to carry out this plan, in cooperation with the State Historical Commission, and the State Highway Commission; the General Assembly of North Carolina do enact:

That expenditures by the State Highway and Public Works Commission in cooperation with the Department of Conservation and Development and the State Historical Commission for the purposes of carrying out the program outlined in the preamble hereof is hereby declared to be a valid expenditure of State Highway maintenance funds: Provided, that not more than five thousand dollars in any one year shall be expended for this purpose, but this limitation shall not be construed to prevent the expenditure of any Federal Highway Funds that may be available for this purpose. (1935, c. 197.)

§ 136-44. Maintenance of grounds at home of Nathaniel Macon and grave of Anne Carter Lee.—The Highway and Public Works Commission is hereby authorized and directed through the Highway Supervisor of the Warren County District, to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the County of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County. (1939, c. 38.)

Art. 3. General Provisions.

Part I. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.—The general purpose of the laws creating the state highway and public works commission is that said commission shall take over, establish, construct, and maintain a state-wide system of hard-surfaced and other dependable highways running to all county-seats, and to all principal towns, state parks, and principal state institutions, and linking up with state highways of adjoining states and with national highways into national forest reserves by the most practical routes, with special view of development of agriculture, commercial and natural resources of the state, and for the further purpose of permitting the state to assume control of the state highways, repair, construct, and reconstruct and maintain said highways at the expense of the entire state, and to relieve the counties and cities and towns of the state of this burden. (1921, c. 2, s. 2; 1943, c. 410; C. S. 3846(a).)

Editor's Note.—The statutes in Parts I and II of this article reflect the growth and culmination of general state control of the public roads, and must be read in this light. Sections 136-45 to 136-47 are codified from the act which authorized the state highway system of 1921—the first important step. Sections 136-48 to 136-50, enacted in 1927, and repealed by 1943, c. 410, authorized an extension of this system. Sections 136-51 to 136-53 authorized the assumption of control by the state of the county public roads.

As to the general policy of the state as to highway, see Young v. Board, 190 N. C. 52, 128 S. E. 401.

The 1943 amendment rewrote the first part of this section.

Laws Repealed.—Former sections 3580-3593 are repealed by this article in so far as the former conflict with the latter and under the latter power is conferred on the State Highway Commission to take over county highways as a part of the national highway system of roads upon such terms and agreements with the county commissioners as may be made by them as authorized by the article. Lassiter v. Board, 188 N. C. 379, 124 S. E. 738.

The purpose of the act of 1921 is to encourage co-operation between the highway commission and the county authorities. Young v. Board, 190 N. C. 52, 128 S. E. 401.

Statutes Construed in Pari Materia.—The statute relating to the creation, maintenance, etc., of a State-wide system of public roads, and the amendatory act providing for the taking over of county highways for state maintenance are to be construed together in pari materia. Board of Com'rs v. State Highway Comm., 195 N. C. 26, 141 S. E. 539.

The Highway Commission Is an Administrative Body.—Cameron v. State Highway Comm., 188 N. C. 84, 88, 123 S. E. 465.

Broad Discretion Given.—The statutes section 136-18, subsec. (b), and section 136-45, give broad discretionary powers to the State Highway Commission in establishing, altering and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886.

Control of Discretion as to Change of Highway.—The State Highway Commission, neither by contract nor otherwise, can be controlled beforehand in the exercise of its discretion, conferred on it by statute, as to the change of

location of a public highway. Johnson v. Board, 192 N. C. 561, 135 S. E. 618.

Change of Route as Violating Rights of Owners.—Those who have acquired property along the "proposed" route, as shown in connection with the consideration by the Legislature of the bill which became enacted into what is now this article, acted with implied notice of the powers conferred upon the commission in changing the route, and cannot maintain the position that they have been deprived of the due-process-of-law provision in the Constitution, whether of a vested right or otherwise. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465.

Liability of Commission for Torts, etc.—The State Highway Commission is an unincorporated agency of the State to perform specific duties in relation to the highways of the State, and is not liable in damages for the torts of its subagencies and an action may not be maintained against it or a county acting thereunder in trespassing upon the lands of a private owner, or for the faulty construction of its drains, or the taking of a part of the lands of such owner for the use of the highway, the remedy prescribed by the statute being exclusive. Latham v. State Highway Comm., 191 N. C. 141, 131 S. E. 385.

Liability for Defects in Highway.—Counties in North Carolina are not liable for damage resulting from defective condition of their highways, being political agencies of the state; nor are county commissioners individually liable, unless they acted corruptly or of malice. Thompson Caldwell Const. Co. v. Young, 294 Fed. 145.

Power of County and State Commissioners to Contract. — The boards of county commissioners and the state highway commission are vested with powers to enter into contracts and agreements for the construction of roads forming a part of the state highway system. Young v. Board, 190 N. C. 52, 128 S. E. 401.

Actions in Regard to Condemnation.—The state highway and public works commission is an unincorporated agency of the state, charged with the duty of exercising certain governmental functions, and like the state may only be sued by a citizen when authority is granted by the general assembly, and the methods prescribed for the entertainment of such an action are exclusive. While the various acts creating the state highway commission and prescribing its powers and duties do not declare in so many words that it may "sue and be sued," it sufficiently appears from the language of the statutes that in the matter of condemnation of land for highway purposes, and with respect to the method of arriving at compensation therefor, right of action lies in the manner set out by statutes, and the procedure prescribed is open to the property owner as well as to the highway commission. Yancey v. North Carolina State Highway, etc., Comm., 222 N. C. 106, 22 S. E. (2d) 256.

Injunction.—The action of the State Highway Commission in building the highways and bridges of the State is of public interest and equity will not enjoin them in this work when injury by flooding lands may probably result in the future, there being an adequate remedy at law. Greenville v. State Highway Commission, 196 N. C. 226, 145 S. E. 31.

Cited in Parker v. State Highway Com., 195 N. C. 783, 143 S. E. 871.

§ 136-46. Establishment of system of state highways; work leading to hard-surfaced construction.—The purpose and intent of chapter two of the Public Laws of 1921 is to establish a system of state highways for the state, hard-surfacing said highways as rapidly as possible, and maintaining the entire system of said highways in the most approved manner as outlined in that act. Work on the various links in the state highway system shall be of such a character as will lead to ultimate hard-surfaced construction as rapidly as money, labor, and materials will permit, and to a state system of durable hard-surfaced, all-weather roads, connecting the various county-seats, principal towns, and cities. (1921, c. 2, s. 3; C. S. 3846(b).)

§ 136-47. Routes and maps; objections; changes.—The designation of all roads comprising the state highway system as proposed by the state highway and public works commission shall be mapped, and there shall be publicly posted at the courthouse door in every county in the state a map of all the roads in such county in the state system, and the board of county commissioners or county road-governing body of each county, or street governing body of each city or town in the state shall be notified of the routes that are to be selected and made a part of the state system of highways; and if no objection or protest is made by the Board of County Commissioners of the county, road-governing body of any county, or street-governing body of any city or town in the state within sixty days after the notification before mentioned, then and in that case the said roads or streets, to which no objections are made, shall be and constitute links or parts of the state highway system. If any objections are made by the board of county commissioners or county road-governing body of any county or street-governing body of the city or town, the whole matter shall be heard and determined by the state highway and public works commission in session, under such rules and regulations as may be laid down by the commission, notice of the time and place of hearing to be given by the commission at the courthouse door in the county, and in some newspaper published in the county, at least ten days prior to the hearing, and the decision of the commission shall be final. A map showing the proposed roads to constitute the state highway system is attached to chapter two of the Public Laws of one thousand nine hundred and twenty-one and made a part hereof. The roads so shown can be changed, altered, added to or discontinued by the commission: Provided, no roads shall be changed, altered or discontinued so as to disconnect county-seats, principal towns, state or national parks or forest reserves, principal state institutions, and highway systems of other states. The rights of way to all roads taken over under this section shall be not less than thirty (30) feet: Provided, that no toll road shall be taken over under this section unless by agreement or condemnation as herein provided. (1921, c. 2, s. 7; 1933, c. 172, s. 17; 1943, c. 410; C. S. 3846(c).)

Editor's Note.—The effect of the decisions treated below was modified by Pub. Laws 1927, chap. 46, codified herein as §§ 136-54 to 136-59.

The map referred to is printed in P. L. 1921, c. 2.

Prior to the 1943 amendment the approximate maximum limit of the state highway system was fifty-five hundred miles.

Section Construed with § 136-18.— Section 136-18 giving the commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with this section thereof, the latter limiting the discretion conferred in the former, among other things, in respect to routes between county-seats, "principal towns," according to a map referred to and attached to the act; and as to those matters particularly mentioned in this section the discretion was taken away from the commission by express statutory provision. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465.

Power to Change Route.—See note under section 136-45. Where the commission, in pursuance of section 136-47 have, as required, posted at the courthouse door of a county a map showing the proposed route, and the county roads to be taken, the limitation of sixty days expressed in the statute is upon the time allowed the county to object; and a subsequent change made by the State Highway Commission in the proposed route prior to the time of building the highway is not reviewable by the court in the absence of an abuse by the commission of the discretionary power conferred on it by the statute. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886.

The map referred to in this section as a "proposed" route

of the State Highway system, by placing certain towns along its proposed route, does not affect the discretionary authority of the Highway Commission in locating the highway between county-seats, or prevent the commission from changing the route from them, but its determination is reviewable by the courts as a mixed question of law and fact, whether the change decided upon goes by the principal towns as required by the statute. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465.

Same—After Vote Taken by County.—Where the State Highway Commission has taken over a certain public road within a county, as a link in the State system of public highways, and the county in which it is situate has contracted to loan the State Commission a certain amount of money to be expended on its improvement, subject to approval of the voters in issuing bonds for the purpose, and there is nothing in the contract that would require the route of the existing road to continue as it then was laid out, the discretionary power vested in the State Highway Commission as to changing the route, vesting in them by statute, will not be interfered with by the courts, at the suit of the taxpayers residing in a corporated or unincorporated town, contending that they would not have voted for the bond issue except upon representation made to them that the then existing route would not be changed. Johnson v. Board, 192 N. C. 561, 135 S. E. 618.

Presumption as to Posting of Map.—It is presumed on appeal, when the record is silent in relation thereto, that the Commission made publication of the proposed adoption of a link in the State Highway System, by posting the map thereof at the county-seat, etc., as the law requires. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601.

Change from Route Finally Adopted.—The Commission is not authorized by statute to make an entire change of route in its system of State Highway between county-seats from one that it has finally adopted. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601, citing Carlyle v. Highway Commission, 193 N. C. 36, 49, 136 S. E. 612.

But the power of the commission to slightly or immaterially vary the location of the highway in question is not at an end until its final acceptance thereof. Smith v. State Highway Commission, 194 N. C. 333, 139 S. E. 606, approving Newton v. Highway Com., 194 N. C. 159, 138 S. E. 601.

Enjoining Unauthorized Change. — An injunction will lie against the State Highway Commission from proceedings to make a change in a link of the State System of public highway unauthorized by the statute. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601.

Effect of Finding of Trial Court on Appeal.—A finding by the trial judge that an entire change of route in a link of highways connecting two county-seats was only temporary is not binding upon the Supreme Court on appeal when as a matter of law, upon the evidence, it is conclusively made otherwise to appear. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601.

Failure to Protest Location.—Upon the failure of any principal town along the proposed route to object thereto, it is not a proper or necessary party to the proceedings, and the trial court may refuse its motion to be made a party. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601.

§§ 136-48 to 136-50: Repealed by Session Laws 1943, c. 410.

Part II. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in State Highway and Public Works Commission.—From and after July first, one thousand nine hundred and thirty-one, the exclusive control and management and responsibility for all public roads in the several counties shall be vested in the State Highway and Public Works Commission as hereinafter provided, and all county, district, and township highway or road commissioners, by whatever name designated, and whether created under public, public-local, or private acts, shall be abolished:

Provided, that for the purpose of providing for the payment of any bonded or other indebtedness, and for the interest thereon, that may be outstanding as an obligation of any county, district, or township commission herein abolished, the board of county commissioners of the respective counties are hereby constituted fiscal agents, and are vested with authority and it shall be their duty to levy such taxes on the taxable property or persons within the respective county, district, or township by or for which said bonds or other indebtedness were issued or incurred and as are now authorized by law to the extent that the same may be necessary to provide for the payment of such obligations; and the respective commissions herein abolished shall on or before July first, one thousand nine hundred and thirty-one, turn over to said board of county commissioners any moneys on hand or evidences of indebtedness properly applicable to the discharge of any such indebtedness (except such moneys as are mentioned in paragraph (a) above); and all uncollected special road taxes shall be payable to said board of county commissioners, and the portion of said taxes applicable to indebtedness shall be applied by said commissioners to said indebtedness, or invested in a sinking fund according to law. All that portion of said taxes or other funds coming into the hands of said county commissioners and properly applicable to the maintenance or improvement of the public roads of the county shall be held by them as a special road fund and disbursed upon proper orders of the Commission.

Provided, further, that in order to fully carry out the provisions of this section the respective boards of county commissioners are vested with full authority to prosecute all suitable legal actions. (1931, c. 145, s. 7; 1933, c. 172, s. 17.)

Cited in In re Edwards, 206 N. C. 549, 550, 174 S. E. 505; Grady v. Grady, 209 N. C. 749, 184 S. E. 512; Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362.

§ 136-52. Eminent domain with respect to county roads. — To the end that the State Highway and Public Works Commission may the better take over the maintenance and improvement, reconstruction and construction of the public roads in the various counties, together with the bridges and railroad grade crossings thereon, and may the better carry out the intent and purposes of § 136-51, the Commission is vested, in respect of and to the public roads in the various counties, with the same powers of and responsibility of eminent domain as are conferred and imposed upon the Commission in §§ 136-18 and 136-19 in respect of and to the State Highway System, and the Commission is authorized and empowered to adopt rules and regulations governing the use of the various county road systems and to promulgate the same. (1931, c. 145, s. 10; 1933, c. 172, s. 17.)

§ 136-53. Map of county road systems posted; objections.—On or before May first, one thousand and nine hundred and thirty-one, the designation of all roads comprising the several county road systems as are proposed to be taken over for maintenance and improvement by the State Highway and Public Works Commission shall be mapped, and there shall be publicly posted at the courthouse door in each county a map of all the roads in such county to be contained in the county road system of such county, and

the board of county commissioners of such county and the street-governing body of each city or town in such county shall be notified of the roads that are to be selected and to be made a part of the county road system of such county. If no objection is made by the board of county commissioners or the street-governing body of any city or town in such county within thirty (30) days after the notification herein provided for, then and in that event the roads to which no objections are made shall be and constitute the county road system for such county. If objections are made by the board of county commissioners of the county or the street-governing body of any city or town in the county, the Commission shall as soon as practicable send an agent to such county who shall take the matter up with the view of adjusting the objections and agreeing with the county commissioners or the street-governing body of any city or town. If such agent and the board of county commissioners or the street-governing body of any city or town cannot agree, then the whole matter shall be heard and determined by the Commission in session under such rules and regulations as may be made by the Commission. Notice of the time and place of the hearing shall be given by the Commission at the courthouse door and in some newspaper, if any, published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. It is the intent and purpose of this section that all roads legally established and used as public roads in the various counties on March 20, 1931, are to and shall be included in the county road systems of the various counties. Maps showing the proposed roads to constitute the county road systems in the several counties have been printed and bound and are now on file in the office of the Commission, and are the maps which shall be posted. If it shall appear to the Commission prior to the posting of the maps under this section that any road or roads which should be included in the county road systems of any county have been omitted from the map of any county as printed, the commission may change such maps so as to include such road or roads before posting. (1931, c. 145, s. 11; 1933, c. 172, s. 17.)

Part III. Power to Make Changes in Highway System.

§ 136-54. Power to make changes.—Subject to the provisions of §§ 136-56, 136-57 and 136-60 the State Highway and Public Works Commission shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and substitute new sections for, any portion of the State highway system, as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. (1927, c. 46, s. 1; 1933, c. 172, s. 17.)

Editor's Note.—The relation between §§ 136-54, 136-55, 136-56, 136-57 and 136-60 should be noted. Section 136-55 prescribes a procedure for the change or abandonment of portions of the state highway system, under which the decision of the Commission is final. However, §§ 136-54 and 136-55 are subject to the provisions of § 136-56 (requiring the consent of the street governing body of a town before the number of state highways enfering certain towns may be reduced); § 136-57 (requiring the consent of the road governing body of the county if the road in question has been located and constructed in accordance with plans and specifications prepared by and on file with the Commission); and § 136-60 (requiring the consent of the county commisioners if the road in question was a portion of the county road system taken over by the State by virtue of §§ 136-51 to 136-53). Thus, §§ 136-54 and 136-55 must be read with these limitations in mind.

The preamble to the act from which this section was taken reads, "Whereas, the system of highways, by act of the General Assembly, is peculiarly a State system as distinct from county roads; and,

"Whereas, it is the established policy of North Carolina that State highways shall be constructed and maintained by funds derived from sources other than ad valorem taxes; and,

"Whereas, certain counties, in order to hasten the construction of State highways within said counties, have heretofore made cash donations in part payment of the construction of State highways within said counties; and,

"Whereas, certain other counties have made loans to the State Highway Commission under form of contract by which such loans are to be repaid out of future allocations of State highway construction funds: Now, therefore," and then followed the section.

Validity of Statute.—Chapter 46 of Public Laws 1927, and all its provisions are valid. Parker v. State Highway Commission, 195 N. C. 783, 787, 143 S. E. 871.

Elimination of Underpass.—Where the state highway commission, in the interest of public safety, builds an overpass and relocates a highway to cut out dangerous curves and an inadequate underpass, it has the authority to order the underpass closed, if not by authority expressly conferred then in the exercise of the police power by an appropriate agency of the state. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133.

Cited in Long v. Melton, 218 N. C. 94, 10 S. E. (2d) 699 (dissenting opinion).

§ 136-55. Notice to local road authorities.—Before any road, which is being maintained by the State Highway and Public Works Commission as a part of the State Highway System, can be changed, altered, or abandoned, the chairman or his duly authorized agent shall notify the road governing authorities of the county or counties in which said change, alteration, or abandonment is proposed, of the extent, nature and character of the proposed change, alteration or abandonment, and a map showing the old location and the new proposed location shall be posted at the courthouse door. If within thirty days after the giving of such notice and the posting of such map the road governing body of such county or the street governing body of any county seat or principal town immediately affected thereby, shall protest the proposed change, alteration or abandonment by filing a written notice of such protest with the Commission at Raleigh; the Commission shall thereupon designate three members of the Commission, one of whom may be the chairman, to hear such protest. The place, which shall be within the county, and the time of such hearings shall be fixed by the chairman and notice given to the protesting parties. Such hearings shall be held publicly and all persons desiring to be heard shall be heard. At the close of such hearing the committee shall publicly state their decision. The protesting parties may appeal from such decision to the whole Commission and such appeal shall be heard at a regular or duly called meeting for this purpose in the city of Raleigh and notice given to the appellants. The decision of the whole commission shall be determined by roll call vote duly recorded upon the minutes of the commission.

Any county seat or principal town shall be deemed "immediately affected" if the proposed

change or alteration shall enter or leave said town by streets other than those used for such purposes prior to the proposed change. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17.)

Editor's Note.—The Act of 1931 added the words "as a part of the State Highway System" in lines three and four of this section. It struck out the words "commissioner of the district in which said road is located" formerly appearing in the same sentence and inserted in lieu thereof "chairman or his duly authorized agent." It also struck out the words "the others to be from districts other than that from which the protest is filed," formerly appearing before the phrase "to hear such protest" at the end of the second sentence.

Consent of Unimportant Town.—Where, in the exercise of its discretion, the Commission has made a slight change of an existing route, the consent of an unimportant town is unnecessary. Yadkin College v. State Highway Comm., 194 N. C. 180, 138 S. E. 717.

§ 136-56. Number of highways entering town not reduced without consent.—The number of State highways entering the corporate limits of a county seat, principal town, or town in which is located any of the principal State institutions, now served by the State Highway system, shall not be reduced without the consent of the street governing body of said town. (1927, c. 46, s. 3.)

The town of Yadkin College with a population of approximately 100 people and no substantial industries is not a principal town as contemplated in this section. Yadkins College v. State Highway Comm., 194 N. C. 180, 183, 138 S. E. 717.

§ 136-57. Consent of local road authorities.—No portion of the State Highway system which has heretofore, or which shall hereafter be located and constructed in accordance with plans and specifications prepared by and on file with the State Highway and Public Works Commission, shall be changed or abandoned without the consent of the road governing body of the county in which said road is situated. (1927, c. 46, s. 4; 1933, c. 172, s. 17.)

Cited in Long v. Melton, 218 N. C. 94, 10 S. E. (2d) 699 (concurring opinion).

§ 136-58. Confirmation.—All changes in, alterations of, and/or abandonments of any portion of the State Highway system heretofore made by the State Highway and Public Works Commission which are not now the subject of litigation, are hereby ratified, approved and confirmed and the newly-established routes are hereby made a part of the State Highway system as fully and to the same extent as if they had appeared upon the map and surveys made and posted by the Commission as required in § 136-47 and no action shall hereafter be maintained in any court of this State against the Commission on account of such change, alteration and/or abandonment. (1927, c. 46, s. 6; 1933, c. 172, s. 17.)

§ 136-59. No court action but by local road authorities.—No action shall be maintained in any of the courts of this State against the State Highway and Public Works Commission to determine the location of any State highways or portion thereof, by any person, corporation, or municipal corporation, other than the road governing body of the county in which said road is situated, or the county seat or principal town affected, as defined in § 136-55 by any change, alteration or abandonment. (1927, c. 46, s. 7; 1933, c. 172, s. 17.)

Discretion Not Reviewable.—It is within the discretion of the road-governing body of a county to object or not to the partial change in a road by the Commission and their action is not subject to review in the courts. And mandamus will not lie to control such discretion. Parker v. State Highway Commission, 195 N. C. 783, 143 S. E. 871.

Decision of Commission Final.—The decision of the state highway commission upon appeal by the board of commissioners from an adverse decision is final and conclusive. Parker v. State Highway Commission, 195 N. C. 783, 143 S. E. 871.

Cited in Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513.

§ 136-60. Road taken over not to be abandoned without consent of county commissioners.—No road, which shall be a part of any county road system as the same shall be finally adopted in pursuance of § 136-53, shall be abandoned or materially changed without the consent of the board of county commissioners of the county in which said road is located, except the state highway and public works commission may be relieved of all responsibility for county roads in areas where the federal government acquires exclusive ownership and control. (1931, c. 145, s. 12; 1943, c. 410.)

Editor's Note.—The 1943 amendment added the exception clause at the end of the section.

Cited in Long v. Melton, 218 N. C. 94, 10 S. E. (2d) 699 (concurring opinion).

§ 136-61. Petition by county commissioners to change or abandon roads or build new roads.—The board of county commissioners of any county may, when in the opinion of said board the best interests of the people of said county or of any particular community thereof will be subserved thereby, petition the State Highway and Public Works Commission to change or abandon any road in the county road system or to add thereto any new road. Said petition shall be filed with the chairman of the Commission, who shall personally or by his duly constituted deputy, after conference with the board of county commissioners of said county, make diligent inquiry into and study of the proposed change, abandonment, or addition, and if in his opinion the public interest demands the same, such change, abandonment, or addition shall be made. Provided, however, that if any such change or abandonment of a road shall affect a road connecting with any street of any city or town in such county, no such change or abandonment shall be made until the street-governing body of such town shall have been duly notified thereof and given opportunity to be heard upon the question. If the chairman of the Commission shall be of the opinion that the public interest does not demand the change, abandonment, or addition petitioned for, the board of county commissioners filing such petition may appeal from his decision to the whole commission, who shall, at such time and place as shall be designated, due notice of which shall be given the parties interested, give public hearing on the matter. The action of the Commission upon all such matters shall be final. Provided, however, any petition which has been declined by the Commission may be again presented under the provisions hereof after the expiration of twelve (12) months. (1931, c. 145, s. 13; 1933, c. 172, s. 17.)

Taking Held to Be for Public Purpose.—Under this section the county commissioners petitioned that certain roads in the county be taken over as a part of the county system. Plaintiff, owner of part of the land involved, obtained a temporary injunction prohibiting the taking over of the road, claiming the taking was for a private and not

a public purpose. The court found that the taking was for a public purpose, and dismissed the action, it appearing from the pleadings that the proposed road would give four families access to the county-seat and that the road would constitute a part of a through scenic highway. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513.

Scenic Value May Be Considered.—In taking over a road as a part of the highway system, the scenic value of such road and its necessity as a part of the system of scenic highways for the public may be considered in determining whether taking over the road is for a public or private purpose. Id.

§ 136-62. Petition of citizens to county commissioners to ask Commission to make road changes.—When any number of citizens of any county or any community thereof, not less than twenty-five (25), shall sign and file with the board of county commissioners of such county a petition asking that any road in the county road system of the county be changed or abandoned or that any new road be added to said system, it shall be the duty of said board of county commissioners to make full and thorough investigation, and if in their opinion the best interests of the people of said county or of the particular community thereof to be affected require such change, abandonment, or addition, the said board of county commissioners shall file and prosecute before the State Highway and Public Works Commission the petition provided for in § 136-61. (1931, c. 145, s. 14; 1933, c. 172, s. 17.)

§ 136-63. Public hearings on road changes.—All public hearings provided for in §§ 136-61 and 136-62 shall, when practicable, be held in the county in which the road or roads under consideration and the subject of said hearing, shall be located. (1931, c. 145, s. 15.)

§ 136-64. Filing of complaints with Commission; hearing and appeal.—In the event of failure to maintain the roads of the State Highway System or any county road system in good condition, the board of county commissioners of such county may file complaint with the State Highway and Public Works Commission. When any such complaint is filed, the Commission shall at once investigate the same, and if the same be well founded, the said commission shall at once order the repair and maintenance of the roads complained of and investigate the negligence of the persons in charge of the roads so complained of, and if upon investigation the person in charge of the road complained of be at fault, he may be discharged from the service of the commission. The board of commissioners of any county, who shall feel aggrieved at the action of the Commission upon complaint filed, may appeal from the decision of the Commission to the Governor, and it shall be the duty of the Governor to adjust the differences between the board of county commissioners and the Commission. (1921, c. 2, s. 20; 1931, c. 145, s. 17; 1933, c. 172, s. 17; C. S. 3846(11).)

§ 136-65 to 136-66: Repealed by Session Laws 1943, c. 410.

Art. 4. Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.—All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the State Highway and Public Works Commission, but which remain open and in general use by the public, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Public Welfare, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use regardless of whether the same have ever been a portion of any state or county road systems, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of §§ 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested citizen is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use. Upon request of the Board of County Commissioners of any county, the State Highway and Public Works Commission is permitted, but is not required, to place such roads in a passable condition without incorporating the same into the State or County Systems, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the State Highway and Public Works Commission in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183.)

Editor's Note.—The 1941 amendment inserted the provision in the first sentence beginning with the words "and all other" in line ten and ending at the next comma. It also inserted the proviso and changed the wording of the second sentence.

Use of Abandoned Way.—Where plaintiffs' allegations and evidence tended to show that the alleged public way to an old wharf had been abandoned by the highway commission when it took over the county roads, and that plaintiffs did not reside along the alleged public road, and that it was not necessary to them as a way of egress and ingress to their homes, but they used same in getting to the old wharf to their boats for hunting and fishing parties, they failed to establish their right to the use of the passway as a neighborhood public road. Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362.

Question of Discontinuance Raised by Special Proceeding.—The question of the discontinuance of a road which is a neighborhood public road, within the meaning of this section, must be determined by a special proceeding instituted before the clerk, and where the question has been presented by petition to the board of county commissioners the judgment of the Superior Court on appeal dismissing the petition is correct, but that part of the judgment providing that the road shall remain open is erroneous and will be stricken out on further appeal to the Supreme Court. In re Edwards, 206 N. C. 549, 174 S. E. 505.

Persons living along a highway which had been taken over by the State Highway Commission, and subsequently abandoned by it, are "interested citizens" within the meaning of this section, and may maintain a proceeding to have the road established as a "neighborhood public road." Grady v. Grady, 209 N. C. 749, 184 S. E. 512.

This section merely fixes the status of roads abandoned by the state highway commission as public roads and does not invest any private easement in owners of property abutting the abandoned road, their right to the continued use of such road being the same as that of the public gen-

erally. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133.

What Constitutes Abandonment.—Where the state highway commission, in the interest of public safety, builds an overpass and relocates a short section of the road in order to cut out dangerous curves and an inadequate underpass, and thereafter tears up the section of old road lying on one side of the underpass, the short section of old road is not a highway abandoned by the commission which remains open and in general use by the public within the purview of this section and does not become a public road. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133.

Cited in Long v. Melton, 218 N. C. 94, 10 S. E. (2d) 699 (concurring opinion).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal. — The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the Clerk of the Superior Court in the county where the property affected is situate. Such special proceeding shall be commenced by a petition filed with said Clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the Superior Court for trial de novo and the procedure established under chapter 40, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (Rev., s. 2683; Code, s. 2023, 1879, c. 82, s. 9; 1931, c. 448; C. S. 3835.)

Local Modification.—Burke, Caldwell, Catawba, Lincoln: 1931 Pub. Loc. c. 313; Graham: 1935 Pub. Loc. c. 224.

Editor's Note.—Prior to the Act of 1931 the board of supervisors had authority to lay out and discontinue cartways.

A proceeding in Haywood county to establish cartways over the lands of others should be instituted before the board of county commissioners, and not before the clerk, and the clerk of the superior court of that county has no jurisdiction of a proceeding for this relief instituted before him. Rogers v. Davis, 212 N. C. 35, 192 S. E. 872.

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615.

§ 136-69. Cartways, tramways, etc., laid out; procedure. — If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the Court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the Court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than fourteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the Clerk of the Superior Court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the Clerk of the Superior Court. The Clerk of the Superior Court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the Clerk, together with the cost of the proceeding, shall be paid in to the Clerk's office before the petitioners shall acquire any rights under said proceeding. (Rev., s. 2686; Code, s. 2056; 1917, c. 282, s. 1; 1917, c. 187, s. 1; 1909, c. 364, s. 1; 1903, c. 102; 1887, c. 46; R. C., c. 101, s. 37; 1798, c. 508, s. 1; 1822, c. 1139, s. 1; 1879, c. 258; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; C. S. 3836.)

Editor's Note.—This section was amended by Public Laws 1921, ch. 135, so as to include industrial and manufacturing plants, and the right to cross canals and streams was given. At the same time the words, "affording necessary and proper means of ingress thereto and egress therefrom" were added. Later in 1921, Public Laws Ex. Sess. ch. 73, this section was again amended to provide for new cartways when the old ones had become unreasonably inconvenient.

The Act of 1931 made material changes in the section.

Section Strictly Construed.—This section is in derogation of the rights of landowners, and must be strictly construed. Warlick v. Lowman, 103 N. C. 122, 9 S. E. 458.

Section Must Be Followed.—The right to establish cartways, tramways, etc., over the lands of another, when no such right arises by implication of law, is regulated in this State by statute, and one who desires to cross the lands of another for the purpose of removing timber, or for other purposes, must follow the statute or purchase the right. Roper Lumber Co. v. Richmond Cedar Works, 158 N. C. 161, 73 S. E. 902.

Tract Devised without Egress to Public Road.—Where a petition for a "way of necessity" over the lands of another is filed in the Superior Court, and the petition alleges that the petitioner was devised a tract of land without any way of egress to a public road except over the land of another devisee of the testator, and there is no allegation that such a way over the land of the other devisee had theretofore existed, and there is no stipulation in the devise for a way of ingress and egress to a given point, the petitioner's exclusive remedy is under the provisions of this and the previous section, and the proceedings in the Superior Court were properly nonsuited. White v. Coghill, 201 N. C. 421, 160 S. E. 472.

Cartway Quasi-Public Road.—Cartways are regarded as quasi-public roads, and the condemnation of private property for such a use has been sustained upon that ground as a valid exercise of the power of eminent domain. Cook v. Vickers, 141 N. C. 101, 53 S. E. 740.

Undedicated Neighborhood Road Not a Public Road.—A neighborhood road not dedicated to the public, but used by the public under permission or license of the owner of the land, is not a public road within the meaning of this section. Collins v. Patterson, 119 N. C. 602, 26 S. E. 154.

Requisites for Cartways.—The fact that there is no public road leading to the premises upon which a petitioner for a cart-way resides, and that such way will be more convenient to him, will not warrant its establishment; it must be made to appear further that the petitioner has no other way of egress and ingress, and that it is necessary, reasonable and just. Burwell v. Sneed, 104 N. C. 118, 10 S. E. 152.

A cart-way will not be granted, under this section as a mere matter of convenience, but only when it is necessary, reasonable and just that the petitioner should have it. Warlick v. Lowman, 103 N. C. 122, 9 S. E. 458.

Where the applicant for a cartway over the land of another has already one or more convenient rights of way over the land of another to the public road or other public place to which he seeks access, his application shall be rejected, and if an order for a cartway has been previously obtained, the cartway will be discontinued on the petition of the owner of the land. Plimmons v. Frisby, 60 N. C. 200. See, also, Burgwyns v. Lockhart, 60 N. C. 264.

"Necessary, Reasonable and Just." — For the owner of lands, cultivating the same, to obtain a way of necessity over the lands of another to a public road, he must show that such way is "necessary, reasonable and just," under the provisions of this section; and where it appears, without sufficient denial, that there is a public road leading to

the cultivated lands, the petition is properly dismissed. Rhodes v. Shelton, 187 N. C. 716, 122 S. E. 761.

Special Local Law Applicable. — While, under the provisions of our general statute, this section, a petitioner who already has an outlet from his lands to a public road, reasonably sufficient for the purpose, is not allowed to have an additional or different cartway established merely because a shorter and better route can be shown, it may be otherwise when the petitioner has proceeded under the provisions of a special local law applicable to a certain county allowing it under certain conditions, the provisions of the local law controlling those of the general statute on the subject. Farmer v. Bright, 183 N. C. 655, 112 S. E. 420.

Sufficiency of Existing Cartway Matter for Jury.—Where there is evidence tending to show that the plaintiffs' lands are situated off of a public highway, with a cartway thereto of great inconvenience, and the board of road supervisors have ordered that a proposed way, more convenient and shorter in distance be laid off, and have held that such way is necessary, reasonable and just, and an appeal has been taken by the owners of the land from this order, and the owners of the lands condemned have further appealed to the superior court, an issue arises for the determination of the jury as to whether sufficient reasons exist for the proposed way, and a judgment of the lower court that the plaintiffs are not entitled to it as a matter of law is reversible error. Brown v. Mobley, 192 N. C. 470, 135 S. E. 304.

Road Impassable.—Where one's lands are connected with the public road, but by an impassable tract, he is entitled to a cart-way over the lands of another. Mayo v. Thigpen, 107 N. C. 63, 11 S. E. 1052.

Opinion of Witnesses.—Upon the trial of an issue whether a proposed cart-way was necessary and reasonable, the opinions of witnesses are not competent, the question not being one of science, peculiar skill or professional knowledge. Burwell v. Sneed, 104 N. C. 118, 10 S. E. 152.

Cartway May Be Laid out for One Person.—A cartway may be awarded over the lands of another in favor of an individual citizen, when the necessity for it exists, in a manner that is reasonable and just, by proper proceedings upon petition to the township board of supervisors. Ford v. Manning, 152 N. C. 151, 67 S. E. 325.

Lumber Company Cannot Condemn Tramway.—A lumber company cannot condemn land for a tramway solely for carrying its own timber, but, at most, it can obtain only a temporary easement, ex-necessitate, under this section, and this only by a strict compliance with the statute. Leigh v. Garysburg Mfg. Co., 132 N. C. 167, 43 S. E. 632.

This section is invalid, so far as it authorizes the construction of railways over the lands of others for the exclusive use of the owner of the timber, because authorizing the taking of private property for a use which is not public, though the removal of the timber by means of such railways would aid in the development of the natural resources of the state. Cozard v. Kanawha Hardwood Co., 139 N. C. 283, 51 S. E. 932.

Failure to Establish Cartway.—The failure to establish a cartway according to law is a matter of defense to be pleaded in the trial of an indictment for breaking down a gate across it. State v. Combs, 120 N. C. 607, 27 S. E. 30.

Inference of Public Road Rebutted by Nonuser.—The inference from evidence tending to show that a way over and through a man's land is a public road may be rebutted by evidence of nonuser for more than twenty years. Burgwyn v. Lockhart, 60 N. C. 264.

Private Easement.—A mere right of way which a deed gives the grantee over the grantor's remaining lands is not a "cartway," for obstruction of which indictment will lie under section 136-90. State v. Haynie, 169 N. C. 277, 84 S. E. 385. See, also, State v. Lance, 175 N. C. 773, 94 S. E. 721.

Permissive Cartway.—Where an owner of land not reached by any public road for 37 years used a road across defendant's land without exercising any ownership or possession except passing back and forth, and occasionally cutting out a tree or other obstruction, the way was neither a public highway nor a private cartway. State v. Norris, 174 N. C. 808, 93 S. E. 950.

Termini Must Be Fixed.—In ordering the laying out of a cartway, it is the duty of the court, in its judgment, to fix both the termini of such way. Burden v. Harman, 52 N. C. 354.

Omission of Justices' Names from Record.—Where the record of an order made in a County Court for laying out a cartway recited—"seven justice being present,"—without giving their names it was held that such record was fatally defective, and the order void. Link v. Brooks, 61 N. C. 499.

Petition Held Sufficient.—Petitioners alleged that they had used a road over defendant's land for fifty years in going from petitioners' farm to the public highway, that such road was the only means of ingress and egress from petitioners' farm to the highway, that respondents had blocked the road, and prayed that if respondents did not open up the road for use by petitioners, that the court appoint a jury of view to lay off a roadway as an outlet for petitioners. Respondents demurred on the ground that petitioners did not allege a right of easement over respondents' land by grant, necessity or prescription. Held: Petitioners are not asserting a vested right over the road barricaded by respondents, and the demurrer should have been overruled, since the petition is sufficient to state a cause of action for the establishment of a neighborhood public road under the provisions of this section. Pearce v. Privette, 213 N. C. 501, 196 S. E. 843.

When Appeal May Be Taken.—The action of township supervisors in ordering the establishment of a cartway is such a final determination of the matter as will support an appeal to the Board of Commissioners, and thence through the superior to the Supreme Court, although the order may not have been executed. Warlick v. Lowman, 101 N. C. 548, 8 S. E. 120.

Where in a proceeding to establish a private cartway over lands of defendants, the clerk entered judgment that petitioner was not entitled to the relief demanded, and petitioner appealed to the superior court, the judgment of the clerk determined the rights of the parties and an appeal to the superior court was proper and not premature, and the order of the superior court remanding the case to the clerk upon the apprehension that an appeal would not lie until after the appointment of a jury of view and the laying out of the cartway and the assessment of damages, is erroneous. Dailey v. Bay, 215 N. C. 652, 3 S. E. (2d) 14.

How Appeal Heard.—Upon such appeal to the Board of Commissioners, they should have considered the whole matter de novo upon the merits, and so likewise the Superior Court, upon appeal to it. Warlick v. Lowman, 101 N. C. 548, 8 S. E. 120.

Cited in Pool v. Trexler, 76 N. C. 297; Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615.

§ 136-70. Alteration or abandonment of cartways, etc., in same manner. — Cartways or other ways established under this article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same. (Rev., s. 2694; Code, s. 2057; 1887, c. 46, s. 2; R. C., c. 101, s. 38; 1798, c. 508, ss. 1, 2, 3; 1834, c. 16, s. 1; 1887, c. 266; 1931, c. 448; C. S. 3837.)

See "Local Modifications" under § 136-68.

Editor's Note.—The Act of 1931 inserted this section in place of the former one.

When Petitioner Acquires Servient Tract.—A petitioner who has acquired a right, by order of the court, to have a cart-way over the land of another, and who has afterwards obtained title to the servient tenement, has a right to obstruct and discontinue such cart-way. Jacocks v. Newby, 49 N. C. 266.

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615.

§ 136-71. Church roads laid out on petition; procedure.—Necessary roads leading to any church or other place of public worship may be established in the same manner as set forth in the preceding sections of this article upon petition of the duly constituted officials of such church. (Rev., ss. 2687, 2689; Code, ss. 2062, 2064; 1872-3, c. 189, ss. 1-3, 5; 1931, c. 448; C. S. 3838.)

Editor's Note.—The Act of 1931 made material changes in this section. Formerly the proceedings were before the board of supervisors.

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615.

Art. 5. Bridges.

§ 136-72. Load limits for bridges; liability for violations. — The State Highway and Public

Works Commission shall have authority to determine the maximum load limit for any and all bridges on the State Highway System or on any county road systems, to be taken over under §§ 136-51 to 136-53, and post warning signs thereon, and it shall be unlawful for any person, firm, or corporation to transport any vehicle over and across any such bridge with a load exceeding the maximum load limit established by the Commission and posted upon said bridge, and any person, firm, or corporation violating the provisions of this section shall, in addition to being guilty of a misdemeanor, be liable for any or all damages resulting to such bridge because of such violation, to be recovered in a civil action, in the nature of a penalty, to be brought by the Commission in the Superior Court in the county in which such bridge is located or in the county in which the person, firm, or corporation is domiciled; if such person, firm, or corporation causing the damage shall be a nonresident or a foreign corporation, such action may be brought in the Superior Court of Wake County. (1931, c. 145, s. 16; 1933, c. 172, s. 17.)

§ 136-73. Duty as to bridges of millowners on, or persons ditching or enlarging ditches across, highways.—It shall be the duty of every owner of a water-mill which is situate on any public road, and also of every person who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain or canal across a public road, respectively, to keep at his own expense in good and sufficient repair all bridges that are or may be erected or attached to his milldam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain or canal on the highway, so long as they may be needed by reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained: Provided, no public road or highway shall be cut except in accordance with provisions of § 136-93. (Rev., s. 2697; Code, s. 2036; 1887, c. 261; R. C., c. 101, s. 24; 1817, c. 941, s. 1; 1846, c. 95, s. 1; 1881, c. 290; 1943, c. 410; C. S. 3795.)

Editor's Note.—The 1943 amendment added the proviso at the end of the section.

Duty of One Constructing Ditch. — When the proprietor of lands, for the purpose of draining the same, shall construct a ditch, drain or canal across a public road, it shall be the duty of the said proprietor to build a bridge over said ditch, canal, etc., and keep the same in repair. Nobles v. Langly, 66 N. C. 287.

Owners of land cutting ditches through a highway are bound to maintain bridges over them. Norfleet v. Cromwell, 64 N. C. 1, 16.

Priority of Road to Mill.—In an action for failing to keep a sufficient bridge over a canal cut across a public road, brought under this section, the plaintiff need not allege that the road was laid off before the mill was erected, in order to negative the proviso in that statute. Wadsworth v. Stewart, 97 N. C. 116, 2 S. E. 190.

Overseer Not Liable.—When a civil action was brought against the overseer to recover damages alleged to have been incurred in consequence of his negligently permitting a bridge over a canal to become unsafe and in bad condition, it was competent for him to show that the canal had been dug across the public road by the proprietor of the land adjacent thereto, and for the purpose of draining the same, and that a bridge had been built over the canal by the proprietor of the land, and had been kept up by him for several years. Nobles v. Langly, 66 N. C. 287.

Stated in Dodge v. State Highway, etc., Comm., 221 N. C. 4, 18 S. E. (2d) 706.

Cited in Holmes v. Upton, 192 N. C. 179, 134 S. E. 401.

§ 136-74. Liability for failure to maintain bridges; penalty and damages.—If any owner of a watermill situated on any public road, or any other person whose duty it is under this chapter to keep up and repair bridges built across any public road or across any ditch, drain, or canal, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, unless repair was prevented by unavoidable circumstances, any bridges which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor and shall be liable for such damages as may be sustained. (Rev., ss. 2703, 3772, 3773; Code, ss. 1086, 2037; R. C., c. 34, s. 40; c. 101, s. 25; 1817, c. 941, ss. 2, 3; 1876-7, cc. 90, 211; C. S. 3796.)

Editor's Note.—As to liability of the county comimssioners, see Holmes v. Upton, 192 N. C. 179, 134 S. E. 401.

§ 136-75. Railroad companies to maintain bridges which they make necessary.—All railroad companies shall keep up, at their own expense, any bridge on or over public roads, when the building of such bridge was made necessary in establishing the railroad; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same, and in addition shall be guilty of a misdemeanor. (Rev., ss. 2700, 3775; Code, s. 2054; R. C., c. 101, s. 35; 1838, c. 5, ss. 1-4; C. S. 3797.)

§ 136-76. Counties to provide draws for vessels.—The county or counties which may erect bridges shall, by their boards of commissioners, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber-rafts, said draw may not exceed twenty feet in width. (Rev., s. 2698; Code, s. 2053; 1891, c. 168; R. C., c. 101, s. 34; C. S. 3798.)

Cross Reference.—As to liability of commissioners for neglect, see § 153-15.

It is within the discretion of the commissioners as to whether the draws in the bridges should turn both ways. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105.

When Commissioner Excused for Failure to Provide Draws.—Where in an action for the penalty under § 153-15, for defendant's failure and neglect, as County Commissioner, to construct a draw in a county bridge across a river, it appeared that there had been a question whether the stream above the bridge was navigable, and that during six months or more of the year the water was insufficient to float boats and that the draw had been put in as soon as the question of the navigability was determined by the Engineering Department of the United States Government, it was proper for the trial judge to direct a verdict for the defendant. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63.

§ 136-77. Owner of bridge to provide draws on

notice.—Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months notice of such intention in one of the public journals of the state, published nearest the river or creek intended to be navigated, and to the owner of the bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter. (Rev., s. 2699; Code, s. 2052; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2; 1838-9, c. 5; C. S. 3799.)

§ 136-78. Railroad companies to provide draws.—Railroad companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass. (Rev., s. 2701; Code, s. 2051; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2; C. S. 3800.)

§ 136-79. Solicitor to prosecute for injury to county bridges.—The solicitors of the superior court are authorized and directed to institute suits in the name of the state, in the counties wherein the injuries may be done, for the recovery of damages, against all persons who shall willfully or negligently injure any public bridge belonging to any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties injured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided. (Rev., s. 2705; Code, s. 2055; R. C., c. 101, s. 36; 1846, c. 11, ss. 1, 2; C. S. 3801.)

Injunction May Issue.—The county commissioners, under the general powers granted by this section may bring an action for an injunction to restrain the use of a non-floatable stream for floatage of logs, causing damage to a county bridge over such stream. Commissioners v. Catawba Lumber Co., 115 N. C. 590, 20 S. E. 707.

§ 136-80. Fastening vessels to bridges misdemeanor.—If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county. (Rev., s. 3774; Code, s. 2050; 1887, c. 93, s. 3; R. C., c. 101, s. 31; R. S., c. 104; 1858-9, c. 58, s. 1; C. S. 3804.)

§ 136-81. Commission may maintain footways.—The state highway and public works commission shall have the power to erect and maintain adequate footways over swamps, waters, chasms, gorges, gaps, or in any other places whatsoever, whenever said commission shall find that such footways are necessary, in connection with the use of the highways, for the safety and convenience of the public. (Rev., s. 2695; Code, s. 2029; R. C., c. 101, s. 17; 1817, c. 940, ss. 1, 2; 1921, c. 2; 1931, c. 145; 1933, c. 172, s. 17; C. S. 3785.)

Art. 6. Ferries and Toll Bridges.

§ 136-82. State highway and public works commission to establish and maintain ferries.—The State Highway and Public Works Commission is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State Highway System, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Commission, be expedient.

To accomplish the purpose of this section said Commission is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Commission represent the fair value of the public service rendered. (1927, c. 223; 1933, c. 172, s. 17.)

§ 136-83. Control of county public ferrries and toll bridges transferred to State.—The State Highway and Public Works Commission shall succeed to all the rights and duties vested in the county commissioners or county highway commissions on the thirty-first day of March, one thousand nine hundred and thirty-one, with respect to the maintenance and operation of any public ferries or toll bridges forming links in the county highway systems: Provided, that where there is an outstanding indebtedness against any such ferries or bridges, all tolls collected shall be turned over to the County Treasurer to be applied to debt service until all indebtedness against such ferry or bridge has been discharged. (1931, c. 145, s. 38; 1933, c. 172, s. 17.)

Editor's Note.—The amendment of 1935 added the proviso at the end of this section.

§ 136-84. State highway and public works commission to fix charges.—The state highway and public works commission is directed, authorized, and empowered to fix and determine the charges to be made by all ferries and toll bridges connecting any state highway within the state of North Carolina, which said charges shall be uniform for the same service rendered. (Ex. Sess. 1921, c. 86, s. 1; 1933, c. 172, s. 17; C. S. 3821(a).)

§ 136-85. Extent of power to fix rates.—The state highway and public works commission is vested with all the rights, powers and authorities granted the utilities commission in the hearing and fixing of rates for ferries and toll bridges now vested in it by law. (Ex. Sess. 1921, c. 86, s. 2; 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97; 1943, c. 410; C. S. 3821(b).)

Editor's Note.—The 1943 amendment substituted the words "ferries and toll bridges" for the words "any purposes."

§ 136-86. Existing rights of appeal conferred.—All rights given any firm, person or corporation in any hearing before the utilities commission in the fixing of rates by way of appeal shall exist in all cases of charges fixed by the state highway and public works commission under and by virtue of §§ 136-84 to 136-87. (Ex. Sess. 1921, c. 86, s.

3; 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97; C. S. 3821(c).)

§ 136-87. Making of excessive charges a misdemeanor; punishment.—Any person, firm or corporation who shall charge any sum greater than the amount fixed by the state highway and public works commission for crossing any ferry or toll bridge connecting any state highway within the state of North Carolina, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding the sum of one hundred dollars or imprisoned not exceeding six months, or both in the discretion of the court. (Ex. Sess. 1921, c. 86, s. 4; 1933, c. 172, s. 17; C. S. 3821(d).)

§ 136-88. Authority of County Commissioners with regard to ferries and toll bridges; rights and liabilities of owners of ferries or toll bridges not under supervision of Commission.—Subject to the provisions of §§ 136-67, 136-99, and 153-198, the boards of commissioners of the several counties are vested, in regard to the establishment, operation, maintenance, and supervision of ferries and toll bridges on public roads not under the supervision and control of the State Highway and Public Works Commission, with all the power and authority regarding ferries and toll bridges vested by law in county commissioners on the thirty-first day of March, one thousand nine hundred and thirty-one. And the owners or operators of ferries or toll bridges not under the supervision and control of the State Highway and Public Works Commission shall be entitled to the same rights, powers, and privileges, and subject to the same duties, responsibilities and liabilities, to which owners or operators of ferries or toll bridges were entitled or were subject on the thirty-first day of March, one thousand nine hundred and thirty-one.

§ 136-89. Safeguarding transportation of life; guard chains or gates.—Each and every person, firm or corporation, owning or operating a public ferry upon any sound, bay, river, creek or other stream, shall have securely affixed and attached thereto, at each end of the same, a detachable steel or iron chain, or in lieu thereof a steel or iron gate, and so affixed and arranged that the same shall be closed or fastened across the opposite end from the approach, whenever any motor vehicle, buggy, cart, wagon, or other conveyance shall be driven upon or shall enter upon the same; and shall be securely fastened or closed at each end of the ferry after such motor vehicle, buggy, cart, wagon, or other conveyance shall have been driven or shall have entered upon the same. And the said gates or chains shall remain closed or fastened, at each end, until the voyage across the stream upon which said ferry is operated shall have been completed. The State Highway and Public Works Commission, as to ferries under its supervision, and the respective Boards of County Commissioners, as to other ferries, shall fix and determine a standard weight or size of chain, and a standard size, type, or character of gate, for use by said ferries, leaving optional with the said owner or operator the use of chains or gates.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 133; 1927, c. 223; 1931, c. 145, s. 38; 1933, c. 172, s. 17; C. S. 3825(a).)

Art. 7. Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.—If any person shall willfully alter, change, or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right of way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 3784; Code, s. 2065; 1872-3, c. 189, s. 6; 1883, c. 383; C. S. 3789.)

Requisites of Indictment and Conviction.—An indictment for obstructing a neighborhood road leading to a church, which follows the words of this section, will be sustained—still, to warrant a conviction, it is essential, in the absence of proof of an actual dedication, or of a laying out by public authority under section 136-71 to show a user for twenty years, and it must have been worked and kept in order by public authority. State v. Lucas, 124 N. C. 804, 32 S. E. 553.

A special verdict, rendered on a trial for obstructing a road, is also defective in that it does not find that the user of the road by the public was as of right and adversary. State v. Stewart, 91 N. C. 566.

Placing Nails in Highway.—Placing nails in the highway in order to puncture automobile tires is an obstruction within this section. State v. Malpass, 189 N. C. 349, 127 S. E. 248.

Preventing Construction of Drainage Ditch.—Where a person obstructs an overseer in cutting a ditch across his land to drain a public road, he is not guilty of obstructing justice, there being no provision of law for taking private property for this purpose and the payment of just compensation therefor. State v. New, 130 N. C. 731, 41 S. E. 1033.

Obstruction a Nuisance.—Unlawful obstruction of a highway is a public nuisance. Brooks v. Henrietta Mills, 182 N. C. 719, 110 S. E. 96.

Highway Unknowingly Obstructed.—When a mill company gratuitously maintained a ball ground on its premises for its employees, without direction or supervision, it is manifest that the relation of licensor and licensee without pecuniary compensation existed between them, and it is not liable for an injury caused by obstruction of an adjoining highway by a rope intended to exclude spectators who did not pay for admission, there being no evidence that it had actual or implied knowledge thereof. Brooks v. Henrietta Mills, 182 N. C. 719, 110 S. E. 96.

Damages Allowed Also.—Damages are allowable for the obstruction of a highway. Tate v. Seaboard Air Line R. Co., 168 N. C. 523, 84 S. E. 808.

Obstruction of Permissive Cartway.—A way over the lands of another as an outlet to and from the lands of the one claiming it, cannot be established by permissive user, but by possession adverse to the true owner; and a way of this character which has not been established by the public authorities or used and kept up by the public for a sufficient length of time does not fall within the meaning of this section so as to make its obstruction punishable. State v. Norris, 174 N. C. 808, 93 S. E. 950.

Private Easement.—A reservation by deed to the grantor of a restricted easement across the lands conveyed, without defining or locating it, and which has not since been located, the grantor and his family going across the lands conveyed whenever they choose, is sufficient proof of a public road so as to sustain an indictment under this section. State v. Haynie, 169 N. C. 277, 84 S. E. 385.

Private Roadway.—In a prosecution for unlawfully and willfully obstructing a public cartway, in the absence of evidence of dedication to the public, or evidence of an adverse continuous user by the prosecuting witness for the period required by law to give him an easement, defendant could not be guilty where the obstruction was on the part of the road where it crossed his land. State v. Lance, 175 N. C. 773, 94 S. E. 721.

Maximum Penalty Constitutional.—Where a defendant is convicted of obstructing a highway and of wanton injury to personal property by the same act, it is not in violation of our constitution nor otherwise improper to sentence him to the maximum penalty for each offense. State v. Malpass, 189 N. C. 349, 127 S. E. 248.

Law Shortening Statute of Limitation.—A public-local law

which shortens the period for the running of the statute of limitations to a time already expired and depriving the owner of lands of his right to stop the public user of a private right of way thereover, and declares the right of way a public one, is unconstitutional in taking the property of the owner without due process of law and in denying him the equal protection of the laws. State v. Haynie, 169 N. C. 277, 84 S. E. 385.

§ 136-91. Placing glass, etc., or injurious obstructions in road.—No person shall throw, place or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any of the public highways of this state. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1917, c. 140, ss. 18, 21; C. S. 2599, 2619.)

§ 136-92. Obstructing highway drains, misdemeanor. — Any person who shall obstruct any drains along or leading from any public road in the state shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. (1917, c. 253; C. S. 3791.)

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.—No opening or other interference whatsoever shall be made in any state road or highway other than streets not maintained by the state highway and public works commission in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the state highway and public works commission or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No state road or state highway, other than streets not maintained by the state highway and public works commission in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any state road or state highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said commission or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the commission or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done: the commission, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the state of North Carolina, in such an amount as may be deemed sufficient by the commission or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a state road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law. (1921, c. 2, s. 13; 1923, c. 160, s. 2; 1933, c. 172, s. 17; 1943, c. 410; C. S. 3846(u).)

Editor's Note.—The 1943 amendment inserted in the first and second sentences the words "not maintained by the state highway and public works commission."

§ 136-94. Gates projecting over rights-of-way forbidden. — It shall be unlawful for any person, firm or corporation to erect, maintain or operate upon his own land, or the land of another, any farm gate or other gate which, when opened, will project over the right-of-way of any state highway.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1927, c. 130.)

§ 136-95. Water must be diverted from public road by ditch or drain.—When any ditch or drain is cut in such a way as to turn water into any public road, the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road. (Rev., s. 2697; Code, s. 2036; C. S. 3790.)

§ 136-96. Road or street not used within 20 years after dedication deemed abandoned; declaration of withdrawal recorded; defunct corporations. —Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by any deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within twenty years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, unless such right shall have been asserted within two years from and after March 8, 1921: Provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece, or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid. Provided further, that where any corporation has dedicated any strip, piece, or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title, or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest to said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms, or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out hereinbefore in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway

purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway prior to March 8, 1921. This section shall be in force from and after March 8, 1921, and shall apply to dedications made after as well as before that date. (1921, c. 174; 1939, c. 406; C. S. 3846(rr).)

Editor's Note. — The 1939 amendment added the second proviso.

For comment on the 1939 amendment, see 17 N. C. Law Rev. 371.

This Section Is Constitutional.—The right of those purchasing lots in a subdivision with reference to a plat to assert easements in the streets shown by the plat is dependent upon the doctrine of equitable estoppel, and providing for the termination of their easements by revocation of the dedication when they have failed to assert same within two years from the effective date of the statute, affords them a reasonable time in which to assert their rights, and therefore does not deprive them thereof without due process of law. Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817.

Effect of Withdrawal before Acceptance.—The prospective dedication of streets, parks, etc., in the sale of a development of lands is not binding upon a city until acceptance, and neither the city nor the general public can acquire any rights thereunder against the owner of the land or purchasers from him where the offer of dedication has been withdrawn before acceptance, under the provisions of this section. Irwin v. Charlotte, 193 N. C. 109, 136 S. E. 368.

Withdrawal in Conformity with Section Terminates Easement.—The streets in question were dedicated to the public more than twenty years prior to the institution of this action by the sale of lots in a subdivision with reference to a plat showing the streets. The streets were never actually opened or used at any time, and no person asserted any public or private easement therein within two years from the passage of this article, or at any other time. The streets in question are not necessary to afford convenient ingress or egress to any other lots in the subdivision. The corporation making the dedication no longer exists. Plaintiffs, claimants under dedicator, filed and recorded a declaration withdrawing said streets from the dedication. Held: The revocation of the dedication terminated the easement of the public and of the purchasers of lots in the subdivision, and therefore plaintiffs own the fee in the said land and can convey same free of the easements. Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817.

Use by Public Prevents Withdrawal.—Where a street in a subdivision is dedicated to the purchasers of lots and to the public by the sale of lots with reference to a plat of the subdivision showing the street, and the street is actually opened and used by the public even for a part of the width shown by the plat, such use precludes the owner from revoking the dedication under this section, even as to the portion of the width of the street not used and maintained by the municipality. Home Real Estate Loan, etc., Co. v. Carolina Beach, 216 N. C. 778, 7 S. E. (2d) 13.

Declaration of Withdrawal Must Be Filed.—When certain streets and alleys have been dedicated to the public by the registration of a plat, it is necessary to a withdrawal of the dedication under this section, among other requirements, that the declaration of such withdrawal should be recorded; and when the facts agreed in an action involving the validity of an alleged withdrawal fail to disclose whether the declaration of the withdrawal had been recorded and to show plaintiffs to be claimants of title under dedicators who filed the plats, they are insufficient to enable the court to determine the question. Sheets v. Walsh, 215 N. C. 711, 2 S. E. (2d) 861.

§ 136-97. Responsibility of counties for upkeep, etc., terminated; liability of commission for damage on state highway system. — The board of county commissioners or other road-governing bodies of the various counties in the state are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the state highway system, after the same shall have been taken over, and the control thereof assumed by the state highway and public works commission. The state highway and public works commission as a commission and the individual members thereof, shall not be liable for any damage sustained by any person, firm, or corporation on the state highway system, except for wanton and corrupt negligence. (1921, c. 2, s. 50; 1933, c. 172, s. 17; C. S. 3846(dd).)

Failure to Remove Obstruction after Notice.—In an action to recover for injuries sustained when the car in which plaintiffs were riding struck a limb lying on a dirt highway, it was shown that defendant was a divisional engineer of the state highway and public works commission, that the highway in question was embraced within his division, that defendant was given notice that the limb was lying across the highway and that the accident occurred some six hours after such notice. It was held that defendant's motion to nonsuit was properly allowed, since, if defendant's failure to remove the limb was a breach of an official or governmental duty involving the exercise of discretion, there was neither allegation nor evidence of corruption or malice, and if such duty was a ministerial duty it was of a public nature imposed entirely for the public benefit, and there was neither allegation nor proof that this section provided for personal liability. Wilkins v. Burton, 220 N. C. 13, 16 S. E. (2d) 406.

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.—From and after the first day of July, one thousand nine hundred and thirty-one, no county or road district by authority of any public, public-local, or private act, shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the Highway Commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July first, one thousand nine hundred and thirty-one. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July first, one thousand nine hundred and thirty-one, shall be taken over by the State Highway and Public Works Commission and completed by the Commission by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district

which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto. (1931, c. 145, s. 35.)

§ 136-99. Sale of camp sites and other real estate and application of proceeds.—Any county, road and/or highway district which owns a camp site or other real estate built or purchased with road or highway funds, may sell and convey such camp site or real estate, and the money so received therefrom shall be used to retire any bonds issued for road or highway purposes, or interest due thereon. If there are no outstanding bonds, the money received shall be turned over to the general county fund. (1931, c. 232, s. 2.)

§ 136-100. Application of insurance funds collected on burned buildings. — In event any building or buildings erected or constructed with road or highway funds shall be damaged or destroyed by fire and the same were insured, the insurance when collected shall be used to retire any outstanding bonds issued for road purposes and interest thereon, and if there are no outstanding bonds the money shall be turned over to the general county fund: Provided, that said fund received from insurance may be used to rebuild, repair and equip any jail or other building used to house prisoners. (1931, c. 232, s. 4.)

§ 136-101. Use of funds to retire current liabilities and deficits.—In lieu of paying the moneys received as herein set out on bonds and interest, if there are any current liabilities or current deficits, the money may be used for discharging such current liabilities and deficits. (1931, c. 232, s. 5.)

Art. 8. Citation to Highway Bond Acts.

I. State of North Carolina Highway Serial Bonds, Public Laws 1921, c. 2, s. 39; Public Laws Ex. Sess. 1921, c. 74; Public Laws 1923, c. 263, s. 3; Public Laws 1925, c. 45, s. 4; Public Laws 1925, c. 133.

II. State of North Carolina Highway Serial Bonds. Public Laws 1925, c. 35.

III. Chowan Bridge Bonds. Public Laws 1925, c. 74; Public Laws 1927, cc. 176 and 183; Public Laws 1929, cc. 128 and 144; Public Laws 1935, c. 15, s. 1.

IV. The Highway Bond Act of 1927. Public Laws 1927, c. 95; 1929, c. 312.

V. Cape Fear River Bridge Bonds. Public Laws 1927, c. 41; Public Laws 1929, cc. 127, 144; Public Laws 1931, c. 90; 1935, c. 17.

VI. For acts which authorized the issuance of county, township, and district road bonds, and bonds for state-line bridges, having no prospective operation after 1931 in view of Public Laws 1931, c. 145, s. 35, see Chapter 70 of the Consolidated Statutes, as amended.

VII. The Highway Bond Act of 1943. Session Laws 1943, c. 322.

Cross Reference.—For list of bond acts generally, see chapter 142, Art. 6.

Chapter 137. Rural Rehabilitation.

Sec.

Art. 1. State Rural Rehabilitation Law.

Art. 1. State Rural Rehabilitation Law.

§ 137-1. Title of article. — This article shall be known as the "State Rural Rehabilitation Law." (1935, c. 459, s. 1.)

§ 137-2. Declaration of necessity for subsistence homesteads; agencies established to effect purpose.—It is hereby declared that it is necessary in the public interest to make provision for the establishment of small individual farms or subsistence homesteads with the necessary dwellings and other structures in planned rural communities, together with livestock, farm implements, equipment and initial materials and supplies to enable success of the applicant and his family, and that the providing of such subsistence homesteads or farm homes and operating facilities in community settlements, being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land (not classed as sub-marginal lands) the construction of new agricultural facilities, the clearing, grading, draining of lands, and building of planned rural communities under public supervision in accord with proper standards of sanitation and safety at a cost which will permit their use or sale at prices which families of low income and/or families of agricultural experience or ability can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the State of North Carolina and/or the agencies and instrumentalities of the United States government when and if designated by it as such, for the purpose of attaining the ends herein recited and their necessity in the public interest. (1935, c. 459, s. 2.)

§ 137-3. State board of rural rehabilitation created; appointment and terms of members; vacancies; compensation. — There is hereby created a state board of rural rehabilitation of the State of North Carolina, which will consist of three (3) members, to be appointed by the governor. Two of the three members shall be appointed for two years, and one for four years, and at the expiration of these terms their successors shall be appointed for a term of four years. All vacancies which may occur for any unexpired term shall be filled by the governor. The members of the board shall receive no salary, but shall be entitled to a per diem of not in excess of $10.00 when attending meetings of the corporation and the necessary traveling and other expenses incurred in the discharge of their duties, which shall be paid by the corporation. (1935, c. 459, s. 3.)

§ 137-4. Officers and employees. — The members of the board shall choose from among their number a chairman, and the board may appoint such other officers and employees, including a secretary, as it may require, for the performance of its duties, and shall fix and determine their qualifications, duties and salaries. (1935, c. 459, s. 4.)

§ 137-5. Submission to board of projects; community corporations; supervision of board over monies of such corporations; naming of trustee; duties; disbursement of funds.—No rural community project proposed by a corporation incorporated under this article shall be undertaken without the approval of the board.

(a) There shall be submitted to the board a community plan and financial plan in such forms and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improvements and operating facilities by subscriptions to or the sale of the stock, income debentures, and/or mortgage bonds of such corporation. Whenever reference is made in this article to cost of projects or of buildings and improvements in projects, such cost shall include the necessary personal property in farm units and community buildings, charges for financing and supervision approved by the board, and carrying charges during construction required in the project, including interest on borrowed and, where approved by the board, on invested capital.

(b) The corporation agrees to accept a designee of the board of rural rehabilitation as a member of the board of directors of said corporation, which designee may be a representative of the United States or of the principal creditor of said corporation.

(c) If required by the board, the corporation shall deposit all monies received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the State of North Carolina and to perform trust functions, and such trustee shall receive such monies and make payment therefrom

for the acquisition of land, the construction of improvements and other items entering into cost of land improvements and the personal property and supervision necessary for successful independent farm units and rural community centers, upon presentation of draft, check, or order signed by a proper officer of the corporation and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation. (1935, c. 459, s. 5.)

§ 137-6. Investigation into affairs of corporations; judicial powers. — The board shall have power to investigate into the affairs of limited dividend and/or non-dividend companies incorporated under this article, and into the dealings, transactions, or relationships of such companies with other persons. Any of the investigations provided for in this article may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits, and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this article, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the board or excused from attendance. (1935, c. 459, s. 6.)

§ 137-7. Study of rural conditions; programs for betterment; dissemination of information; approval of community projects; coöperation with local officials. — The board is hereby empowered to (a) study rural conditions and farm tenancy throughout the State, to determine in what areas unhealthful and insanitary conditions constitute a menace to health, and reasonable comfort of the citizens of the State; (b) prepare programs for correcting such conditions as may be relieved by the purposes of this article; (c) collect and distribute information relating to rural development; (d) recommend and approve the areas within which or adjacent to which the construction of rural community projects by limited dividend and/or non-dividend companies may be undertaken, and (e) co-operate with local officials and planning commissions or similar bodies in the development of projects they may have under consideration. (1935, c. 459, s. 7.)

§ 137-8. Consolidation of projects. — The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project, or the consolidation of any approved project with a proposed project. In any of these events the consolidation project shall be treated as an original project and an application shall be submitted as in the case of an original project, and sale prices may be averaged throughout the consolidated or extended project. The board may by approval of its charter likewise permit any limited dividend and/or non-dividend corporation to organize and operate one or more rural community projects which may be organized and operated independently of each other under such by-laws, rules and regulations authorized by the board, not inconsistent with the provisions of this article, as may be necessary for the proper conduct of the affairs of the corporation. (1935, c. 459, s. 8.)

§ 137-9. Other powers of board. — In pursuance of its power and authority to supervise and regulate the operations of limited dividend and/or non-dividend companies incorporated under this article the board may in its discretion:

(a) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board, or by the terms of any project approved by the board for protection of its security holders or creditors, or to refrain from doing any acts in violation thereof.

(b) Examine all such corporations and keep informed as to their general condition, their capitalization, and the manner in which their property is constructed, operated, or managed and sold.

(c) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus, and devices of any such corporation, examine all books, contracts, records, documents, and papers of any such corporation, and by subpoena duces tecum compel the production thereof.

(d) In its discretion prescribe uniform methods and forms of keeping accounts, records, and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged, or credited.

(e) Require every such corporation to file with the board an annual report setting forth such information as the board may require, verified by the oath of the president and general manager or receiver, if any, thereof, or by the person required to file the same. Such report shall be in the form, cover the period, and be filed at the time prescribed by the board.

(f) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article. (1935, c. 459, s. 9.)

§ 137-10. Price fixing for farms sold; determination of payments made by corporations; dividends; sinking funds.—The board shall fix the maximum and minimum purchase price to be charged for the farms sold by such corporation. Such minimum purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as herein prescribed, and such purchase prices shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges and all operating and maintenance charges and ex-

penses, which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charge, if, when, and to the extent deemed necessary by the board; reserves, sinking funds, and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend, if any, not exceeding all the maximum fixed by this article upon the stock of the corporation allotted to the project by the board. (c) Where feasible, in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock and income debentures of the corporation to the extent permitted by this article, or specified in the issues outstanding. (1935, c. 459, s. 10.)

§ 137-11. Reorganization of corporations. — (1) Reorganization of limited dividend and/or non-dividend companies incorporated under this article shall be subject to the supervision and control of the board and no such reorganization shall be had without its authorization.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness, shall be such as is authorized by the board, which, in making its determination, shall not exceed the fair value of the property involved. (1935, c. 459, s. 11.)

§ 137-12. Power of board to enjoin illegal acts of corporations.—Whenever the board shall be of opinion that any such limited dividend and/or non-dividend company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the board, and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lien holders or the stockholders, it may commence an action or proceeding in the superior court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said superior court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding thirty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint, or in such modified or other form as the court may determine will afford appropriate relief. (1935, c. 459, s. 12.)

Cross Reference.—As to injunctions generally, see § 1-485 et seq.

§ 137-13. Acquisition by corporations of property for projects; power of eminent domain.— When the board shall have approved a project for the construction or establishment of a rural community or communities presented it by a limited dividend and/or non-dividend company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest, or purchase, or, in the case of limited dividend and/or non-dividend companies engaged in the construction and development of rural communities, by the exercise of the power of eminent domain under and pursuant to the law providing for the appropriation or condemnation of private property by corporations with specific authorization by the board to be in the public interest and necessary for the public use. (1935, c. 459, s. 13.)

§ 137-14. Application for charter. — Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging, and filing in the office of the secretary of state articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the State, except as herein modified or changed. (1935, c. 459, s. 14.)

Cross Reference.—As to information required in certificate of incorporation for corporations generally, see § 55-2.

§ 137-15. Purposes of incorporation enumerated.—The purposes for which a limited dividend and/or non-dividend rural development company is to be formed shall be as follows: To acquire, construct, maintain, and operate housing projects, subsistence homesteads and organized rural rehabilitation or community projects, and to establish, loan, make loans for, and to assist in the establishment of small individual farms and farm homes, together with the necessary buildings and other structures, livestock, equipment, implements and machinery, materials, supplies, facilities, medical, social and educational centers, cooperative enterprises and commercial establishments essential to the growth and development of said rural rehabilitation or community projects, when authorized by and subject to the supervision of the board of rural rehabilitation. (1935, c. 459, s. 14.)

§ 137-16. Preference to applicants possessing certain qualifications. — Preference shall be given to applicants who are married or who have dependent families, have good moral character, and are experienced in farming and familiar with farm operations, or who are or recently were farmers, farm tenants, share croppers, or farm laborers, or to good families of small incomes who will contribute to social advantages of the community, and each of whom may be approved by designated representatives of the federal and state agricultural extension service. (1935, c. 459, s. 14.)

§ 137-17. Capital stock. — The capital stock may consist of one or more classes, the shares

of which shall have a par value. (1935, c. 459, s. 14.)

§ 137-18. Declaration as to serving a public purpose; restriction on income from stock; disposition of surplus.—Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose, and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and satisfactory social and agricultural conditions, subject to the provision of the State Rural Rehabilitation Law; and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at a rate not in excess of six per centum per annum, and that any surplus in excess of such amount, if said company shall be dissolved, shall revert to the State of North Carolina, or to such federal department or agency that may have provided the funds for establishing a rural community as herein contemplated. (1935, c. 459, s. 14.)

§ 137-19. Power to borrow money and issue bonds secured by mortgage; amortization.—Any company formed under this article may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgages, or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second or junior lien upon the real property embraced in any project or projects. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the rural community projects in the event of such entry by mortgagee or receiver shall be subject to the regulation of the board under this article. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the board, and the amortization period shall begin three years after the farm family or families are established on the land and continue semi-annually up to a limit of forty years. (1935, c. 459, s. 14.)

§ 137-20. Application of general corporation laws.—The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend and/or non-dividend rural rehabilitation companies, except where such provisions are in conflict therewith. (1935, c. 459, s. 14.)

Cross Reference.—For provisions of general corporation act, see §§ 55-1 et seq.

§ 137-21. Dividends on stock restricted. — No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per centum per annum, except that when in any preceding year, dividends of the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years. (1935, c. 459, s. 15.)

§ 137-22. Issuance of stock and bonds regulated.—No limited dividend and/or non-dividend company incorporated under this article shall issue stock, bonds, or income debentures except for money, services, or property actually received for the use and lawful purpose of the corporation. No stock, bonds, or income debentures shall be issued for property or services except upon a valuation approved by the board of rural rehabilitation and such valuation shall be used in computing actual or estimated cost. (1935, c. 459, s. 16.)

§ 137-23. Exchange of stock and bonds for income debenture certificates. — The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than five per centum per annum. After the incorporation of a limited dividend rural rehabilitation company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of rural rehabilitation for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor. (1935, c. 459, s. 17.)

§ 137-24. Restrictions on corporations. — No limited dividend nor non-dividend company incorporated under this article shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purposes defined in this article.

(2) Sell, transfer, assign, or lease any real or personal property without first having obtained the consent of the board: Provided, however, that leases and/or sales conforming to the regulations and rules of the board and for actual occupancy by the lessees and/or purchasers may be made without the further consent of the board. Any conveyance, incumbrance, lease or sub-lease made in violation of the provisions of this section, and any transfer or assignment thereof, shall be void.

(3) Charge or accept any rental, purchase price, or other charge in excess of the amounts prescribed by the board, except for the insurance of mortgage loans as provided under the Federal Housing Act.

(4) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per centum per annum.

(5) Issue its stock, debentures and bonds covering any project or projects undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest

and other carrying charges during construction and the necessary supervision of the project or projects thereafter.

(6) Mortgage any real property or issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Enter into contracts for the construction of rural community projects or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(8) Voluntarily dissolve without first having obtained the consent of the board.

(9) Make any guaranty without the approval of the board. (1935, c. 459, s. 18.)

§ 137-25. Earnings transferable to surplus; distribution upon dissolution; surplus paid into general fund of state.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b), and (c) of section 137-10 shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen per centum of the outstanding capital stock and/or income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend and/or non-dividend company the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued, and unpaid dividends or interest thereon less any payment or distributions theretofore made other than by dividends provided in § 137-21, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the State of North Carolina, or shall be disposed of in such other manner as the board may direct and the governor may approve. (1935, c. 459, s. 19.)

§ 137-26. Foreclosure actions; foreclosure or other judicial sale; unrestricted rights of mortgagees.—(1) In any foreclosure action the board shall be a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding the court shall be authorized to make an order increasing the sale price to be charged for the farms, etc., in the project involved in such foreclosure, or appoint a receiver of the property, or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend and/or non-dividend corporation organized under this article, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this article.

(2) Notwithstanding the foregoing provisions of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage, which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the State of North Carolina, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public, and no costs shall be awarded against it. (1935, c. 459, s. 20.)

§ 137-27. Application to board for one corporation to purchase property of another. — Before any limited dividend or non-dividend corporation incorporated under this article shall purchase the property of any other limited dividend or non-dividend corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project, and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this article, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this article. (1935, c. 459, s. 21.)

§ 137-28. Notice to board required before execution of judgment against corporation.—In the event of a judgment against a limited dividend or non-dividend corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties. (1935, c. 459, s. 22.)

§ 137-29. Fees for examination of plans and supervision of construction and for other purposes; state not liable for board expenses. — The board may charge and collect from a limited dividend or non-dividend corporation, incorporated under this article, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-quarter of one per cent of the cost of the project; for the holding of a public hearing upon application of a limited dividend or non-dividend corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a limited dividend or non-dividend corporation and for any act done by the board, or any of its employees, in performance of their duties under this article an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state

treasury. The board may authorize a limited dividend or non-dividend corporation to include such fees as part of the cost of a project, or as part of the charges specified in § 137-10, pursuant to rules to be established by the board. (1935, c. 459, s. 23.)

§ 137-30. Corporate existence limited; extension.—The corporate existence of any corporation authorized hereunder shall not extend beyond sixty years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless general corporation laws, by approval of the state board of rural rehabilitation should grant an extension for an additional period of time. (1935, c. 459, s. 25.)

Art. 2. North Carolina Rural Rehabilitation Corporation.

§ 137-31. Designated a state agency. — The North Carolina rural rehabilitation corporation, a non-profit corporation, organized by the members of the commission of the North Carolina emergency relief administration, and chartered by the State to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families by enabling them to secure subsistence and gainful employment from the soil and co-ordinated and other enterprises in order to restore them as self sustaining citizens and thereby reduce the burden of public relief for the needy and unemployed, is hereby recognized and designated as an agency of the State of North Carolina and of the North Carolina emergency relief administration and its successor within the powers and limitations of its charter for the carrying out of said objects and purposes. (1935, c. 314, s. 1.)

§ 137-32. Powers of corporation. — The corporation is hereby authorized to accept and receive loans, grants and other assistance from the United States government, departments and/or agencies thereof for its use or for relief and rehabilitation purposes as well as to receive like financial and other aid when extended by the State of North Carolina or any of its departments, political subdivisions or agencies or any municipality, or from other sources, either public or private, and to employ the same in carrying out its rehabilitation purposes and activities; to utilize such means and agencies as shall be found useful or necessary to carry out the purposes of this article and which will facilitate the securing of co-operation and financial assistance from the government of the United States, its departments or agencies, in aid thereof. (1935, c. 314, s. 2.)

§ 137-33. Coöperation by state officers, boards, etc.—The various officers, boards, courts and governing bodies of the State engaged in any way in the relief of destitution and unemployment are hereby authorized to co-operate with the North Carolina rural rehabilitation corporation for the purposes specified in § 137-31. (1935, c. 314, s. 3.)

§ 137-34. Fund for loans to county boards of education for erecting or equipping vocational buildings, etc.—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of three hundred twenty-five thousand dollars ($325,000.00) to be used, together with any net income accruing thereon, for loans, to be made in the manner hereinafter set forth, to county boards of education for the purpose of erecting or equipping vocational buildings for teaching agriculture and home economics. (1939, c. 241, s. 1; 1941, c. 307, s. 1.)

Editor's Note.—The 1941 amendment inserted the word "net" in line six of this section.

§ 137-35. Loans to be made through state board of education.—The said loans shall be made through and with the assistance of the state board of education in the following manner:

(a) As applications for loans are made, the director of schoolhouse planning and the director of vocational education, state department of public instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(b) The local government commission will then determine whether the county or school district can, under the constitution, borrow funds necessary for the construction or equipment of such buildings.

(c) The state board of education will then pass upon, and approve or disapprove, the project from the standpoint of the state educational system.

(d) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina rural rehabilitation corporation for final approval.

(e) Upon such final approval the North Carolina rural rehabilitation corporation will deliver to the state board of education the funds which are to be advanced.

(f) Said funds will be loaned by the state board of education according to the same rules and regulations and legal requirements as those under which the state literary fund is now administered.

(g) Said loans will be repayable in ten (10) equal annual installments and will bear interest at four per cent per annum, payable annually, semi-annually, or quarterly, as the state board of education shall determine.

(h) All loans made by the state board of education from such funds so advanced by the rural rehabilitation corporation shall be evidenced by notes payable to the order of the rural rehabilitation corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the state board of education, to the rural rehabilitation corporation and a proper receipt taken therefor. (1939, c. 241, s. 2.)

§ 137-36. Approval of applications from county boards by state board of education.—The state board of education is hereby empowered to receive and approve applications from county boards of education for such vocational agricultural and home economics buildings or equipment loans in the same manner and on the same forms as it now receives applications for loans from the state literary fund, and in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 3.)

§ 137-37. Loans from state literary fund.—As an alternative method of making loans to county boards of education for the purpose of erecting or equipping such vocational agricultural and home economics buildings, the state board of education is hereby empowered to make loans for said purposes from the state literary fund and to sell or transfer, without recourse, the notes received for said loans (together with the security therefor) to North Carolina rural rehabilitation corporation. Loans so made from the state literary fund for such vocational agricultural and home economics buildings shall be made in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 4.)

§ 137-38. County boards of education authorized to borrow funds. — County boards of education are hereby empowered to borrow through or from the state board of education amounts necessary for constructing or equipping vocational agricultural and home economics buildings to the same extent and in the same manner as they are now authorized by law to borrow from the state literary fund by the provisions of §§ 115-220 to 115-224, and by other applicable provisions of law. (1939, c. 241, s. 5.)

§ 137-39. Creation of fund for loans to students of rural social science authorized.—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of twenty-five thousand dollars ($25,000.00) to be used, together with any net income accruing thereon, for loans to students engaged in the study of rural social science; and the directors of North Carolina rural rehabilitation corporation are hereby authorized to make such regulations relative to said loans as to the said board of directors may seem advisable. (1939, c. 241, s. 6; 1941, c. 307, s. 2.)

Editor's Note.—The 1941 amendment inserted in this section the words: "together with any net income accruing thereon."

§ 137-40. Creation of fund for administrative expenses of corporation.—As of the nineteenth day of May, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of ten thousand dollars ($10,000.00) to be used for administrative expenses of said corporation, and after said administrative expense fund has been exhausted the expenses of the corporation shall be paid out of income from the vocational building loan fund and the social work student loan fund herein provided. (1939, c. 241, s. 7; 1941, c. 307, s. 3.)

Editor's Note.—The 1941 amendment added that part of this section beginning with the words "and after said."

§ 137-41. Transfers of real and personal assets to farm security administration in trust, etc., ratified.—There is hereby ratified the act of North Carolina rural rehabilitation corporation and its board of directors in transferring to the farm security administration of the United States department of agriculture all of its real and personal assets of every kind and description (except the funds hereinabove referred to and except sums necessary for or incident to making the transfer to farm security administration), in trust until the twentieth day of May, one thousand nine hundred and fifty, to use said property for certain purposes of the North Carolina rural rehabilitation corporation selected and designated by the board of directors of said corporation, and in trust thereafter to repay or redeliver to North Carolina rural rehabilitation corporation any unused or unexpended portions of said property. (1939, c. 241, s. 8.)

Chapter 138. Salaries and Fees.

§ 138-1. Annual salaries payable monthly.—All annual salaries shall be paid monthly. (Rev., s. 2772; Code, s. 3731; 1893, c. 54; 1925, c. 230; 1929, c. 100; C. S. 3847.)

§ 138-2. Payment of fees; when to be paid in advance.—All public officers shall receive the fees prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers, and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the state, or of a county, for the benefit of the state or county, the fees need not be paid in advance; but if for the state, shall be paid by the state, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance. (Rev., s. 2804; Code, ss. 3758, 1173; C. S. 3849.)

Cross References.—As to fees in criminal cases not being demandable in advance, see § 6-6; as to summary judgment for official fees, see § 6-2; as to liability of defendant in criminal actions for costs, see §§ 6-45 to 6-48; as to liability of prosecutor for costs, see § 6-49 et seq.; as to constitutional provision, see Art. IV, sec. 18.

Officers of Court Must Demand Fees.—Officers of the courts are not compelled to perform their duties, unless the fees prescribed by law are paid or tendered them, but they must demand them before laches can be imputed to the litigants. West v. Reynolds, 94 N. C. 333.

Same—When Demand Not Made. — The officer is not "compelled to perform" the required service, but he may perform it, and dispense with the payment, and if he does not so intend, he should say so at the time, and not presume that the posting of the notice in his office, of an inflexible rule that he had adopted and from which he would not

under any circumstances depart, would be known to every one. West v. Reynolds, 94 N. C. 333, 336.

Effect of Unconditional Pardon.—Fees due officers of the court are vested rights by law, and are not discharged when the defendant receives an unconditional pardon, after conviction and sentence, from the Governor of the State. State v. Mooney, 74 N. C. 98.

When Pardon Discharges Defendant from Costs. — In State v. Underwood, 64 N. C. 599, it was held that where the pardon is pleaded after verdict and before judgment, it will discharge the defendant from the costs. State v. Mooney, 74 N. C. 98, 99.

Supreme Court Clerk's Fee for Docketing Case. — The appellant's undertaking does not cover the fee of the clerk of the Supreme Court in docketing the case, and the clerk is in the exercise of his right in refusing to docket the transcript where he has demanded the prescribed fee in advance and its payment has been refused. Dunn v. Clerk's Office, 176 N. C. 50, 96 S. E. 738.

Right of Clerk of Superior Court. — The clerk had the right, even under the common law, as he has under the statute, to demand his fees in advance. West v. Reynolds, 94 N. C. 333; Clerk v. Wagoner, 26 N. C. 131; Andrews v. Whisnant, 83 N. C. 446; Long v. Walker, 105 N. C. 90, 97, 10 S. E. 858; Martin v. Chesteen, 75 N. C. 96; Ballard v. Gay, 108 N. C. 544, 545, 13 S. E. 207.

Same—In Criminal Actions.—In criminal actions, the clerk of the superior court cannot require that the costs of transcript upon appeal shall be paid in advance, although the defendant did not appeal in forma pauperis, and a certiorari will issue directing the clerk to send up the transcript which he holds for such prepayemnt. State v. Nash, 109 N. C. 822, 13 S. E. 733.

Same—Section 1-305.—This section and section 1-305 providing that clerk shall issue execution on all judgments rendered in their respective courts, within six weeks of the rendition thereof, or be amerced in the sum of one hundred dollars, must be construed together, it follows that clerks of the superior court will not incur the penalty prescribed in section 1-305 unless the plaintiff pays or tenders him his fees for that service. Bank v. Bobbitt, 111 N. C. 194, 16 S. E. 169.

Register May Refuse to Function.—The register has the right to refuse to treat a mortgage as delivered to him for registration until his fees in that respect had been paid. Cunninggim v. Peterson, 109 N. C. 33, 38, 13 S. E. 714.

Legislative Power.—The Legislature may reduce or increase the salaries of such officers as are not protected by the constitution, during their term of office. Cotten v. Ellis, 52 N. C. 545.

Taxation of Salary.—But a State cannot tax the salary of a state officer whose office is created by the Constitution. Purnell v. Page, 133 N. C. 125, 45 S. E. 534. And this applies to the salaries of judges. State Const. Art. IV, § 18, and notes thereto.

Improperly Collected Fee Subject to Recovery.—Where a person is compelled to pay a public officer fees which he had no right to claim, in order to induce him to do his duty such fees may be recovered back. Robinson v. Ezzell, 72 N. C. 231.

§ 138-3. Compensation limited to that fixed by law.—No officer or employee of the state shall receive any compensation other than the salaries fixed by law, except as provided by way of fees or by special appropriation or from any departmental fund. (1907, c. 830, s. 1; 1907, c. 994, s. 1; 1925, c. 128, s. 1; C. S. 3850.)

Chapter 139. Soil Conservation Districts.

§ 139-1. Title of chapter.—This chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

§ 139-2. Legislative determinations, and declaration of policy.—It is hereby declared, as a matter of legislative determination—

A. The Condition.—The farm, forest and grazing lands of the state of North Carolina are among the basic assets of the state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the topsoil is being blown and washed out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The Consequences.—The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts

over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, drainage developments, farming, and grazing.

C. The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments; manurial materials, and fertilizers for the correction of soil deficiencies and/or to promote increased growth of soil-protecting crops; retardation of run-off by increasing the absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy.—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. (1937, c. 393, s. 2.)

§ 139-3. Definitions. — Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

(3) "Committee" or "state soil conservation committee" means the agency created in § 139-4.

(4) "Petition" means a petition filed under the provisions of subsection A of § 139-5 for the creation of a district.

(5) "Nominating petition" means a petition filed under the provisions of § 139-6 to nominate candidates for the office of supervisor of a soil conservation district.

(6) "State" means the state of North Carolina.

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state.

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall have contracted to purchase any lands lying within a district organized under the provisions of this chapter.

(11) "A qualified voter" includes any person qualified to vote in elections by the people under the constitution of this state.

(12) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. (1937, c. 393, s. 3.)

§ 139-4. State soil conservation committee. —A. There is hereby established to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the state soil conservation committee. The following shall serve, ex-officio, as members of the committee: The director of the state agricultural extension service, the director of the state agricultural experiment station, and the state forester. The committee may invite the secretary of agriculture of the United States of America to appoint one person who is a resident of North Carolina to serve with the above-mentioned members as a member of the committee. The committee in cooperation with the North Carolina State College of Agriculture and Engineering in the state shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

B. The state soil conservation committee may employ an administrative officer and such techni-

cal experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the state government, and shall be furnished with the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall designate its chairman, and may, from time to time, change such designation. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority of the committee in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. (1937, c. 393, s. 4.)

§ 139-5. Creation of soil conservation districts. —A. Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the state soil conservation committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any such petitions.

B. Within thirty days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion of the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography or the area considered and of the state and

composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in § 139-2. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of ....., ... and ....." and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of ..... and ....." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of land lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in § 139-2: Provided, however, that the committee shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act, with the three supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointment evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of

the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

G. After six months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by two-thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5.)

§ 139-6. Election of three supervisors for each district. — Within thirty days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petitions shall be accepted by the committee unless it shall be subscribed by twenty-five or more qualified voters of such district. Qualified voters may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. All qualified voters residing within the district shall be eligible to vote in such election. The three candidates who shall receive the largest number, respectively, of the votes cast in such election shall be elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof. (1937, c. 393, s. 6.)

§ 139-7. Appointment, qualifications and tenure of supervisors.—The governing body of the district shall consist of five supervisors, elected or appointed as provided hereinabove. The two supervisors appointed by the committee shall be persons who are by training and experience quali-

fied to perform the services which will be required of them in the performance of their duties hereunder.

The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three years, except that the supervisors who are first appointed shall be designated to serve for terms of one and two years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, shall be made in the manner in which the retiring supervisors shall, respectively, have been selected. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. Each supervisor shall receive as compensation for his services the sum of three dollars ($3.00) per diem for each meeting of the supervisors, not exceeding four meetings per year, and shall also be entitled to expenses, including traveling expenses necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the state committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. (1937, c. 393, s. 7; 1943, c. 481.)

Editor's Note.—Prior to the 1943 amendment the supervisors received no compensation for their services.

§ 139-8. Powers of districts and supervisors.—A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this chapter:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing vegetation, changes in use of land, and the measures listed in subsection C of § 139-2, on lands owned or controlled by this state or any of its agencies, with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interest in such lands.

(2) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.

(4) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(7) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the

United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

(9) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(10) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. (1937, c. 393, s. 8; 1939, c. 341.)

Editor's Note.—The 1939 amendment omitted an exception clause formerly contained in paragraph (7) relating to obtaining forest tree seedlings from the state forest nursery.

§ 139-9. Adoption of land-use regulations.—The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such ferendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two-thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions, requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

2. Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.

3. Specifications of cropping programs and tillage practices to be observed.

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 139-2.

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within

the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ 139-10. Enforcement of land-use regulations.—The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of § 139-9 are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ 139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors.—Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of § 139-9 are not being observed on particular lands, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgment, when filed in accordance with the provisions of § 1-234, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ 139-12. Co-operation between districts.—The supervisors of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. (1937, c. 393, s. 12.)

§ 139-13. Discontinuance of districts.—At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five occupiers of land lying within the boundaries of such districts may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commit-

tee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in § 139-2: Provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificates of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of § 139-11, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this chapter, more often than once in five years. (1937, c. 393, s. 13.)

Chapter 140. State Art and Symphony Societies.

Art. 1. State Art Society.

Art. 2. State Symphony Society.

Art. 1. State Art Society.

§ 140-1. Directors for North Carolina Art Society.—The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of sixteen members, of whom the Governor of the State, the Superintendent of Public Instruction, the Attorney General, and the chairman of the art committee of the North Carolina Federation of Women's Clubs shall be ex-officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by the members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. Of the four directors first named by the Governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1929, c. 314, ss. 1, 2.)

§ 140-2. Adoption of by-laws; amendments.—The said board of directors, when organized un-

der the terms of this article, shall have authority to adopt the by-laws for the society, and said by-laws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of directors at two consecutive regular meetings. (1929, c. 314, s. 3.)

§ 140-3. Board of Public Buildings and Grounds authorized to provide space for art exhibits.—The Board of Public Buildings and Grounds is authorized and empowered to set apart, for the exhibition of works of art owned, donated or loaned to the North Carolina State Art Society, Incorporated, any space in any of the public buildings in the City of Raleigh which may be so used without interference with the conduct of the business of the State, and it shall be the duty of the custodians of such buildings to care for, safeguard and protect such exhibits and works of art. (1929, c. 314, s. 4.)

§ 140-4. Annual audit by State Auditor. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina State Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1929, c. 314, s. 5.)

§ 140-5. Allocations from contingency and emergency fund; expenditures.—The governor and council of state may, in their discretion, allocate from the contingency and emergency fund, from time to time, such amounts, not exceeding two thousand dollars ($2,000.00) per annum, as may be deemed essential to supplement the revenues and income of the North Carolina State Art Society, Incorporated, in paying the necessary administrative expenses of the same. The said allocations shall be expended only upon budgets submitted to the budget bureau and all expenditures thereof shall be subject to the provisions of §§ 143-1 to 143-47. (1943, c. 752.)

Art. 2. State Symphony Society.

§ 140-6. Directors for North Carolina Symphony Society.—The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of directors consisting of sixteen members, of which the governor of the state and the superintendent of public instruction shall be ex officio members, and four other members shall be named by the governor. The remaining ten directors shall be chosen by the members of the North Carolina Symphony Society, Incorporated, in such manner and at such times as that body shall determine. Of the four members first named by the governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1943, c. 755, ss. 1, 2.)

§ 140-7. Adoption of by-laws; amendments.—The said board of directors, when organized under the terms of this article, shall have authority to adopt by-laws for the society and said by-laws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of directors. (1943, c. 755, s. 3.)

§ 140-8. Annual audit by state auditor. — It shall be the duty of the state auditor to make an annual audit of the accounts of the North Carolina Symphony Society, Incorporated, and make a report thereof to the general assembly at each of its regular sessions, and the said society shall be under the patronage and the control of the state. (1943, c. 755, s. 4.)

§ 140-9. Allocations from contingency and emergency fund; expenditures. — The Governor and council of state are hereby authorized and empowered to allot a sum not exceeding two thousand dollars ($2,000.00) a year from the contingency and emergency fund to aid in the carrying on of the activities of the said society. All expenditures made by the said society shall be subject to the provisions of §§ 143-1 to 143-34. (1943, c. 755, s. 5.)

Chapter 141. State Boundaries.

§ 141-1. Governor to cause boundaries to be established and protected. — The governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the state of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to rerun and remark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this state and any of the said states.

The governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this state and any other state, to institute and prosecute in the name of the state of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the attorney-general or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings. (Rev., s. 5315; Code, s. 2289; 1889, c. 475, s. 1; 1881, c. 347, s. 1; 1909, c. 51, s. 1; C. S. 7396.)

State Boundaries — Line Between North Carolina and Tennessee.—Under the acts of 1821 of the states of North Carolina and Tennessee confirming the boundary line between the two states "as run and marked" by the joint com-

mission, when it is clearly shown where the line between two known points but a few miles apart was run and marked by the commission, such line must be accepted by the courts, in a suit between private persons, as the true and ancient boundary, even though it now appears that a different line between such points might more accurately conform to a general call in the act of cession for "the extreme height" of a certain mountain for a distance of 100 miles. Stevenson v. Fein, 116 Fed. 147.

§ 141-2. Payment of expenses of establishing boundaries.—When the line has been rerun and remarked as above provided between this state and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the governor is authorized to issue his warrant upon the state treasurer for such portion of the expenses as shall fall to the share of this state. (Rev., s. 5316; Code, s. 2290; 1889, c. 475, s. 2; 1881, c. 347, s. 2; C. S. 7397.)

§ 141-3. Appointment of arbitrators. — If any disagreement shall arise between the commissioners, the governor of this state is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary.. (Rev., s. 5317; Code, s. 2291; 1889, c. 475, s. 3; 1881, c. 347, s. 3; C. S. 7398.)

§ 141-4. Disagreement of arbitrators reported to general assembly.—In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the governor to the next general assembly for their action. (Rev., s. 5318; Code, s. 2292; 1889, c. 475, s. 4; 1881, c. 347, s. 4; C. S. 7399.)

§ 141-5. Approval of survey.—When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the governor, who shall lay the same before the council of state; and when the governor and the council of state shall have approved the same the governor shall issue his proclamation, declaring said lines to be the true boundary line or lines, and the same shall be the true boundary line or lines between this and the states above referred to. (Rev., s. 5319; Code, s. 2293; 1889, c. 475, s. 5; 1881, c. 347, s. 5; C. S. 7400.)

Chapter 142. State Debt.

Art. 1. General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; minimum amount.—All bonds or certificates of debt of the state, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the governor, and countersigned by the state treasurer, and sealed with the great seal of the state, and shall be made payable to bearer unless registered as hereinafter provided; and the principal shall be made payable by the state at a day named in the bond or certificate. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable either at a bank in the city of New York to be designated by the state treasurer, or at the office of the state treasurer in Raleigh, as may be designated by the treasurer, or shall be made payable at the option of the holder, either at such bank in New York or at the office of the state treasurer: Provided, that no original bond or certificate of debt of the state shall be sold for a sum less than par value; nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the state treasury. (Rev., s. 5020; Code, s. 3563; R. C., c. 90, s. 3; 1848, c. 89, s. 22; 1852, c. 9; 1852, c. 10, s 10; Ex. Sess. 1921, c. 66, ss. 1, 2; C. S. 7401.)

Editor's Note.—By amendment, Ex. Sess. 1921, c. 66, ss. 1, 2, the provision for all bonds being made payable to bearer unless registered replaced a provision that they should be payable to the purchaser or to bearer. The provision in regard to not attaching registered interest coupons, and the provision for optional place of payment was added at the same time. The provision for no bonds below par replaced a provision for no bonds below one thousand dollars.

Cited in Galloway v. Jenkins, 53 N. C. 147, 174.

§ 142-2. Title of act and year of enactment recited in bonds.—In every bond or certificate of debt issued by the state, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the chapter, and the year of the legislative session. (Rev., s. 5023; Code, s. 3566, R. C., c. 90, s. 6; 1850, c. 90, s. 6; C. S. 7402.)

§ 142-3. Record of bonds kept by state treasurer.—The state treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the state, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (Rev., s. 5021; Code, s 3564; R. C., c. 90, s. 4; 1852, c. 10, s. 2; C. S. 7403.)

§ 142-4. Books for registration and transfer.—The state treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the state heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the state treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (Rev., s. 5019; Code, s. 3562; R. C., c. 90, s. 2; 1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11; Ex. Sess. 1921, c. 66, s. 3; C. S. 7404.)

Editor's Note.—Prior to the amendment of this section, Ex. Sess. 1921, ch. 66, s. 3, it provided for transfer by delivery, of bonds payable to bearer, but those payable to holder by name alone were transferred by delivery to the state treasury for cancellation, where new bonds were issued.

§ 142-5. Registration as to principal.—Upon the presentation at the office of the state treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the state, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the state treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation to the state treasurer with a written assignment acknowledged or approved in a form satisfactory to the treasurer. The name of the registered assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (Rev., s. 5025; Code, s. 3568; 1883, c. 25; 1887, c. 287; Ex. Sess., 1921, c. 66, s. 4; C. S. 7405.)

Editor's Note.—Prior to the amendment Ex. Sess. 1921, ch. 66, sec. 4, registered bonds were issued in exchange for coupon bonds, and coupon bonds were issued in exchange for registered bonds on application. The denomination of such bonds to be issued was also specified and the time of maturity and rate of interest was to be the same as on the bond surrendered.

§ 142-6. Registration as to principal and interest.—If, upon the registration of any such bond or certificate, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond has been converted into a fully registered bond, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the state treasurer to pay such interest in funds current at the state capital, which request shall be entered in the said register. (Rev., s. 5026; Code, s. 3569; 1856, c. 16; 1883, c. 25, s. 2; 1887, c. 287, s. 2; Ex. Sess. 1921, c. 66, s. 5; C. S. 7406.)

Editor's Note.—Prior to the amendment Ex. Sess. 1921, ch. 65, sec. 5, this section provided for registration of bonds, and the admission in evidence of the registry in case the bonds were lost, also a provision for signing and sealing registered bonds, and exemption for them from taxation. For registration of bonds now, see section 142-4.

§ 142-7. No charge for registration. — There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (Rev., s. 5027; 1887, c. 287, ss. 4, 5; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49; C. S. 7407.)

Editor's Note.—Prior to the amendment, Ex. Sess. 1921, ch. 66, sec. 6, a fee of two dollars was charged for exchange of bonds (which was for registration). All bonds surrendered were destroyed by the treasurer in the presence of the governor and attorney-general. By the amendment of 1921 a fee of twenty-five cents was charged for each registration or transfer. By the Public Laws 1925, ch. 49, it was provided that no fees be charged.

§ 142-8. Application of sections 142-1 to 142-9. —Sections 142-1 to 142-9, both inclusive, as amended by chapter 66 of the public laws of the extra session of 1921, shall be applicable to all bonds or certificates of the state heretofore issued and now outstanding, and to all bonds or certificates of the state that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Rev., s. 5028; Code, s. 3570; 1887, c. 287, s. 3; Ex. Sess. 1921, c. 66, s. 7; C. S. 7408.)

Editor's Note.—Prior to the amendment Ex. Sess. 1921, ch. 66, sec. 7, this section provided for negotiation of bonds by surrender, cancellation, and the issuance of a new bond.

§ 142-9. Duties performed by other officers.— If the council of state shall at any time find that either the governor or the state treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the lieutenant-governor may sign the same in lieu of the governor, and they may be signed in lieu of the treasurer by any member of the council of state designated by it. (Rev., s. 5024; Code, s. 3567; 1864-5, c. 24; Ex. Sess. 1921, c. 66, s. 8; C. S. 7409.)

Editor's Note.—Prior to the amendment by Ex. Sess. 1921, ch. 66, sec. 8, this section provided for a registration and transfer by the chief clerk in case the treasurer was absent.

§ 142-10. Chief clerk may issue when Treasurer unable to act.—Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notes of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notes shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

§ 142-11. When bonds deemed duly executed.— State bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

§ 142-12. State bonds exempt from taxation.— The original bonds or certificates of debt of the state, which have been issued since the first day of January, one thousand eight hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation. (Rev., s. 5022; Code, s. 3565; R. C., c. 90, s. 5; 1852, c. 10, s. 4; C. S. 7410.)

§ 142-13. List of surrendered bonds kept; bonds and coupons destroyed.—The treasurer shall provide a substantially bound book for the purpose, in which he shall make a correct descriptive list of all bonds of the state surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds, being ascertained to be present, shall be consumed by fire in the presence of the governor, the treasurer, the auditor, the attorney general, the secretary of state and superintendent of public instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed. The treasurer shall also provide a certificate setting forth the amount and kind of coupons which have been paid in the past year or biennium, which said coupons shall be consumed by fire in the same way and manner as is provided for the cremation of bonds referred to herein. (Rev., s. 5035; Code, s. 3578; 1879, c. 98, s. 8; 1941, c. 28; C. S. 7415.)

Editor's Note.—The 1941 amendment substituted "descriptive" for "description" in line three, omitted a provision that the list contain the names of the persons surrendering the bonds, and added the provision relating to coupons.

§ 142-14. Issuance of temporary bonds.—Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars, and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and ex-

ecution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the treasurer or such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

§ 142-15. Reimbursement of treasurer for interest. — Whenever it shall become necessary for the state treasurer to borrow money to provide the maintenance fund for any state institution, the said treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any state institution, unless said laws shall specifically state otherwise. (1923, c. 210; C. S. 7466(a).)

Art. 2. Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

§ 142-16. Governor and Council of State may borrow on note.—The Governor and Council of the State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

Editor's Note.—Section four of the act from which this section was taken repeals a prior law which was similar to this section.

Public Laws 1931, c. 28, authorized the State Treasurer by and with the consent of the Governor and Council of State to borrow money on short term notes for paying obligation incurred under this section.

Public Laws 1941, c. 81, provided for the issuance of bonds to reimburse state funds for emergency advances authorized under this section.

§ 142-17. Recital of facts entered on minutes; directions to treasurer; limit of amount.—The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand ($500,000) dollars in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in one thousand nine hundred and twenty-nine and not exceeding five hundred thousand ($500,000) dollars in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five per cent per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, County and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

§ 142-18. Report to General Assembly. — At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the Governor and Council of State in borrowing money under this article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

§ 142-19. Power given to director of budget to authorize State treasurer to borrow money.— The director of the budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

Editor's Note.—Public Laws of 1935, chapter 129, contains a section similar to the above with reference to borrowing to meet the appropriation for each biennium for the years 1935 and 1937.

Art. 3. Refunding Bonds.

§ 142-20. Title of article. — This article shall be known and may be cited as the "State Refunding Bond Act." (1935, c. 445, s. 1.)

§ 142-21. Refunding bonds authorized for state. —The state treasurer is hereby authorized, by and with the consent of the governor and council of State, to issue at one time or from time to time bonds of the State for the purpose of refunding any or all bonds of the State then outstanding, but no such refunding bonds shall be issued except when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded. (1935, c. 445, s. 2.)

§ 142-22. Date and rate of interest; maturity.—Such refunding bonds shall bear such date or dates and such rate or rates of interest, not exceeding six per cent per annum, payable semi-annually, and shall mature at such time or times, not more than forty years from date, as may be fixed by the governor and council of state. (1935, c. 445, s. 3.)

§ 142-23. Execution; interest coupons; registration; form and denomination.—Such refunding bonds shall be signed by the governor and the state treasurer, and sealed with the great seal of the State, and shall carry interest coupons which shall bear the signature of the state treasurer, or a facsimile thereof, and such bonds shall be subject to registration as is now or may hereafter be provided by law for state bonds, and the form and denomination thereof shall be such as the state treasurer may determine in conformity with this article. (1935, c. 445, s. 4.)

§ 142-24. Sale of bonds.—Subject to determination by the governor and council of state as to the manner in which such bonds shall be offered for sale, whether by publishing notices in certain newspapers and financial journals or by mailing notices or by inviting bids by correspondence or otherwise, the state treasurer is authorized to sell such bonds at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest. (1935, c. 445, s. 5.)

§ 142-25. Proceeds directed to separate fund; use limited.—The proceeds of such bonds shall be placed by the state treasurer in a separate fund and used solely for the purpose specified in § 142-21. (1935, c. 445, s. 6.)

§ 142-26. State's credit and taxing power pledged.—The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1935, c. 445, s. 7.)

§ 142-27. Coupons receivable for debts due state.—The coupons of said bonds after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1935, c. 445, s. 8.)

§ 142-28. Exemption from taxation. — All of such bonds and coupons shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on such bonds shall not be subject to taxation as for income, nor shall such bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1935, c. 445, s. 9.)

§ 142-29. Investment in bonds made lawful for fiduciaries.—It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any moneys in their hands in such bonds. (1935, c. 445, s. 10.)

Art. 4. Sinking Fund Commission.

§ 142-30. Title of article.—This article shall be known as "The Sinking Fund Commission Act." (1925, c. 62, s. 1.)

§ 142-31. Creation; duties. — A State Sinking Fund Commission is hereby created, the members of which shall be the Governor, State Treasurer and Auditor, who shall serve without additional compensation. It shall be the duty of the commission to see that the provisions of all sinking fund laws are complied with and to provide for the custody, investment and application of all sinking funds. The commission and its members may call upon the Attorney-General for legal advice as to their duties, powers and responsibilities hereunder. (1925, c. 62, s. 2.)

§ 142-32. To adopt rules; organization. — The commission shall adopt rules for its organization and government and the conduct of its affairs. Its chairman shall be the Governor and its secretary the Auditor. All clerks and employees in the office of the Governor, Auditor and Treasurer may be called upon to assist the commission. (1925, c. 62, s. 3.)

§ 142-33. Treasurer of commission; liability.—The State Treasurer shall be ex officio treasurer of the commission and the custodian of the sinking fund and the investments thereof. He and the sureties upon his official bond as State Treasurer shall be liable for any breach of faithful performance of his duties under this article as well as his duties as State Treasurer, and his official bond shall be made to comply with this requirement. (1925, c. 62, s. 4.)

§ 142-34. Investment of sinking funds. — Moneys in the sinking funds herein shall not be loaned to any department of the State, but shall be invested by the commission in:

(a) Bonds of the United States or bonds or securities fully guaranteed both as to principal and interest by the United States.

(b) Bonds or notes of the State of North Carolina, and in the obligations of any quasi-public corporation in which the State of North Carolina owns not less than fifty-one per cent of its capital stock.

(c) Bonds of any other state whose full faith and credit are pledged to the payment of the principal and interest thereof.

(d) Bonds of any county in North Carolina, any city or town in North Carolina and any school district in North Carolina, provided such bonds are general obligations of the subdivision or municipality issuing the same and provided that there is no limitation of the rate of taxation for the payment of principal and interest of the bonds. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82; 1941, c. 17, s. 1.)

Cross Reference.—As to investment of bonds guaranteed by the United States, see § 53-44.

Editor's Note.—The Act of 1931 amended this section by striking out all references to population.

The amendment of 1935 added the last clause to subsection (b). The 1937 amendment added subsection (e) which was deleted from the General Statutes as obsolete. The 1941 amendment made subsection (a) applicable to securities guaranteed by the United States.

§ 142-35. Purchase of securities.—No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. No securities shall be pur-

chased except bonds of the United States, or bonds or securities fully guaranteed both as to principal and interest by the United States, or bonds or notes of the state of North Carolina, unless the vendor shall deliver with the securities an opinion of an attorney at law, believed by the commission to be competent and to be recognized by investment dealers as an authority upon the law of public securities, to the effect that the securities purchased are valid and binding obligations of the issuing governmental agency or unit, unless the commission shall be satisfied that such opinion can be readily obtained when required, it being the intention of this requirement to assure the commission that such securities are valid and that they will not be unsalable by the commission because of doubts as to the validity thereof. The commission is empowered to appoint one or more of its members for the purpose of making purchases and sales of securities. (1925, c. 62, s. 6; 1941, c. 17.)

Editor's Note.—The 1941 amendment rewrote this section to appear as set out above.

§ 142-36. Interest of securities held as part of sinking fund.—The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. Bonds and notes of the State of North Carolina purchased for any sinking fund shall not be canceled before maturity, but shall be kept alive, and the interest and principal thereof shall be paid into the sinking fund for which the same are held. (1925, c. 62, s. 7.)

§ 142-37. Registration of securities; custody thereof.—Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The State of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the State Treasurer, but the treasurer shall not make such release unless and until the securities to be so released shall have been sold by the commission or until the commission shall have ordered such release. The treasurer shall rent a safety deposit box or boxes in some responsible bank in Raleigh in which he may keep all securities purchased for sinking funds and in which it shall be his duty to keep all such securities not registered as to the principal thereof. (1925, c. 62, s. 8.)

§ 142-38. Expenses of commission.—The necessary expense of the commission for the rental of a safety deposit box, publication of advertisements, postage, insurance upon securities in transit, etc., not exceeding one-twentieth of one per cent of the amount in all sinking funds at the end of any fiscal year, shall be a charge upon the general fund. (1925, c. 62, s. 9.)

§ 142-39. Report of commission. — The commission shall make a report in writing to the General Assembly not later than the tenth day of each regular and extraordinary session thereof, stating the nature and amount of all receipts and disbursements of each sinking fund since the last preceding report, and the amount contained in each fund, and giving an itemized statement of all investments of each fund as to name of security, purpose of issuance, date of maturity and interest rate, which report shall be spread upon the journals of the Senate and House of Representatives. (1925, c. 62, s. 10.)

§ 142-40. Embezzlement by member of commission. — If any member of the commission shall embezzle or otherwise willfully and corruptly use or misapply any funds or securities in any sinking fund for any purpose other than that for which the same are held, such member shall be guilty of a felony, and shall be fined not more than ten thousand dollars, or imprisoned in the State's Prison not more than twenty years, or both, at the discretion of the court. (1925, c. 62, s. 11.)

§ 142-41. False entry by secretary or treasurer.—If the secretary or treasurer of the commission shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as such officer, or shall wittingly or falsely form, or cause to be formed, any statement of the condition of any sinking fund, or any statement required by this article to be made, with intent in any of said instances to defraud the State, or any person or persons, such secretary or treasurer, as the case may be, shall be guilty of a misdemeanor and fined at the discretion of the court not exceeding three thousand dollars, and imprisoned for not exceeding three years. (1925, c. 62, s. 12.)

§ 142-42. Interest of member in securities; removal.—If any member of the commission shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in any securities purchased or sold by the commission, or shall act as agent for any investor or dealer for any securities to be purchased or sold by the commission, or shall receive directly or indirectly any gift, emolument, reward, or promise of reward for his influence in recommending or procuring any such purchase or sale, he shall forthwith be removed from his position, and shall upon conviction be guilty of a misdemeanor, and fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned, in the discretion of the court. (1925, c. 62, s. 13.)

§ 142-43. Report of sufficiency of sinking fund.—When the funds or securities in any sinking fund shall be found by the sinking fund commission to be sufficient with interest accretions reasonably to be expected for the retirement at maturity of all bonds for which such sinking fund is held, and when the commission shall file a statement of such finding in the office of the Auditor and in the office of the State Treasurer, further payments into such sinking fund shall be suspended and shall not again be made unless such fund should thereafter become insufficient for any reason. (1925, c. 62, s. 18.)

Art. 5. Sinking Funds for Highway Bonds.

§ 142-44. Highway bonds; annual payments.—For the retirement of the principal of nineteen million five hundred thousand dollars highway serial bonds heretofore issued under chapter two Public Laws of one thousand nine hundred and twenty-one, Regular Session, a sinking fund is

created, into which fund the state treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of one hundred thousand dollars. (1923, c. 188, s. 2; 1925, c. 62, s. 15; C. S. 7472(s).)

Editor's Note.—The 1925 amendment substituted the words "fiscal year ending June 30, 1924" for the word "year."

§ 142-45. Highway bonds not issued; annual payments.—For the retirement of the principal of bonds issued for highway purposes, chapter two, Public Laws of one thousand nine hundred and twenty-one, Regular Session, over and above the nineteen million five hundred thousand dollars heretofore issued, a sinking fund is hereby created into which fund the state treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of four hundred thousand dollars. (1923, c. 188, s. 3; 1925, c. 62, s. 16; C. S. 7472(t).)

Editor's Note.—The 1925 amendment substituted the words "fiscal year ending June 30, 1924" for the word "year."

§ 142-46. Source of funds.—All of the highway bond sinking fund payments to be made under §§ 142-44 and 142-45, aggregating five hundred thousand dollars ($500,000) annually, shall be made from the revenues collected under the provisions of said chapter two (2) public laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said chapter two (2) for the maintenance of the State Highway and Public Works Commission and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: Provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be entitled if no such amendment had been made. (1923, c. 188, s. 4; 1925, c. 45, s. 4; 1925, c. 133, s. 4; C. S. 7472(u).)

Art. 5A. Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

§ 142-47. Exchange of securities.—The state sinking fund commission is hereby authorized to exchange any bonds of the state which shall at any time be held as an investment of moneys in any sinking fund under its control for like principal amounts of bonds of the state which shall then be held as an investment of moneys in any other sinking fund under its control, and in each such exchange each such sinking fund shall be charged with the market value of the bonds received by it, plus the accrued interest thereon, and shall be credited with the market value of the bonds exchanged therefor, plus the accrued interest thereon. Any difference in the amounts of such charges and such credits shall be adjusted by making the appropriate transfer of moneys from one sinking fund to the other sinking fund. The market value of each bond so exchanged shall be determined by the commission, and such determination shall be based, as far as practicable, upon the current offering prices of bankers and dealers, taking into account the interest rates borne by the bonds and their maturities. (1943, c. 321, s. 1.)

§ 142-48. Investment of sinking funds.—The state sinking fund commission shall invest the moneys in the sinking funds created by sections 142-44 and 142-45 in highway bonds of the state unless the commission shall determine that it would be more practicable, at the time of such investment, to invest such moneys in other bonds of the state or in other securities eligible for such investment. (1943, c. 321, s. 2.)

§ 142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds.—If requested so to do by the governor and council of state, the state sinking fund commission may at any time cancel any highway bonds of the state which are held in the sinking fund created by section 142-44 and which are a part of the bonds for the payment of which said sinking fund was so created, and to cancel any highway bonds of the state which are held in the sinking fund created by section 142-45 and which are a part of the bonds for the payment of which said sinking fund was so created.

Upon the cancellation of any highway bonds of the state which are held in the sinking fund created by section 142-44, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from one hundred thousand dollars to one hundred and fifty thousand dollars. Upon the cancellation of any highway bonds of the state which are held in the sinking fund created by section 142-45, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from four hundred thousand dollars to six hundred thousand dollars. (1943, c. 321, ss. 3-5.)

Art. 6. Citations to Bond and Note Acts.

1. Bonds to fund bonds issued pursuant to any act of the General Assembly passed prior to May 20, 1861, exclusive of bonds issued for the construction of the North Carolina Railroad; bonds issued pursuant to 1865, c. 3; bonds issued pursuant to 1867, c. 56; bonds issued pursuant to an act ratified March 10, 1866, entitled "An Act to Provide for the Payment of the State Debt Contracted Before the War"; bonds issued pursuant to an act ratified August 10, 1868, entitled "An Act to Provide for Funding the Matured Interest on the Public Debt"; or any registered certificates belonging to the Board of Education pursuant to an act of the General Assembly of 1867. Consolidated Statutes, ss. 7411-7414, 7416-7432; 1879, c. 98, s. 1; 1901, c. 126; 1909, c. 399; 1913, c. 131; 1919, c. 314.

2. Bonds for the care of the insane, and to pay the deficit in the account of the State Hospital at Morganton. Consolidated Statutes, ss. 7433-7436; 1909, c. 510.

3. Bonds for payment of state bonds issued pursuant to 1903, c. 750 and 1905, c. 543, and to pay the holders of bonds of the issue upon which the South Dakota judgment was rendered. Consolidated Statutes, ss. 7440-7444; 1909, c. 718; 1911, c. 73.

4. Bonds for state building. Consolidated Statutes, ss. 7437-7439; 1911, c. 66.

5. Bonds to relieve the deficit of the state treasury and to improve the new state building. Consolidated Statutes, ss. 7448-7452; 1913, c. 102.

6. Bonds for central heating plant. Consolidated Statutes, ss. 7445-7447; 1913, c. 143.

7. Bonds for construction and improvement of Caswell Training School at Kinston. Consolidated Statutes, ss. 5905-5912; 1911, c. 89, ss. 9, 10, 11; 1917, c. 269.

8. Bonds for permanently enlarging the state's educational and charitable institutions. Consolidated Statutes, ss. 7459-7463; 1917, c. 154; Joint Resolution No. 40, 1917; 1919, c. 44; 1919, c. 314.

9. Bonds for payment of North Carolina railroad bonds. Consolidated Statutes, ss. 7453-7458; 1919, c. 1; 1919, c. 11.

10. Notes in anticipation of the sale of bonds for permanent enlargement of certain state institutions. Consolidated Statutes, ss. 7464-7466, 7467-7472; 1919, c. 328.

11. Bonds to pay the notes authorized by 1921, c. 43. Consolidated Statutes, ss. 7472(z)-7472(ii); 1921, c. 107.

12. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(a)-7472(i); 1921, c. 165; Ex. Sess. 1921, c. 82.

13. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1921, c. 147.

14. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. Consolidated Statutes, ss. 5688-5694; 1923, c. 136, ss. 278-284; 1925, c. 201.

15. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(j)-7472(q); 1923, cc. 162, 164; 1925, c. 192; 1927, c. 147; 1929, c. 295; 1935, c. 439; 1937, c. 296; 1937, c. 392; Ex. Sess. 1938, c. 1.

16. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1925. 1925, c. 112.

17. Notes for funding prison debt. 1925, c. 132.

18. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1927, c. 199.

19. Bonds for Industrial Farm Colony for Women. 1927, c. 219, ss. 14-24; 1931, c. 128.

20. Bonds to acquire and develop state prison farm. 1927, c. 152; 1931, c. 110.

21. Bonds for payment of notes and obligations issued pursuant to 1927, c. 49. 1931, c. 28.

22. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1931, and to place the fiscal operations of the state for the biennium 1931-1933 upon a budgetary basis. 1931, c. 371, s. 2.

23. Funding Bond Act of 1933. 1933, c. 330.

24. Bonds for N. C. State stadium. 1933, c. 291; 1935, c. 62.

25. Notes to pay appropriations for 1935 and 1937. 1935, c. 129.

26. Notes for the purchase, by the State Textbook Purchase and Rental Commission, of textbooks and supplies for the pupils of the public schools of the state. 1935, c. 422, s. 6.

27. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. 1935, c. 201, ss. 1-8.

28. Bonds for the purchase, by the State Textbook Commission, of textbooks and supplies for the pupils of the public schools of the State. 1937, c. 169, ss. 7, 8, 9, 10.

29. Bonds to reimburse for emergency advances. 1937, c. 193 (biennium 1937-1939).

30. Board of Health bonds for revenue producing undertakings. 1937, c. 324.

31. New State Office Building Bonds. 1937, c. 364.

32. Notes to pay appropriations for the biennium ending June 30, 1941. 1939, c. 77.

33. Validation of proceedings of the University of North Carolina relating to the issuance and payment of certain Revenue Bonds of the University authorized by 1935, c. 479, 1936, c. 2, and 1937, c. 323. 1939, c. 289.

34. North Carolina State College Athletic Stadium Loan Act. 1939, c. 399.

35. Bonds for the construction of an Eastern North Carolina Sanatorium for the treatment of Tuberculosis. 1939, c. 325, ss. 7, 8, 9; 1941, c. 86, ss. 2, 2A.

36. Bonds to reimburse the State Treasury for advances made therefrom for permanent improvements at certain state institutions and for purchasing books. 1939, c. 67.

37. Notes to pay appropriations for biennium ending June 30, 1943. 1941, c. 41.

38. Bonds to reimburse funds for emergency advances. 1941, c. 81.

39. Bonds for improvements at North Carolina College of Agriculture and Engineering. 1941, c. 94.

40. Bonds to refund the outstanding Athletic Stadium Bonds issued by the North Carolina State College of Agriculture and Engineering of the University of North Carolina, and bonds for the liquidation of the outstanding indebtedness of the athletic department of said institution. 1941, c. 169. See also c. 240.

41. Bonds or notes for the protection of the state's interest in the Atlantic and North Carolina Railroad. 1941, c. 170.

42. Bonds and notes for construction of a building and improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 240.

43. Notes to pay appropriations for biennium ending June 30, 1945. 1943, c. 320.

44. Bonds for loan to Altantic and North Carolina Railroad for rehabilitation of properties. 1943, c. 412.

45. Bonds for loan to Atlantic and North Carolina Railroad for refunding certain indebtedness. 1943, c. 443.

Cross Reference.—For list of highway bond acts, see chapter 136, Art. 8.

Chapter 143. State Departments, Institutions, and Commissions.

Art. 1. Executive Budget Act.

Art. 2. Division of Personnel under the Budget Bureau.

Art. 3. Division of Purchase and Contract.

Art. 4. World War Veterans Loan Administration.

Title I. "World War Veterans Loan Act of 1925."

Art. 1. Executive Budget Act.

§ 143-1. Scope and definitions. — This article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Budget Bureau and to be performed by it, but it shall mean when used otherwise any state agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any state funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the state, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1.)

§ 143-2. Purposes.—It is the purpose of this article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be Ex-officio Director of the Budget and shall be the responsible head of the Budget Bureau, which Bureau is a part of the Governor's office. The Governor shall on or before the first day of July next after his inauguration appoint a budget officer, who shall be known as the "Assistant to the Director," and such officer shall serve for a term of four years beginning on the first day of July next after the inauguration of each Governor, at a salary to be fixed by the Director, who makes the appointment. The purpose of this article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Budget Bureau shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise. (1925, c. 89, s. 2; 1929, c. 100, s. 2.)

Editor's Note.—As director of the budget, the Governor has large powers in supervising the expenditure of State funds and in determining what appropriations shall be made by the General Assembly. The idea that our governments, Federal, State and local, should be run in a business-like fashion is gaining prevalence and the budget system in government is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently. 4 N. C. Law Rev. 17.

§ 143-3. Examination of officers and agencies; disbursements.—The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited; to supervise generally the accounting and auditing systems thereof now in force, and to inaugurate such changes in respect thereto which may be necessary, in his opinion, to exhibit and to furnish complete and correct information as to its financial condition, including the budget accounts of such departments, bureaus or associations within the terms of this article. The cost of making all audits and effecting all necessary changes in the system of accounting shall be paid from the regular maintenance appropriation made by the General Assembly for such bureaus, departments, divisions, institutions, commissions, persons or agencies that may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; c. 337, s. 4.)

§ 143-4. Advisory Budget Commission. — The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, and two other persons to be appointed by the Governor, shall constitute the Advisory Budget Commission, whose duties shall be such as are hereinafter defined.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars per day for each day which they shall serve and their expenses. The

Advisory Budget Commission shall be called in conference in January and July of each year, upon ten days' notice by the Director or Assistant to the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

Vacancies on the Commission shall be filled by the Governor: Provided, any vacancy caused by the death, resignation, or other removal from office of any member of the Commission by virtue of his office as a member of the General Assembly shall be filled by the Governor upon the recommendation of the presiding officer of that branch of the General Assembly in which such member holds office. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295.)

Editor's Note.—The Act of 1931 added the last paragraph to this section.

§ 143-5. Appropriation Rules.—All moneys heretofore and hereafter appropriated shall be deemed and held to be within the terms of this article and subject to its provisions unless it shall be otherwise provided in the act appropriating the same; and no money shall be disbursed from the State Treasury except as herein provided. (1925, c. 89, s. 5; 1929, c. 100, s. 5.)

Cited in O'Neal v. Wake County, 196 N. C. 184, 189, 145 S. E. 28, 29.

§ 143-6. Information from departments and agencies asking state aid.—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Since it is not practicable to require the members of the Judicial system who preside over courts to attend and furnish such information, upon request of the Director, the Attorney-General shall furnish such information, data and estimates and expenditures as may be desired in reference to the Judicial Department of this State. (1925, c. 89, s. 6; 1929, c. 100, s. 6.)

§ 143-7. Itemized statements and forms.—The statements and estimates required under § 143-6 shall be itemized in accordance with the Budget Classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Budget Bureau. (1925, c. 89, s. 7; 1929, c. 100, s. 7.)

§ 143-8. Statements of Auditor as to legislative expenditures.—On or before the first day of September, biennially, in the even numbered years, the State Auditor shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the Budget Classification adopted by the Director and approved and certified by the presiding officer of each House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the Judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the Budget Classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Auditor shall transmit to the Director with these estimates an explanation of all increases or decreases. These estimates and accompanying explanations shall be included in the Budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8.)

§ 143-9. Information to be furnished upon request.—The departments, bureaus, divisions, officers, commissions, institutions, or other State agencies or undertakings of the State, upon request, shall furnish the Director, in such form and at such time as he may direct, any information desired by him in relation to their respective activities or fiscal affairs. The State Auditor shall also furnish the Director any special, periodic, or other financial statements as the Director may request. (1925, c. 89, s. 10; 1929, c. 100, s. 9.)

§ 143-10. Preparation of budget and public hearing. — The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the Budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State Government and the means of financing the same.

The Director, together with the Commission, shall provide for public hearings on any and all estimates to be included in the Budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. (1925, c. 89, s. 11; 1929, c. 100, s. 10.)

§ 143-11. Survey of departments.—On or before the fifteenth day of December, biennially in the even numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropria-

tions for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the Budget for the next biennial period, he shall prepare their report in the form of a proposed Budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed Budget based on his own conclusions and judgment and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views. The Budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the Classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the Budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The Budget shall clearly differentiate between General Fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the Budget with:

(1) A Budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June thirtieth.

(3) A statement of special funds.

(4) A statement showing the itemized estimates of the condition of the State Treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the Budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11.)

§ 143-12. Bills containing proposed appropriations. — The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

(a) A bill containing all proposed appropriations of the Budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."

(b) A bill containing the views of the Budget Bureau with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.

(c) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the Budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Budget Bureau, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the director and the commission shall not agree as to the appropriation, revenue and machinery bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14.)

§ 143-13. Printing copies of budget report and bills and rules for the introduction of the same. —The Director shall cause to be printed one thousand copies each of the Budget report,

the Budget Appropriation Bill, the Budget Revenue Bill, and the Budget Machinery Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Budget Appropriation Bill shall be introduced by the Chairman of the Committee on Appropriations in each House of the General Assembly, and the Budget Revenue Bill and the Budget Machinery Bill shall be introduced by the Chairmen of the Finance Committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the Budget report and the Budget Appropriation Bill and the Budget Revenue Bill and the Budget Machinery Bill to the Governor-elect, on or before the fifteenth day of December, and the said Budget report, Appropriation, Revenue and Machinery Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15.)

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.—The Appropriations Committees of the House of Representatives and the Senate and sub-committees thereof shall sit jointly in open sessions while considering the Budget and such consideration shall embrace the entire Budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the Budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, boards, commission, and agencies of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or sub-committees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or sub-committees thereof. The said joint committee or any sub-committee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be such as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16.)

§ 143-15. Reduction and increase of items by general assembly.—The provisions of this article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rule adopted by either branch of the General Assembly.

The General Assembly may reduce or strike out such item in the Budget Appropriation Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Budget Appropriation Bill shall have been enacted in whole or in part or rejected, unless the Governor shall submit and recommend an Emergency Appropriation Bill or Emergency Appropriation Bills, which may be amended in the manner set out herein, and such Emergency Appropriation Bill, or Bills, when enacted, shall continue in force only until the Budget Appropriation Bill shall become effective, unless otherwise provided by the General Assembly.

The General Assembly may also increase any appropriation set out in the Budget Appropriation Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the Budget Report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the Budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17.)

§ 143-16. Article governs all departmental, agency, etc., appropriations.—Every State department, bureau, division, officer, board, commission, institution, State agency, or undertaking, shall operate under an appropriation made in accordance with the provisions of this article; and no State department, bureau, division, officer, board, commission, institution or other State agency or undertaking shall expend any money, except in pursuance of such appropriation and the rules, requirements and regulations made pursuant to this article. (1925, c. 89, s. 17; 1929, c. 100, s. 18.)

§ 143-17. Requisition for allotment. — Before an appropriation to any spending agency shall become available, such agency shall submit to the Director, not less than twenty days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who shall be governed in his control of expenditures by said allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director in writing. (1925, c. 89, s. 18; 1929, c. 100, s. 19.)

§ 143-18. Unincumbered balances to revert to Treasury; capital appropriations excepted.—All unincumbered balances of maintenance appropriations shall revert to the State Treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of the biennial fiscal period; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. (1925, c. 18, s. 19; 1929, c. 100, s. 20.)

§ 143-19. Help to director.—The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this article; and shall fix the compensation of all persons employed under this article; which shall be paid by the State Treasurer upon the warrant of the State Auditor. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this article, shall be reported to the General Assembly by the Director, and all payments made under this article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Budget Bureau. (1925, c. 89, s. 20; 1929, c. 100, s. 21.)

§ 143-20. Examination accounts state departments.—The Director shall examine or cause to be examined annually before and/or after the close of each fiscal year, the accounts of the State Treasurer and the Auditor and shall examine or cause to be examined, the accounts and vouchers relating to all money received into and paid out of the State Treasury during the preceding fiscal year, and shall cause a complete audit to be made annually of the condition of the State Treasury and shall certify and report to the Budget Bureau such audits and the Budget Bureau, through the Governor, shall transmit such reports to the General Assembly at its next session. (1925, c. 89, s. 22; 1929, c. 100, s. 22.)

§ 143-21. Issuance of subpoenas.—The Director shall have and is hereby given full power and authority to issue the writ of subpœna for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director of the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for contempt in the discretion of the court and to be fined as witnesses summoned to attend the Superior Court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney-General under the direction of the Director. Any and all persons who shall be subpœnæd and required to appear before the Director or the Commission as witnesses concerning any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23.)

§ 143-22. Surveys, studies and examinations of departments and institutions.—The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and for the purpose of determining whether the proper system of modern accounting is had in such departments, institutions, commissions and agencies and to require and direct the installation of the same whenever, in his opinion, it is necessary and proper in order to acquire and to secure a perfect correlated and control system in the accounting of all departments, institutions, commissions, divisions, and State agencies including every department or agency handling or expending State funds, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this article. All auditing systems or uses prescribed, or to be prescribed hereunder, shall be administered by the Auditor. (1925, c. 89, s. 26; 1929, c. 100, s. 23.)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.—All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such

departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the Budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget. (1929, c. 100, s. 24.)

§ 143-24. Borrowing of money by State Treasurer.—The Director of the Budget, by and with the consent of the Governor and Council of State, shall have authority to authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. (1929, c. 100, s. 25.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.—All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Commissioner of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this act are to provide and insure that there shall be no overdraft or deficit in the General Fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this act as to prevent any such overdraft or deficit. (1929, c. 100, s. 26.)

§ 143-26. Director to have discretion as to manner of paying annual appropriations.—Unless otherwise provided, it shall be discretionary with the Director of the Budget whether any annual appropriation shall be paid in monthly, quarterly or semiannual installments or in a single payment. (Rev., s. 5372; 1897, c. 368; 1925, c 275, s. 9; 1929, c. 100, s. 27; C. S. 7683.)

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.—All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them, are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs of maintenance of such institutions, departments, and agencies. (1929, c. 100, s. 28.)

§ 143-28. All State agencies under provisions of this article.—It is the intent and purpose of this article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this article. Any power expressed in this article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this article shall be liberally construed. (1925, c. 89, s. 28; 1929, c. 100, s. 29.)

§ 143-29. Delegation of power by director.—Any power or duty herein conferred on the Governor as Director may be exercised and performed by such person or persons as may be designated or appointed by him from time to time in writing. (1925, c. 89, s. 29; 1929, c. 100, s. 30.)

§ 143-30. Budget of state institutions.—The several institutions of the State, boards, departments, commissions, agencies, persons or corporations, included with the terms hereof to which appropriations are made now or hereafter for permanent improvements or for maintenance, shall, before any of such appropriations, whether for permanent improvements or for maintenance, are available or paid to them or any one of them, budget their requirements and present the same to the Director of the Budget on or before the first day of June of each odd numbered year hereafter. There shall be a separate Budget presented for permanent improvements and for maintenance. Each of said Budgets shall contain the requirements of said institutions, boards, commissions, and agencies, persons and corporations, and undertakings, as hereinbefore defined, for the succeeding two years. Each institution, board, department, commission, agency, person or cor-

poration, in the preparation of such Budget, shall follow as nearly as may be the itemized recommendations of the Director of the Budget and Advisory Budget Commission and/or as amended by the General Assembly. The forms, except when modified and changed by authority of the Director of the Budget, shall be the forms used in presenting the requests. (1925, c. 230, s. 2; 1929, c. 100, s. 32.)

§ 143-31. Building and permanent improvement funds spent in accordance with budget.—All buildings and other permanent improvements, which shall be erected and/or constructed, shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the Budget requests of such institution, board, commission, agency, person, or corporation filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the Budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the Budget recommendations and/or as amended by the General Assembly for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was appropriated and budgeted, as herein required, and not in strict accordance with the terms of this article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the Auditor of the State not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the Auditor is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33.)

§ 143-32. Person expending an appropriation wrongfully. — Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney-General for the use of the State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in § 1-83, subsection 2. (1925, c. 230, s. 4; 1929, c. 100, s. 34.)

§ 143-33. Intent.—It is an intent and purpose of this article that all departments, institutions, boards, commissions, agencies, persons or corporations to which appropriations for permanent improvements and/or maintenance are made, shall submit to the Director of the Budget their requests for the payment of such appropriations in the form of a budget, following the recommendations made by the Director of the Budget and the Advisory Budget Commission and/or as amended by the General Assembly. (1925, c. 230, s. 5; 1929, c. 100, s. 35.)

§ 143-34. Penalties and punishment for violations. — A refusal to perform any of the requirements of this article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred and fifty ($250.00) dollars, to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney-General for the use of the State of North Carolina, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon thirty days' notice in writing to such offender. (1929, c. 100, s. 36.)

Art. 2. Division of Personnel under the Budget Bureau.

§ 143-35. Division established.—There is hereby established in the governor's office under the budget bureau a division of personnel, to be under the supervision of the assistant director of the budget, who shall, subject to the provisions of this article, be vested with the powers and authorities and charged with duties and obligations herein described: Provided, that no additional compensation shall be allowed said assistant director of the budget on account of the duties performed hereunder. (1931, c. 277, s. 1; 1933, c. 46, s. 1.)

Editor's Note.—Public Acts 1931, c. 277, s. 15, abolished the Salary and Wage Commission established under Public Laws 1925, c. 125.

Public Laws of 1933, c. 46, repealed the former section and inserted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

See 11 N. C. Law Rev. 250, for criticism of change made in this section in 1933.

§ 143-36. Survey of needs for personal service in all branches of state government.—The assistant director of the budget, together with the head of each and every department, bureau and/or commission of the state, shall make a survey and investigation of the needs for personal service in all state departments and bureaus and of the cost in value of the services rendered by all subordi-

nates and employees of such departments and bureaus, and from time to time publish the information so assembled. (1931, c. 277, s. 3; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-37. Classification of number of employees needed; nature of work; standard of salaries and wages; hours of labor, etc.—The assistant director of the budget shall, after making such survey and investigation and upon the information so assembled, together with the head of each and every department, bureau and/or commission, fix, determine and classify the necessary number of subordinates and employees in any and all departments and bureaus, the type and nature of work to be performed by such subordinates and employees, and/or positions to be filled by subordinates and employees in said departments and bureaus, and together with the head of each and every department, bureau and/or commission, and with the approval of the advisory budget commission fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and/or such intermediate salary rate or rates as may be deemed necessary and equitable, to be paid for all such services and positions and to all such subordinates and employees of said departments and bureaus. The assistant director of the budget, together with the head of each and every department, bureau and commission shall also fix, determine and establish the hours of labor in such department and/or bureau and make all such rules and regulations with respect to holidays, vacations or sick leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor as shall be approved as herein provided: Provided that the provisions of this article shall not apply to the maintenance or construction forces of the state highway and public works commission employed on an hourly basis of wages: Provided further, the provisions of this article shall not apply to the supreme court. (1931, c. 277, s. 4; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-38. Report of survey to governor and agency heads.—As such survey and investigation proceeds and is completed with respect to a particular department or bureau, the assistant director of the budget shall file a report with the governor and with the head of such department or bureau, setting out in such report the number of allowable subordinates and employees, the services to be performed, and/or the positions to be filled and the salaries or wages to be paid to each of the subordinates and employees in said department or bureau. (1931, c. 277, s. 5; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-39. Findings in such report standard as to personal service.—When said report with respect to any such department or bureau has been so completed and filed with the Governor and the head of such department or bureau, the findings in such report shall then become the fixed standard for the number of, the services to be performed, and/or the positions to be filled by, and the salaries or wages to be paid to, any and all subordinates and employees in the department or bureau to which said report relates, and it shall thereupon be the duty of the head of such department or bureau on the first day of the next month, beginning not less than thirty days subsequent to the reception of said report by him, to put the same into effect, and thereupon, with respect to such department or bureau, the number of employees, the services to be performed, and/or the positions to be filled, and the salaries and wages specified in said report, shall become the only allowable standard for, and with respect to such department or bureau. (1931, c. 277, s. 6.)

§ 143-40. Changes in need for personal service made by assistant director of the budget. — It shall be the duty of the assistant director of the budget to keep informed from time to time of changes in the needs for personal services in the several state departments and bureaus and to reconsider the report hereinbefore provided for, and with the approval of the advisory budget commission to make changes therein in accordance with his findings; and upon report by him to the head of any department or bureau, setting out such findings and changes, it shall be the duty of the head thereof to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the receipt by him of such report. (1931, c. 277, s. 7; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-41. Employment of persons by certification of name to assistant director of the budget and by his investigation.—All persons employed in any bureau, department or commission on the first day of July, one thousand nine hundred and thirty-one, shall be deemed qualified. From and after the first day of July, one thousand nine hundred and thirty-one, if the head of any department or bureau shall desire to fill any vacancy or to employ other and further subordinates or employees, such head may certify the name or names of any applicant or applicants to the assistant director of the budget, who shall immediately inquire into the qualifications of such person and if such person is found duly qualified and the assistant director of the budget shall deem it necessary that the employment be made, the said assistant director of the budget shall fix the salary and approve of the employment. (1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-42. Applications for employment to be filed with assistant director of the budget; list of qualified applicants.—The assistant director of the budget may adopt rules and regulations to the end that applicants for positions in the various departments, bureaus, and/or commissions may file with the assistant director of the budget such application for employment and the assistant di-

rector of the budget shall examine into the qualifications of such person and may certify for and keep a list of such persons so qualified, which said list shall be open to the inspection of the heads of the various departments, bureaus and commissions and such heads may from time to time fill the positions from such list. (1931, c. 277, s. 9; 1933, c. 46, ss. 3, 5.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-43. Copies of personnel reports to state auditor. — The assistant director of the budget shall transmit to the state auditor copies of his report or reports with respect to the various departments and bureaus, and the salaries and wages for such subordinates and employees in the several departments and bureaus shall be paid out of the appropriations for such purpose and in accordance with the schedule set out in said report or reports. (1931, c. 277, s. 10; 1933; c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-44. Disputes between assistant director of the budget and agency heads settled by advisory budget commission. — In the event there shall be disagreement between the assistant director of the budget and the head of any department or bureau over the ruling of the assistant director of the budget upon any question involving such department or bureau or any of its subordinates or employees, the matters in dispute shall be heard by the advisory budget commission and the action of said commission thereon shall be final. (1931, c. 277, s. 11; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-45. Payrolls submitted to assistant director of the budget; approval of payment of vouchers.—All payrolls of all departments, institutions, and agencies of the state government shall prior to the issuance of vouchers in payment therefor be submitted in triplicate to the assistant director of the budget, who shall check the same against the budget allotments to such departments, institutions and agencies for such purposes, and if found to be within said budget allotments, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the state auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the assistant director of the budget. (1931, c. 277, s. 12; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 143-46. Salaries derived exclusively from donations.—The Director of the Budget or the Assistant Director of the Budget is hereby prohibited from reducing by any amount or sum whatsoever salaries or travel expenses of those employees of the State of North Carolina whose salaries and travel expenses are entirely derived from donations to the State of North Carolina and which can not be used by the State for any other purpose. (1933, c. 292.)

§ 143-47. Quorum of Advisory Budget Commission.—In all matters where action on the part of the Advisory Budget Commission is required by this article, three members of said Commission shall constitute a quorum for performing the duties or acts required of said Commission. (1931, c. 277, s. 14.)

Art. 3. Division of Purchase and Contract.

§ 143-48. Creation of Division of Purchase and Contract; Director. — There is hereby created in the Governor's office a division to be known as the Division of Purchase and Contract, which division shall be under the supervision and control, subject to provisions of this article, of a Director of Purchase and Contract. (1931, c. 261, s. 1; c. 396.)

§ 143-49. Powers and duties of Director.—The Director of Purchase and Contract provided for in this article shall have power and authority, and it shall be his duty, subject to the provisions of this article:

(a) To canvass all sources of supply, and to contract for the purchase of all supplies, materials and equipment required by the State Government, or any of its departments, institutions or agencies under competitive bidding in the manner hereinafter provided for.

(b) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State Government for any of its departments, institutions or agencies.

(c) To purchase or contract for all telephones, telegraph, electric light power, postal and any and all other contractual services and needs of the State Government, or any of its departments, institutions, or agencies; or in lieu of such purchase or contract to authorize any department, institution or agency to purchase or contract for any or all such services.

(d) To rent or lease all grounds, buildings, offices, or other space required by any department, institution, or agency of the State Government: Provided, this shall not include temporary quarters for State Highway field forces or convict camps, or temporary places of storage for road materials.

(e) To have general supervision of all storerooms and stores operated by the State Government, or any of its departments, institutions or agencies; to provide for transfer and/or exchange to or between all State Departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to maintain inventories of all fixed property and of all moveable equipment, supplies and materials belonging to the State Government, or any of its departments, institutions or agencies.

(f) To make provision for and to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same. (1931, c. 261, s. 2.)

§ 143-50. Certain contractual powers exercised by other departments transferred to Director.—All rights, powers, duties and authority relating

to State printing, or to the purchase of supplies, materials and equipment now imposed upon and exercised by any State department, institution, or agency under the several statutes relating thereto, are hereby transferred to the Director of Purchase and Contract and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Purchase and Contract under the provisions of this article. (1931, c. 261, s. 3.)

§ 143-51. Reports to Director required of all agencies as to needs.—It shall be the duty of all departments, institutions, or agencies of the State Government to furnish to the Director of Purchase and Contract when requested, and on blanks to be approved by him, tabulated estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Purchase and Contract. (1931, c. 261, s. 4.)

§ 143-52. Consolidation of estimates by director; bids; awarding of contract.—The director of purchase and contract shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all state departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of state-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the division of purchase and contract, with the approval of the advisory budget commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the director of purchase and contract to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall wherever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the director of purchase and contract with the approval of the advisory budget commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the faithful performance of any contract may be required of the successful bidder in the discretion of the director of purchase and contract. After the contracts have been awarded, the director of purchase and contract shall certify to the several departments, institutions and agencies of the state government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for.

The advisory budget commission shall have the necessary authority to adopt rules and regulations governing the following:

(a) Designating a board of award, composed of members of the budget commission, or other regular employees of the state or its institutions (who shall serve without added compensation), to act with the director in canvassing bids and awarding contracts.

(b) Fixing a quorum of the board of award and prescribing the routine and conditions to be followed in canvassing bids and awarding contracts.

(c) Prescribing routine for securing bids and awarding contracts on items that do not exceed $2,000 in value.

(d) Prescribing items and quantities to be purchased locally.

(e) Providing that where bids are unsatisfactory the division, with the approval and consent of the budget commission, may reject all bids and purchase the article in the open market, but only at a lower price.

(f) Prescribing procedure to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(g) Adopting any other rules and regulations necessary to carry out the purpose of this article. (1931, c. 261, s. 5; 1933, c. 441, s. 1.)

Editor's Note.—Public Laws of 1933, c. 441, added to this section the part containing subsections (a) to (g).

§ 143-53. Requisitioning for supplies by agencies; must purchase through sources certified.—After sources of supply have been established by contract under competitive bidding and certified by the Director of Purchase and Contracts to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition on blanks to be approved by the Director of Purchase and Contract, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of Purchase and Contract. One copy of such requisition shall be sent to the Director of Purchase and Contract when the requisition is issued. (1931, c. 261, s. 6.)

§ 143-54. Certain purchases excepted from provisions of article.—Unless otherwise ordered by the Director of Purchase and Contract, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Purchase and Contract shall not be mandatory in the following cases:

(a) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets and periodicals for the use of the State Library or any other library in the State supported in whole or in part by State funds.

(b) Perishable articles and such as fresh vegetables, fresh fish, fresh meat, eggs and milk: Provided, that no other article shall be considered perishable within the meaning of this clause, unless so classified by the Director of Purchase and Contract with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State Government shall wherever possible be based on at least three competitive bids. Whenever an order or contract for such articles is awarded by any of the departments, institutions and agencies of the State Government a copy of such order or contract, together with a record of the competitive bids upon which it was based, shall be forwarded to the Director of Purchase and Contract. (1931, c. 261, s. 7.)

§ 143-55. Purchase of articles in certain emergencies.—In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Purchase and Contract shall have power to purchase in the open market any necessary supplies, materials or equipment for immediate delivery to any department, institution or agency of the State Government. A report on the circumstances of such emergency and his transactions thereunder shall be transmitted in writing by the Director of Purchase and Contract to the Advisory Budget Commission at its next meeting and shall be entered in the minutes of the Commission. (1931, c. 261, s. 8.)

§ 143-56. Contracts contrary to provisions of article made void. — Whenever any department, institution or agency of the State Government, required by this article and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment through the Director of Purchase and Contract shall contract for the purchase of such supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department, institution or agency purchases any supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, the executive officer of such department, institution or agency shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor. (1931, c. 261, s. 9.)

§ 143-57. Preference given to North Carolina products and articles manufactured by state agencies; sales tax considered.—The director of purchase and contract shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other state departments, institutions, or agencies which are available for distribution:

Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the state of North Carolina which is levied now or hereafter may be levied and in no case shall a bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2.)

Editor's Note.—Public Laws of 1933, c. 441, added the last proviso of this section as it now reads.

§ 143-58. Division of purchase and contract directed to give preference to home products.—The division of purchase and contract or any other constituted department who is authorized to purchase food stuff and other supplies for state institutions, is hereby directed in all cases where the prices, product, or other supplies are available and equal, the said purchasing department shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the state of North Carolina. (1933, c. 168.)

§ 143-59. Rules and regulations covering certain purposes.—The Director of Purchase and Contract, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this article:

(a) Requiring monthly reports by State departments, institutions or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(b) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(c) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemical and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.

(d) Prescribing the manner in which purchases shall be made by the Director of Purchase and Contract in all emergencies as defined in § 143-55.

(e) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article. (1931, c. 261, s. 11.)

§ 143-60. Standardization Committee. — It shall be the duty of the Governor to appoint a standardization committee to consist of seven members as follows: The Director of Purchase and Contract, who shall be Chairman of said Committee; an engineer from the State Highway and Public Works Commission to be appointed by the Governor upon the recommendation of the Chairman of the State Highway and Public Works Commission; a representative of the State educational institutions to be appointed by the Governor, a representative of the State Departments to be appointed by the Governor, a representative of the State Charitable and Correctional Institutions to be appointed by the Governor, and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the committee by this article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the Chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to formulate, adopt, establish and/or modify standard specifications applying to State contracts. In the formulation, adoption and/or modification of any standard specifications, the Standardization Committee shall seek the advice, assistance and coöperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall in so far as possible satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect, to every State purchase of the commodity described in such specifications. In the preparation of any standard specifications the Standardization Committee shall have power to make use of any State laboratory for chemical and physical tests in the determination of quality. (1931, c. 261, s. 12.)

§ 143-61. Public printer failing to perform contract; course pursued.—If any person who has contracted to do the public printing for the state shall fail to perform his contract according to the terms thereof, the division of purchase and contract shall procure the public printing to be done by other parties, and the attorney-general shall institute suit in the superior court of Wake county in the name of the state to recover of the public printer and his bond any damages for failure to perform the contract. (Rev., s. 5094; 1899, c. 724; 1901, cc. 280, 401, 667; 1931, c. 261, s. 2; C. S. 7289.)

§ 143-62. Law applicable to printing Supreme Court Reports not affected.—Nothing in this article shall be construed as amending or repealing § 7-34, relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13.)

§ 143-63. Appointment of Director and compensation; qualifications; assistants; bond.—The Director of Purchase and Contract shall be appointed by the Governor, who shall fix his compensation subject to the approval of the Advisory Budget Commission. The Director shall have had at least two years experience in buying supplies, materials and equipment for governmental agencies, or for a private concern or corporation. He shall serve at the pleasure of the Governor and he shall have authority to employ such assistants as he shall deem necessary and fix their compensation, subject to the approval of the Assistant Director of the Budget. The Director shall give such bond for the faithful performance of his duties as shall be fixed by the Governor. (1931, c. 261, s. 14; c. 277, s. 15; 1933, c. 46, s. 1.)

§ 143-64. Financial interest of officers in sources of supply; acceptance of bribes.—Neither the Director of Purchase and Contract, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials, or equipment to the State Government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15.)

Art. 4. World War Veterans Loan Administration.

Title I. "World War Veterans Loan Act of 1925."

§ 143-65. Name of Title.—This Title shall be known and may be cited as the "World War Veterans Loan Act." (1925, c. 155, s. 1.)

§ 143-66. Purpose of Title.—The purpose of this Title is, in recognition of military service, for the encouragement of patriotism, and to promote the ownership of homes, to provide a means by which soldiers, sailors, marines and others who served with the armed forces of the United States in the recent world war against the central powers may acquire urban homes or farms upon favorable terms. (1925, c. 155, s. 2.)

§ 143-67. Enlisted men entitled to borrow

money.—Every person who has been enlisted, inducted, warranted or commissioned and who served honorably in active duty in the military or naval service of the United States at any time between the sixth day of April, one thousand nine hundred and seventeen, and the eleventh day of November, one thousand nine hundred and eighteen, and who, at the time of entering such service, was a resident of the State of North Carolina, and who is honorably separated or discharged from such service, or who is still in active service, or has been retired, or who has been furloughed to a reserve, and who was in such service for a period longer than sixty days, shall be entitled to borrow money from the fund provided by this Title upon filing application and otherwise complying with the terms hereof so long as and to the extent that the funds herein provided for are available for that purpose. (1925, c. 155, s. 3.)

§ 143-68. Classes of persons benefits not extended to.—The benefits of this Title shall not be extended to the following classes of persons:

(a) Those who were dishonorably discharged or discharged without honor; or

(b) Those who, being in the military or naval service, refused on conscientious, political, or other grounds to subject themselves to discipline or to render unqualified service; or

(c) Those who, though in the service, did civilian work at civilian pay; or

(d) Those whose military service was confined to taking training in any students army or navy training corps. (1925, c. 155, s. 4.)

§ 143-69. Registration.—Before any such person can become a beneficiary under this title, such person must have complied with chapter one hundred and ninety-eight of the Public Laws, regular session of one thousand nine hundred and twenty-one, relating to the registration of honorable discharges in the office of register of deeds as provided in said act, and such person, at the time of making application for loan as hereinafter provided, shall attach said application to a copy of such person's honorable discharge, which said copy shall show the book and page in which such discharge is recorded, and same shall be certified by such register of deeds and attested by the official seal of his office. (1925, c. 155, s. 5.)

§ 143-70. Fraudulent conspiracy.—If any person shall fraudulently conspire to or shall obtain the benefits of this Title merely for the purpose of procuring, or assisting in, the sale of any real estate, such person shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1925, c. 155, s. 6.)

§ 143-71. Administration; Commissioner; salary; office.—The administration of this Title shall be under the direction and control of a board of advisers consisting of the Secretary of State, who shall be chairman, ex officio, of said board; the Commissioner of Agriculture, the Attorney-General, the Commissioner of Labor and the Treasurer of the State of North Carolina, of which board the Treasurer of the State shall be, ex officio, the treasurer. Said board, as soon as possible after March 6, 1925, as hereinafter provided, shall appoint a competent person to be known as "Commissioner of the Veterans Loan Fund," who shall hold his said office at the will of said board, and who shall receive an annual salary, payable monthly, to be fixed by the board, said amount not to exceed the present salary. Said commissioner shall maintain his office in the city of Raleigh, space for which shall be provided in the same manner as space for other State offices is provided. (1925, c. 155, s. 7; 1937, c. 321; 1941, c. 349.)

§ 143-72. Assistants; application for loan; compensation.—The commissioner, with the approval of the board of advisers, is authorized to appoint such assistants as may be necessary to aid in the administration of this Title and to appoint competent appraisers to pass upon the security offered for loans hereunder. The commissioner shall cause each application for a loan to be carefully considered and the property offered as security to be appraised. The report of the appraiser shall be made in writing to the commissioner, who shall bring the same before the board of advisers for its consideration. No loan shall be made unless it shall be approved by the commissioner and two members of the board of advisers. The board of advisers shall fix the compensation to be paid to the assistants and appraisers and the commissioner shall conduct the affairs of his office and administer this Title in as efficient and economical manner as possible. The commissioner shall prescribe rules and regulations for the management of this office and the administration of this Title and shall specify the nature and extent of the information to be submitted in all applications for loans and shall require abstracts and approval of the title of property offered as security for loans in such manner as he may determine and as may be approved by the board of advisers. (1925, c. 155, s. 8.)

§ 143-73. Rules concerning loans. — No loan shall be made in excess of three thousand dollars to any one person hereunder, nor for a longer period than twenty years, and only one loan shall ever be made to any one person. No loan shall exceed seventy-five per cent of the appraised value of the real property offered as security. No loan for twenty years shall be granted hereunder except upon application filed on or before January first, one thousand nine hundred and thirty-one. The applicant shall forward with his application and deposit with the commissioner such fund as the commissioner may require out of which shall be paid the cost and expense of appraising the property offered as security. The applicant shall pay the cost of the determination of title, registration fees, and such other actual expense as may be incurred in the investigation of the applicant's property. The commissioner, subject to the approval of the board of advisers, is authorized to prescribe such rules and regulations for the administration of this Title and to do such acts or things in connection therewith as may be necessary to fully effectuate and carry out the intent and purpose of this Title, whether or not such act or thing is specifically referred to herein. (1925, c. 155, s. 9.)

§ 143-74. Payment of loans.—All loans made under this Title shall be repayable in not more than twenty equal annual payments or not more than forty equal semi-annual payments. All loans

made under this Title shall bear six per cent interest, payable semiannually. The principal or any part thereof in multiples of fifty dollars, may be repaid upon any interest payment date after the expiration of five years from the date of said loan or within five years by consent of the commissioner: Provided, in case of a loan made on city or town property, the commissioner in his discretion may require monthly payments to be made thereon. (1925, c. 155, s. 10.)

§ 143-75. Bond issue authorized; sale of bonds.—For the purpose of carrying out the provisions of this Title and of creating a fund from which the loans herein provided for shall be made, the board of advisers is hereby authorized, empowered and directed to issue and sell bonds of the State of the amount of two million dollars, the proceeds from the sale of which shall be applied to the purposes herein set forth. Said bonds shall be known, styled and designated: "State of North Carolina World War Veterans Loan Bonds." Said bonds shall bear interest at a rate to be fixed by the board of advisers but not exceeding five percent per annum, payable semiannually, and to be paid at a time to be fixed by the board of advisers. Said bonds shall be dated, issued and sold from time to time in such amounts as the board of advisers may find necessary to provide sufficient funds to meet applications made to and approved by it. All bonds authorized and issued under this Title shall be coupon or registered bonds of the denomination of one hundred dollars or some multiple thereof and shall be payable twenty years from the date of issue and shall be signed by the Governor and the State Treasurer and sealed with the Great Seal of the State. The coupons thereon may be signed by the State Treasurer alone, or he may have lithographed, engraved or printed thereon a facsimile of his signature. The said bonds shall be in all other respects in such form as the board of advisers may direct. The bonds until sold shall be deposited with the State Treasurer, and when sold the proceeds of the bonds shall be paid to the State Treasurer and kept in a separate fund to be designated as the "World War Veterans Loan Fund." The Treasurer upon issuance of said bonds may, if necessary, pledge said bonds as collateral for temporary loans pending a sale thereof. All expenses necessarily incurred in the preparation and sale of said bonds shall be paid from the proceeds of such sale. (1925, c. 155, s. 11.)

§ 143-76. Payments to State Treasurer; audits.—All payments on loans, whether principal or interest, shall be made to the State Treasurer, and shall be deposited and held in a separate fund as above designated and applied to the payment of said bonds when and as they become due: Provided, however, that said board of advisers may in its discretion authorize and direct the commissioner to make loans out of the fund so created to such persons as are authorized hereunder to receive loans, same to be repaid in equal, annual, semiannual, or monthly installments, maturing at such time as may be required to pay off the bonds authorized by this Title at and when they mature: Provided further, that a sum sufficient to cover the semiannual interest on said bonds shall be provided out of said payments. The accounts of the treasurer of the board of advisers shall be audited annually by the State Auditor. (1925, c. 155, s. 12.)

§ 143-77. Cost of administering fund; disposition of surplus.—The cost of administering this Title, including salaries and other expenses provided for herein, shall be paid from the difference between the interest received from the loans made hereunder and the interest on the bonds of the State to be issued, when the same shall be sufficient therefor. Provided, however, during such time as receipts are not sufficient to pay the operating expenses, as above set out, the same shall be paid out of the principal of the World War Veterans' Loan Fund. Provided, further, that any surplus over and above the expense of the administration of this Title when accumulated shall be paid into the General Fund until such amount as the General Fund may have advanced toward the administration of this Title shall have been fully repaid. (1925, c. 155, s. 13; 1935, c. 438, s. 1.)

§ 143-78. Question of bonded indebtedness submitted to voters.—The question of contracting a bonded indebtedness of the State of North Carolina to the amount of two million dollars for the purpose of this Title shall be submitted to the voters of the State at the general election to be held in one thousand nine hundred and twenty-six for the election of members of the General Assembly. A separate ballot shall be printed and distributed by the State Board of Elections to the poll holders in said election to be voted in said election upon which shall be printed or written the words "For World War Veterans Loan Bonds" and an equal number of ballots upon which shall be printed or written the words "Against World War Veterans Loan Bonds" shall be likewise distributed. If a majority of the votes cast on this proposition in said election are "For World War Veterans Loan Bonds," the board of advisers created by this Title shall proceed immediately to carry into effect the provisions hereof. If a majority of the votes cast on this proposition in said election are "Against World War Veterans Loan Bonds," then this Title shall be thereby annulled. Notice of the submission of the proposition shall be given by the Secretary of State, the ballot canvassed and returned, abstracts of the vote made and submitted, the votes canvassed, and a declaration of the results made by the State Board of Elections, and if a majority of the votes cast on the proposition shall be "For World War Veterans Loan Bonds," the State Board of Election shall certify the vote to the Secretary of State and, upon receipt by him of such certificate, this Title shall be in full force and effect. (1925, c. 155, s. 14.)

Editor's Note.—The question of contracting this bonded indebtedness was submitted to the vote of the people in the general election of 1926 and was approved. The Veterans' Loan Fund has been in operation since April, 1927.

Title II. "World War Veterans Loan Supplemental Act of 1927."

§ 143-79. Name of Title.—This Title shall be known and may be cited as the "World War Veterans Loan Supplemental Act." (1927, c. 97, s. 1.)

§ 143-80. Issue and sale of bonds.—The full

faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the two million ($2,000,000) dollars State of North Carolina World War Veterans Loan Bonds, authorized by Title I of this article, and for the payment of the principal and interest of any notes issued in accordance with Title II in anticipation of the sale of said bonds or any of them. When the Board of Advisers shall direct the State Treasurer to issue any of said bonds, he shall sell the same at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest, and when the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina. The manner in which said bonds shall be offered for sale shall be determined by the Governor and Council of State, either by publishing notices in certain newspapers and financial journals, or by mailing notices, or by inviting bids by correspondence or otherwise. All expenses necessarily incurred in the preparation and sale of the bonds shall be paid from the proceeds of such sale. (1927, c. 97, s. 2.)

§ 143-81. Disbursement of fund; prerequisites. —The Veterans Loan Fund shall be disbursed by the State Treasurer either for loans or the cost of administration as provided in Title I of this Article, but only upon warrants drawn by the State Auditor upon requisition therefor signed by the Chairman of the Board of Advisers. The State Auditor shall draw no warrant for a disbursement of the Veterans Loan Fund for the purposes of a loan unless the requisition shall be accompanied by (a) the borrower's note for the sum to be loaned and (b) the mortgage securing the same and (c) either the certificate of an attorney approved by the Board of Advisers and bonded to cover damages suffered through an erroneous certificate made by him, to the effect that the mortgage is a first lien, or a policy of insurance issued by a responsible title guaranty or title insurance company (or certificate certifying that such policy will be issued) insuring the Veterans Loan Fund in the amount of the loan that the mortgage is a first lien. The Treasurer shall not pay any warrant for the purpose of a loan unless such note and mortgage and such certificate or policy are delivered to him, and the same shall remain in his custody. Permanent structures upon the property mortgaged or thereafter placed thereon shall be insured by a reputable insurance company for not less than sixty (60%) per cent of the appraised value thereof and the policies of insurance shall be payable to the State Treasurer as his interest may appear. (1927, c. 97, s. 8.)

§ 143-82. Liability of treasurer and appraisers on bonds; punishment.—The State Treasurer and the sureties upon his official bond as State Treasurer, shall be liable for any breach of faithful performance of his duties under Titles I and II of this Article and his official bond shall be made to comply with this requirement. If any appraiser shall knowingly appraise any property as security for any loan in excess of its value, or if the State Treasurer or the Commissioner or any member of the Board of Advisers shall pay or vote to pay, or shall provide for paying, any moneys in the Veterans Loan Fund except in accordance with the provisions of Titles I and II of this Article, he shall be liable to any aggrieved person and to the State for all damages suffered thereby and shall be guilty of a misdemeanor punishable for each offense by a fine of not less than fifty ($50.00) dollars, or by imprisonment of not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court. (1927, c. 97, s. 9.)

§ 143-83. Conditions to be set forth in mortgages; enforcement of collections. — Mortgages securing loans shall provide that after the lapse of a certain period after any default in the payment when due of any principal or interest of the loan, the principal of the entire loan shall become due and payable. Such period shall be determined by the Board of Advisers but shall not be longer than ninety days. It may be provided in any mortgage that any default and the consequences thereof may be waived upon payment of the amount delinquent, with interest, expenses and costs, if such payment is made before any sale on foreclosure. Notes and mortgages given to secure loans shall be enforced as provided by law for the enforcement of debts and mortgages, and it shall be the duty of the Board of Advisers to enforce the same. Provided, the Commissioner of the Veterans' Loan Fund, with the approval of a majority of the Board of Advisers thereof, may extend the time of payments required by the deeds of trust securing said loan, upon such terms and conditions as may appear to them for the best interest of the State of North Carolina and such mortgagor. (1927, c. 97, s. 10; 1933, c. 55.)

§ 143-84. Allocations of loans.—For the six months period following March first, nineteen hundred and twenty-seven, allocations of loans under Title I shall be made by the Board of Advisers to the several counties of the State in proportion to the number of soldiers, sailors, marines and others entering the military or naval service of the United States, from such counties, respectively, as ascertained from the records in the office of the Adjutant-General of the State of North Carolina, provided, that allocations to the several counties shall not be mandatory on and after September first, nineteen hundred and twenty-seven. (1927, c. 97, s. 11.)

Title III. "World War Veterans Loan Act of 1929."

§ 143-85. Name of title.—This Title shall be known and may be cited as the "World War Veterans Loan Act of one thousand nine hundred and twenty-nine." (1929, c. 298, s. 1.)

§ 143-86. Bond issue authorized; interest.—For the purpose of further carrying out the provisions of Title I of this article and of creating an additional fund from which the loans therein provided for shall be made, the State Treasurer is hereby authorized, by and with the consent of the Governor and Council of State, to issue and sell not exceeding two million dollars ($2,000,000) bonds of the State to be designated "State of North Carolina World War Veterans Loan Bonds of one thousand nine hundred twenty-nine." Said bonds shall be dated, issued and sold from time to time in such amounts as the Board of Advisors may find necessary to provide sufficient funds to

meet applications made to and approved by it, and shall be payable twenty years from the date of issue. The said bonds shall bear interest at a rate to be fixed by the Governor and Council of State, but not exceeding five per cent per annum, to be paid semiannually on the first day of January and July. (1929, c. 298, s. 2.)

§ 143-87. Interest coupons; registration.—Said bonds shall carry interest coupons which shall bear the signature of the State Treasurer, or a facsimile thereof, and said bonds shall be subject to registration and be signed and sealed as is now, or may hereafter be provided by law for State bonds, and the form and denomination thereof shall be such as the State Treasurer may determine in conformity with this Title. (1929, c. 298, s. 3.)

§ 143-88. Sale of bonds.—When the Board of Advisors shall direct the State Treasurer to issue any of said bonds, he shall sell the same at one time, or from time to time, at the best price obtainable, but in no case for less than par and accrued interest, and when the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina. The manner in which said bonds shall be offered for sale shall be determined by the Governor and Council of State, either by publishing notices in certain newspapers and financial journals, or by mailing notices, or by inviting bids by correspondence or otherwise. All expenses necessarily incurred in the preparation and sale of the bonds shall be paid from the proceeds of such sale. (1929, c. 298, s. 4.)

§ 143-89. Separate fund for proceeds.—The proceeds of said bonds, including any premium received thereon and of the bond anticipation notes, herein authorized, shall be placed by the Treasurer in a separate fund, as provided by section 143-75. (1929, c. 298, s. 5.)

§ 143-90. Pledge of State for payment of bonds.—The full faith, credit, and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds and notes herein authorized. (1929, c. 298, s. 8.)

§ 143-91. Loan of proceeds of bonds to veterans.—The proceeds of the bonds authorized by this Title shall be loaned for the same purposes and under the same conditions, provisions and limitations as the bonds authorized by Title I of this article, and said proceeds shall be disbursed in the same manner and subject to the same penalties and to the same provisions as provided in §§ 143-105, 143-81, and 143-82. (1929, c. 298, s. 12.)

§ 143-92. Commissioner may bid at foreclosure sales; disposition of property.—In all cases where mortgages and deeds of trust have been or will be foreclosed upon any property taken in security for the repayment of a loan made under the provisions of this article, relating to the said subject, the Commissioner as such or his agent shall have the right and authority to bid at the foreclosure sale and should the Commissioner be the highest and successful bidder, the title to the said property shall be conveyed, by the trustee named in the said deed of trust or mortgage deed, or the proper person or commissioner executing the power of trust contained therein, or selling the same by order of court or otherwise, to the Commissioner of the World War Veterans' Loan Fund, who shall take the title thereto and hold it in behalf of the State of North Carolina; and in case of any sale of property, the title to which has come into, or may come into the State by virtue of such foreclosure, or by reason of the said loans, the title thereto shall be made by the said Commissioner of the World War Veterans' Loan Fund in his official capacity in behalf of the said State, in accordance with § 143-93.

All lands now belonging to the State of North Carolina to which title has been acquired by virtue of loans made under this article shall be conveyed by the Governor of the State, in the manner now provided by law for conveyance of State property, to the said Commissioner of the World War Veterans' Loan Fund, to be held by him as aforesaid. (1935, c. 438, s. 1.)

§ 143-93. Powers over property acquired or mortgaged.—With the advice and approval of the Board of Advisers, and under regulations prescribed by it, the Commissioner shall have authority to rent, lease, sell, convey title, repair, improve, rebuild, pay taxes and insurance on property for the purpose of preserving the value thereof, and protecting the loan involved, and so as to facilitate the rental or sale thereof. All leases and/or sale contracts and/or conveyances of title shall be approved by the Board of Advisers and shall be executed by the Commissioner as may be required by law. (1935, c. 438, s. 1.)

§ 143-94. Refinancing delinquent loans authorized.—The Commissioner, with the advice and approval of the Board of Advisers, and under such rules and regulations as it may prescribe, shall have the power of refinancing delinquent loans, the terms and conditions of such refinancing shall be reported to the Board of Advisers and shall be subject to its approval. In such refinancing, when the interest of the State may be conserved thereby, installment payments on loans may be reduced or increased as requested by the mortgagor and recommended by the Commissioner, provided reductions or extensions shall not be made which will prevent or interfere with the full payment of loans on or prior to the date of maturity of the bonds from which the loans were made. (1935, c. 438, s. 1.)

§ 143-95. Question of bond issued submitted to voters.—The question of contracting a bonded indebtedness of the State of North Carolina to the amount of two million dollars ($2,000,000) for the purposes herein provided, shall be submitted to the voters of the State at the general election to be held in one thousand nine hundred thirty, for the election of members of the General Assembly. A special ballot shall be printed and distributed by the State Board of Elections to the poll holders in said election, to be voted in said election, upon which shall be printed or written, the words "For World War Veterans Loan Bonds," and an equal number of ballots upon which shall be printed or written the words "Against World War Veterans Loan Bonds," shall be likewise distributed. If a majority of the votes cast on this proposition, in said election, are "For World War Veterans Loan Bonds," the Board of Advisors of the World War Veterans Loan Fund,

created by Title I of this article shall immediately proceed to loan the funds herein provided, for the purposes and under the conditions set out in Title I of this article. If a majority of the votes cast on this proposition in said election are "Against World War Veterans Loan Bonds," then the provisions of this Title authorizing the issuance and sale of the bonds herein provided, shall be null and void. Notice of the submission of the proposition shall be given by the Secretary of State, the ballots canvassed and returned, abstracts of the vote made and submitted, the votes canvassed, and a declaration of the results made by the State Board of Elections; and if a majority of the votes cast on the proposition shall be "For World War Veterans Loan Bonds," the State Board of Elections shall certify the vote to the Secretary of State, and upon receipt by him of such certificate, the provisions of this Title with respect to the bonds authorized hereunder, shall be in full force and effect. (1929, c. 298, s. 13.)

Editor's Note.—The question of contracting this bonded indebtedness was submitted to the vote of the people in the general election of 1930 and was approved.

§ 143-96. Deposit of payments on loans.—All payments on loans, whether principal or interest, shall be made, deposited and applied, as directed in § 143-76, and subject to the provisos contained in said section, and all interest which the State Treasurer has received, or may in the future receive, on the daily balances of funds belonging to the "World War Veterans Loan Fund," which has been, or may be paid to him by banks in which such deposits have been or are made, shall be deposited to the credit of the "World War Veterans Loan Fund" and the State Treasurer is hereby directed to deposit to the credit of the "World War Veterans Loan Fund" such interest as he may have received on the daily balances belonging to this fund and which may have been deposited to the credit of any other fund. (1929, c. 298, s. 14.)

§ 143-97. Acceptance of certificates of title from approved attorneys.—The Commissioner of the Veterans Loan Fund, subject to the approval of the Board of Advisors, is authorized to accept certificates of title to the property offered as security for loans, in cases where such certificates are furnished by attorneys who are on the approved certificate list of the title insurance company insuring the titles to property upon which loans are made for the benefit of the State Treasurer, in lieu of requiring abstracts of title to such property. (1929, c. 298, s. 15.)

§ 143-98. Other Veterans entitled to share benefits.—Every person who was enlisted, warranted, or commissioned and who served in active duty in the military or naval service of the United States at any time during the Spanish-American war and/or the Philippine Insurrection and/or the China Relief Expedition and who at the time of entering such service was a resident of the State of North Carolina and who was honorably separated or discharged from such service or who has been retired and who was in such service for a period longer than sixty days shall be entitled to borrow money from the fund provided by this Title upon compliance with the provisions of Titles I and II of this article. (1929, c. 298, s. 15½.)

Title IV. "General Provisions"

§ 143-99. Trustee in lieu of defunct bank; purchase at sale.—In all cases where any bank not now in existence as a going concern was named as trustee in any mortgage trust deed securing any loan made under the provisions of this article or succeeded to such trusteeship by corporate merger, consolidation, substitution or otherwise, the powers of sale contained in such mortgage trust deeds may be exercised by the Commissioner of Banks and his successors in office, in the same manner, to the same extent, and with like effect as if he had been originally named as trustee therein. The Commissioner of the World War Veterans Loan Fund and his successors in office may purchase the property sold at any such sale and may hold, manage, and sell the same as provided in § 143-92. (1939, c. 87.)

§ 143-100. Investment of Loan Fund; authorized securities.—The Board of Advisers of the World War Veterans Loan Fund, created by Title I of this article by and with the advice and approval of the Governor and Council of State, is hereby authorized and empowered to invest any funds which are now held by the State Treasurer for the World War Veterans Loan Funds or which may be collected for said funds prior to the maturities of the State bonds issued under authority of Titles I and II of this article, in any securities in which the State Sinking Fund Commission is authorized to invest sinking funds of the State of North Carolina as now provided by law, and loan or invest said money in such other securities or investments which in the opinion of the said board of advisors and the Governor and Council of State are considered safe investments for the said funds, reasonably calculated to produce income to aid in meeting the debt service requirements of the outstanding Veterans Loan bonds. (1941, c. 247.)

§ 143-101. Treasurer to borrow money on notes.—By and with the consent of the Governor and Council of State, who shall determine the rate or maximum rate of interest and the date or approximate date of payment, the State Treasurer is hereby authorized to borrow money at the lowest rate of interest obtainable, and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(a) For anticipating the sale of any of said bonds directed to be issued by the Board of Advisers created under Title I of this Article, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds.

(b) For the payment of interest upon or any installments of principal of any of said bonds then outstanding if there shall not be sufficient funds in the State Treasury with which to pay such interest or installments as they respectively fall due.

(c) For the renewal of any loan evidenced by notes authorized by this article. (1927, c. 97, s. 3; 1929, c. 298, s. 6.)

§ 143-102. Funds used in payment of notes.—Funds derived from the sale of bonds shall be used in the payment of any bond anticipation notes that may have been issued in anticipation of the sale of such bonds and any renewals of such notes and funds provided by Title I and Title III of this

Article and other funds provided by the General Assembly for the payment of interest and/or principal of such bonds shall be used in paying the interest and/or principal of any notes or renewals thereof the proceeds of which shall have been used in paying interest and/or principal of such bonds. Interest payments upon said notes may be evidenced by interest coupons in the State Treasurer's discretion. (1927, c. 97, s. 4; 1929, c. 298, s. 7.)

§ 143-103. Coupons receivable in payment of any demands due to State. — The coupons of the bonds and notes authorized under this article, after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1927, c. 97, s. 5; 1929, c. 298, s. 9.)

§ 143-104. Bonds, notes and coupons and interest exempt from taxation.—All of the bonds and notes and coupons issued under this article shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenues or otherwise, and the interest on said bonds and notes shall not be subject to taxation as for income, nor shall said bonds or notes or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation. (1927, c. 97, s. 6; 1929, c. 298, s. 10.)

§ 143-105. Lawful investment for trust funds.— It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any money in their hands in bonds and notes issued under this article. (1927, c. 97, s. 7; 1929, c. 298, s. 11.)

Art. 5. Check on License Forms, Tags and Certificates Used or Issued.

§ 143-106. Blank forms of licenses, etc., to be delivered to State Auditor; monthly report to Auditor; spoiled and damaged forms.—In all cases where blank forms of licenses, tags or certificates are prepared and delivered to any State department or agency for the use of any State department or agency in issuing such license, tag or certificate upon the payment of any fees prescribed by law, a sample of the same, together with a list of the numbers of all such license forms, tags or certificates, and the type of business or privilege to which they relate, shall be delivered to the State Auditor. On or before the tenth day of each calendar month each State department or agency issuing and delivering licenses, tags or certificates shall make report to the State Auditor of all such licenses, tags or certificates delivered during the preceding calendar month, showing the numbers thereof, the business or privilege for which issued, and the person or persons or corporations to whom such licenses, tags or certificates have been so issued. If there be any of such blank license forms, tags or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be transmitted to the State Auditor and by him securely kept. (1931, c. 398, s. 1.)

§ 143-107. Auditor to check forms monthly; report of discrepancies. — It shall be the duty of the State Auditor, as soon as practicable after the tenth day of each calendar month and not later than the thirtieth of such month, to thoroughly examine and check the reports so received, together with all such spoiled forms, tags or certificates, and the remaining such blank license forms, tags or certificates then in the hands of the department or agency to which they have theretofore been delivered. If any discrepancy be found by the State Auditor upon such checking and examination, he shall at once report the same to the Director of the Budget. (1931, c. 398, ss. 2, 3.)

Art. 6. Officers of State Institutions.

§ 143-108. Secretary to be elected from directors.—The board of directors of the various state institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C. S. 7517.)

§ 143-109. Directors to elect officers and employees.—All officers and employees of the various state institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C. S. 7518.)

§ 143-110. Places vacated for failure to attend meetings.—Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ 143-111. Director not to be elected to position under board.—It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various state institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C. S. 7519.)

§ 143-112. Superintendents to be within call of board meetings.—The superintendent of each of the various state institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C. S. 7520.)

§ 143-113. Trading by interested officials forbidden.—The directors, stewards, and superintendents of the state institutions shall not trade directly or indirectly with or among themselves, or

with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C. S. 7521.)

§ 143-114. Diversion of appropriations to state institutions.—It shall be unlawful for the board of trustees, board of directors, or other body controlling any state institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any state institution to which money is appropriated for its maintenance by the state to divert, use, or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C. S. 7521(a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.—Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the state, or any officer, employee of, or person holding any position with any of the institutions of the state, violating any of the provisions of § 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned, in the discretion of the court. (1921, c. 232, s. 2; C. S. 7521(b).)

§ 143-116. Venue for trial of offenses.—All offenses against §§ 143-114 and 143-115 shall be held to have been committed in the county of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C. S. 7521(c).)

Art. 7. Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included. — All persons admitted to the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, Caswell Training School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, the School for the Blind and Deaf at Raleigh, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium, be and they are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions, (1925, c. 120, s. 1.)

Editor's Note.—This act is an attempt to place all State charitable institutions on the same basis, with similar policies, so that the expense which the State bears will be lightened by requiring those who are able to pay to bear the expense of their care, maintenance and treatment. Suits may be brought in favor of the State for the recovery of the cost of caring for patients who are able to pay, and such patients may be removed from State institutions if no payment is made. 4 N. C. Law Rev. 17.

§ 143-118. Governing board to fix cost and charges.—The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, are hereby empowered with the final authority to determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each inmate or patient, and the said boards of trustees or directors shall, to the best of their ability, fix such cost so as to include all the cost of such care, maintenance, treatment and training at such institutions, for each respective inmate, pupil or patient thereof, and the said sum, when so fixed, shall be the actual cost thereof: Provided, that the respective boards of directors of each of said institutions above named, in determining and fixing the actual cost of such care, maintenance and treatment to be paid for by non-indigent inmates thereof, are hereby given full and final authority to fix a general rate of charge, to be paid on a monthly basis by inmates able to pay same, or in cases where indigent inmates later are found to be non-indigent, then such cost for past care and maintenance of such inmates shall be paid in one or more payments based on the monthly rates of cost in effect for the period or periods of time during which such inmates have been confined in said institutions. The past acts of the boards of directors in fixing a monthly rate to be paid by non-indigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for care, maintenance and treatment, the rates so fixed by said board of directors shall prevail and said collections shall be made in accordance therewith. In any action by any of said state's charitable institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, now pending or which may hereafter be instituted, a verified and itemized statement of the account, showing the period of time during which the said non-indigent inmate was confined to the institution, the monthly rate of charge as fixed by said board of directors of such institution for the period of time that the inmate was confined therein, the total amount claimed to be due thereon as predicated upon said rate of charge, and the proper credits for any payments which may have been made on said account, shall be filed with the complaint and shall constitute a prima facie case, and such state institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the inmate's guardian, trustee, administrator, executor, or other fiduciary, that said verified and itemized statement of the superintendent or bookkeeper of said institution is not correct because of—

(a) an error in the calculation of the amount due as predicated upon said monthly rate or charge fixed by the board of directors, or

(b) an error as to the period of time during which the inmate was confined in said state institution, or

(c) an error in not properly crediting the account with any cash payment, or payments, which

may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1.)

Editor's Note.—The proviso relating to the right to fix general rate charges was added by the 1935 amendment.

§ 143-119. Payments.—Such cost, when so fixed and determined by the respective boards of trustees or directors of each institution, shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such fund, and a receipt for the payment of such cost in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the cost, as herein provided for, the superintendent of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The respective boards of trustees or directors of the various institutions are vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of this article directing the boards of directors of the various institutions of this State above named to ascertain which of the inmates are non-indigent and able to pay for their care, maintenance and treatment, and also directing said boards of directors to make certain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs them to remove all of those inmates found able to pay but who refuse to pay, and all of the other provisions of this article relating to the manner in which said board shall collect said costs, shall be construed to be directory provisions on the part of the authorities of said institutions and not mandatory, and the failure on the part of said authorities of such institutions to perform any or all of said provisions shall not affect the right of the state institutions so named to recover in any action brought for that purpose, either during the life-time of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2.)

Editor's Note.—The last sentence of this section was added by the 1935 amendment.

§ 143-120. Determining who is able to pay.—From and after March 4, 1925, the respective boards of trustees or directors of each institution shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this article shall be fixed or determined and payment shall be made in accordance with the terms of this article. (1925, c. 120, s. 4.)

Where patient is indigent at time of admission to state hospital and later becomes nonindigent, under this section, the hospital is entitled to recover the actual cost of the ward's care and maintenance for the whole period the ward was an inmate of the hospital, including the time the ward was indigent as well as the time he was nonindigent, and including the period both before and after demand by the hospital for the cost of his maintenance, and this is true even though this section was ratified after the admission of the ward. State v. Security Nat. Bank, 207 N. C. 697, 698, 178 S. E. 487.

§ 143-121. Action to recover costs.—Immediately upon the fixing of the amount of such actual cost, as herein provided, a cause of action shall accrue therefor in favor of the State for the use of the institution in which such patient, pupil or inmate is receiving training, treatment, maintenance or care, and the State for the use of such institution may sue upon such cause of action in the courts of Wake County, or in the courts of the county in which such institution is located, against said patient, pupil or inmate, or his parents, or either of them, or guardian, trustee, committee, or other person legally responsible therefor, or in whose possession and control there may be any funds or property belonging to either the said pupil, patient or inmate, or to any person upon whom the said patient, pupil, or inmate may be legally dependent, including both parents. (1925, c. 120, s. 5.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487.

§ 143-122. No limitation of such action.—No statute of limitation shall apply to or constitute a defense to any cause of action asserted by any of the above-named institutions for the collection of the cost of care, treatment, training or maintenance, or any or all of these against any person liable therefor, as herein provided, and all statutes containing limitations which might apply to the same are hereby pro tanto repealed, as to all such causes of action or claims, and this section shall apply to all claims, and causes of action for like cost heretofore incurred with such institutions and now remaining unpaid. (1925, c. 120, s. 6.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487.

§ 143-123. Power of trustees to admit indigent persons.—This article shall not be held or construed to interfere with or to limit the au-

thority and power of the management of the boards of trustees, or directors of any of the institutions named herein, to make provision for the care, custody, treatment and maintenance of all indigent persons who may be otherwise entitled to admission in any of the said institutions, and as to indigent pupils, inmates and patients, the same provisions now contained in the several statutes relating thereto shall continue in force, but if at any time any of the said indigent patients, pupils or inmates shall succeed to or inherit, or acquire, in any manner, property, or any of the persons named above as legally responsible for the cost of care, treatment and maintenance of the pupil, inmate and patient at the above named institutions, shall acquire property, or shall otherwise be reputed to be solvent, then each of said institutions shall have the full right and authority to collect and sue for the entire cost and maintenance of such inmate, pupil or patient, without let or hindrance on account of any statute of limitation whatsoever. (1925, c. 120, s. 7.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487.

§ 143-124. Suit by attorney general; venue.— At the request of such institution, all actions and suits shall be sued upon and prosecuted by the Attorney General, and such institution shall have the right to elect as to whether it will institute such action in the courts of Wake County or in the courts of the county in which such institution is located. (1925, c. 120, s. 8.)

§ 143-125. Judgment; never barred.—Any judgment obtained by the State for the use of any of the above named institutions shall never be barred by any statute of limitation, but shall continue in force, and, at the request of the Attorney General or the superintendent of any of said institutions, an execution shall issue therefor at any time without requiring such institution to revive the said judgment, as is now provided by statute, but in case any judgment debtor, or any fiduciary responsible for the payment thereof, shall make affidavit and file the same with the clerk of the Superior Court from which such execution is issued, that payments have been made upon the said judgments, then the clerk shall recall said execution and proceed to hear and determine what is the true amount due thereon, if anything, in the same manner as is now required in motions to revive dormant judgments with the right of appeal to the judge of the Superior Court, as now provided in such motions, and the clerk of the Superior Court and the judge thereof shall have authority, in their discretion, to require security for the payment of the amount of said judgment pending such appeal. (1925, c. 120, s. 9.)

§ 143-126. Death of inmate; lien on estate.— In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina. (1925, c. 120, s. 10.)

§ 143-127. Money paid into state treasury.— All money collected by any institution pursuant to this article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn by the Auditor as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11.)

Art. 8. Public Building Contracts.

§ 143-128. Separate specifications for building contracts. — Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, when the entire cost of such work shall exceed ten thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating and accessories. 2. Plumbing and gas fitting and accessories. 3. Electrical installations. 4. Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the State or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387.)

Cross Reference.—For similar statute applicable to counties and cities, see § 160-280.

Editor's Note.—The 1943 amendment added the words "and accessories" at the end of subdivisions 1 and 2. It also inserted subdivisions 3 and 4.

For comment on this section, see 4 N. C. Law Rev. 14.

§ 143-129. Procedure for letting of public contracts.—No construction or repair work, or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than one thousand dollars ($1000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the state, or of any institution of the state government, or of any county, city, town, or other subdivision of the state, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the state government, or of a state institution, as distinguished from a board or governing body of a subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening

of said proposals in a newspaper having general circulation in the state of North Carolina.

Where the contract is to be let by a county, city, town or other subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision. Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than two thousand dollars ($2000.00), such advertisement may be either published in some newspaper as required herein or posted at the court house door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other sub-division wherein there is no newspaper published and the estimated cost of the contract is less than two thousand dollars ($2000.00), such advertisement may be either published in some newspaper as required herein or posted at the court house door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the state or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposals for the performance of the contract. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company authorized to do business in this state, in an amount equal to not less than two per cent (2%) of the proposal. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the state, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the state or federal government. (1931, c. 338, s. 1; 1933, cc. 50, 400, s. 1; 1937, c. 355.)

The requirements of this section are mandatory, and a contract made in contravention of such requirements is ultra vires and void. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495.

Emergency Defined.—The meaning of the word "emergency" within the exception to this section is not susceptible of precise definition and each case must, to some extent, stand upon its own bottom, but in any event the term connotes an immediate and present condition and not one which may or may not arise in the future or one that is apt to arise or may be expected to arise. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495.

Judicial Review of Finding of Emergency.—The provision of this section that a municipality may let a contract for expenditures in excess of $1,000 without advertisement "in cases of special emergency" constitutes an exception to the general rule, and the commissioners of a municipality may not declare an emergency where none exists and thus defeat the law, nor is such finding by the municipal board upon competent evidence conclusive on the courts, but the courts may review the evidence and determine whether an emergency as contemplated by the statute does in fact exist. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495.

Louisburg.—Ch. 305, Public Laws 1903, does not authorize the town of Louisburg to contract for machinery for its water and sewer system and electric light plant in a sum in excess of $1,000 without submitting the same to competitive bidding after due advertisement. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495.

§ 143-130. Allowance for convict labor must be specified.—In cases where the board or governing body may furnish convict or other labor to the contractor, manufacturer or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials or equipment, involving the expenditure of public money in the amount of two hundred dollars ($200.00) or more but less than one thousand dollars ($1,000.00), made by any officer, department, board or commission of any county, city, town or other subdivision of this State, when practical, shall be awarded to the lowest responsible bidder after informal bids have been secured, and it shall be the duty of such officer, department, board or commission to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2.)

§ 143-132. Minimum number of bids for contracts for state institutions.—No contracts to which § 143-129 applies for construction or repair work or any permanent improvement of any institution of the State shall be awarded by any board or governing body of such institution unless proposals shall have been made by at least three

reputable contractors where the estimated cost thereof shall not exceed five thousand dollars ($5,000.00) and by at least five reputable contractors where the estimated cost thereof shall exceed five thousand dollars ($5,000.00). (1931, c. 291, s. 3.)

§ 143-133. No evasion permitted.—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3.)

§ 143-134. Highway and prison departments excepted.—This article shall not apply to the state highway and prison department of the state of North Carolina. (1933, c. 400 s. 3-A.)

§ 143-135. Limitation of application of article.—This article shall not apply to governmental agencies of sub-divisions of the state of North Carolina doing or performing by or through its or their duly elected officers or agents work for such agency up to and including an amount not to exceed five thousand ($5.000.00) dollars. (1933, c. 552, ss. 1, 2.)

Art. 9. Building Code.

§ 143-136. N. C. building code.—This article shall be known and may be cited as the North Carolina building code. (1933, c. 392, s. 1.)

§ 143-137. Purpose of article.—It is the purpose of this article to protect life, health, and property and all its provisions shall be construed liberally to that end. (1933, c. 392, s. 2.)

§ 143-138. Administration by insurance commissioner; duties of state board of health.—It shall be the duty of the insurance commissioner or his deputy or deputies in coöperation with local officials in accordance with §§ 160-115 to 160-123, inclusive, to enforce the building code hereinafter ratified and adopted, and all rules and regulations which the building code council is authorized to promulgate in modification or addition to said building code under the authority of this article, and further, in coöperation with local authorities, to enforce ordinances of municipal corporations relating to a building code or building rules and regulations: Provided, however, it shall be the duty of the state board of health, instead of the duty of the insurance commissioner, to enforce all provisions of the building code hereinafter designated and all other rules and regulations duly promulgated by the building code council relating to plumbing where such plumbing regulations are not otherwise prescribed by local ordinance or rules and regulations of county health boards. (1933, c. 392, s. 3; 1941, c. 280, s. 1.)

Editor's Note.—The 1941 amendment rewrote this section to appear as set out above.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 457.

§ 143-139. Building code council created; powers and duties; application of building code.—There is hereby created a building code council which shall consist of the following members registered in accordance with the laws of North Carolina where registration laws apply: One architect, one general contractor, one structural engineer, one plumbing and heating contractor, and one representative of organized labor. Members of the building code council shall be appointed or removed by the governor. The terms of office shall be as follows: One architect five years, one general contractor four years, one structural engineer three years, one plumbing and heating contractor two years and one representative of organized labor one year. Vacancies caused by expiration of term of office shall be filled by the governor and appointments made for a period of five years. Vacancies caused by resignation or otherwise shall be filled by the governor for the unexpired term of the person leaving office.

Within thirty days after the passage and publication of this article, the building code council shall meet and organize and shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties and it shall keep an accurate record of all its proceedings. Subject to the limitations hereinafter set forth, the said building code council is authorized and empowered to establish reasonable and suitable classifications of buildings, both as to use and occupancy; to determine general building restrictions as to location, height and floor areas; to promulgate rules for the lighting and ventilation of buildings; means of egress therefrom; construction thereof and precautions to be taken during such construction; materials, loads and stresses of construction; chimneys and heating appliances and elevators; plumbing, heating, electrical control and protection; and to adopt such other rules and regulations as may be reasonably necessary to effectuate the purposes of this article: Provided, however, the said building code council shall not establish any standard or adopt or promulgate any rule, regulation, classification, limitation or restriction more rigid, exacting or stringent in its requirements than is authorized in the "North Carolina Building Code" adopted and promulgated by said council in the year one thousand nine hundred and thirty-six and published in full in August of that year in a printed volume as an official publication of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the said volume being known and designated as the "North Carolina Building Code, prepared by the North Carolina Building Code Council" and also known and identified as "Bulletin number ten, Engineering Experiment Station, State College Station, Raleigh." The provisions of said "North Carolina Building Code" so published are hereby in all respects ratified and adopted and shall continue in full force and effect unless and until they may be modified as hereinafter authorized: Provided, further, the said building code council may, subject to the approval of the insurance commissioner, promulgate rules and regulations which shall have the effect of establishing requirements less rigid and less stringent than those set forth in said "North Carolina Building Code"; Provided, further, any municipal corporation may adopt a building code or building rules and regulations which are more rigid, stringent and exacting than the "North Carolina Building Code" referred to above as the same is now adopted or as it may be hereafter modified pursuant to the

provisions of this article. (1933, c. 392, s. 4; 1941, c. 280, s. 2.)

Editor's Note.—The 1941 amendment added the paragraph at the end of this section.

§ 143-140. Appeals to council.—An appeal from the decision of the insurance commissioner upon any matter affecting the building code may be taken to the building code council as hereinafter provided. (1933, c. 392, s. 5.)

§ 143-141. Compensation; appeals to council and to courts; buildings to meet code standards.—The members of the building code council may each receive five dollars per day as compensation for the time given in the performance of his duty and may be reimbursed for compensation and actual traveling expenses from funds of the organization which he represents.

When the insurance commissioner shall reject or refuse to approve the mode or manner of construction proposed to be followed, or materials to be used in the erection or alteration of any building or structure, or when it is claimed that the provisions of this code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, the owner of such building or structure, or his duly authorized agent, may demand that the decision of the insurance commissioner be reviewed by the chairman and two or more members of the building code council who are qualified to render a fair and impartial decision where the amount in question shall exceed the sum of $1,000.00. The members best qualified in the opinion of the chairman shall be selected to review the decision of the insurance commissioner.

After a review of the decision of the insurance commissioner the chairman shall forward the findings and recommendations to the insurance commissioner immediately. It is understood that the building code council shall serve in an advisory capacity only and that the final decision and responsibility for such decision shall rest upon the insurance commissioner: Provided, nothing in this article shall prohibit the owner his right of appeal to the superior courts.

It shall be the duty of the council not only to make recommendations to the insurance commissioner relative to the proper construction of the pertinent provisions of the building code but it shall also recommend that he shall allow materials and methods of construction other than those required by the building code to be used, when in its opinion such other material and methods of construction are as good as those required by the code, and for this purpose the requirements of the building code as to such matters shall be considered simply as a standard to which construction shall conform. (1933, c. 392, s. 6.)

§ 143-142. Hearings before insurance commissioner as to questions under law or building code, etc.—Any person desiring to raise any question under this article or under the "North Carolina Building Code" or any rule or regulation promulgated by the building code council shall be entitled to a full hearing before the insurance commissioner, and upon request in writing by any such person, the insurance commissioner shall appoint a time for the hearing, giving such person reasonable notice thereof. The insurance commissioner shall conduct a full and complete hearing of the matters in controversy and make a determination thereof. Any person affected by any decision of the insurance commissioner upon such matters may, either before or after appeal to the building council as provided for in § 143-141, proceed against the insurance commissioner in the superior court of Wake county, to enjoin the enforcement of the ruling or decision. In any such injunction proceeding the trial of all matters which may have been involved in the hearing before the insurance commissioner shall be de novo but the decision and ruling of the commissioner shall be prima facie correct and valid and the burden of proof shall be on the party attacking such decision. The provisions of this section shall not deprive any person of any other right of action or appeal which he may have and shall not limit any party to the assertion of said right by injunction as herein permitted: Provided, however, that where the question raised relates to any provision, regulation, ruling or decision regarding plumbing, the hearing shall be held before the state board of health instead of the insurance commissioner; but otherwise the procedure, rights and remedies in such cases shall be as outlined in this section. (1941, c. 280, s. 3.)

Cross Reference.—As to injunction generally, see §§ 1-485 et seq.

§ 143-143. Violation of act subjects offender to fine.—If any employer, owner or other person shall violate any of the provisions of this article, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined within the time prescribed by the insurance commissioner or his deputy or shall fail, neglect, or refuse, to obey any lawful order given or made by the insurance commissioner, for each such violation, failure, or refusal, such employer, owner or other person upon conviction thereof shall be fined in any sum not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each offense. Each seven days neglect shall constitute a separate and distinct offense. (1933, c. 392, s. 7.)

Art. 10. Various Powers and Regulations.

§ 143-144. State institutions may exercise eminent domain.—Whenever the directors or managers of any state institution find it necessary to acquire lands in order to carry out the purposes of the institution, or to acquire lands, rights of way, or easements for the purposes of obtaining and protecting water supplies, or for constructing and maintaining dams, reservoirs, standpipes, pipe lines, flumes, or conduits for water-supply purposes, and are unable to purchase the same from the owners at a reasonable price, or are unable to obtain a good and sufficient title therefor by purchase from the owners, then such state institution may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purposes by condemnation in the manner prescribed by law under the chapter on Eminent Domain. (Rev., s. 3062; 1917, cc. 51, 132; C. S. 7522.)

Cross Reference.—For chapter on Eminent Domain, see Chapter 40, §§ 40-1 et seq.

§ 143-145. Entry on land to lay water pipes.—

For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the state may enter upon the lands through which they may desire to conduct their pipes for such purpose, and lay them under ground, and they, at all times, shall have the right to enter upon such lands for the purpose of keeping the water line in repair and do all things necessary to that end. (Rev., s. 3061; 1893, c. 63, s. 1; 1911, c. 62, s. 26; C. S. 7523.)

§ 143-146. Governor to execute deeds of state lands held for institutions.—The governor of the state is hereby authorized and empowered to execute a deed under the great seal of the state to any lands the title to which is now vested in the state, for the use of any state institution, upon application of the trustees or directors of such institution. The application shall show such conveyance is for the best interests of the institution, and shall be approved by the council of state. (1917, c. 129; C. S. 7524.)

§ 143-147. Method of alienation of real property held by any State agency.—Wherever the power and authority to convey real property held or owned by any State institution, agency, board, commission, person, or corporation that exercises State functions, have been or may be hereafter given by the General Assembly, then the method and manner of conveying the same shall be as herein provided. (1929, c. 143, s. 1.)

Cross Reference.—As to provision for approval of sale of, or encumbrances on, property of corporations in which the state is interested, see § 124-5.

§ 143-148. Execution; signature; attestation; seal.—Such conveyance shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, and signed in the name of the State of North Carolina by the Governor and attested by the Secretary of State, and the Great Seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2.)

§ 143-149. Admission to registration in counties.—Such conveyances shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3.)

§ 143-150. Exclusive method of conveying such property.—The manner and method of conveying real property in the State of North Carolina herein set out shall be the exclusive and only method of conveying same. Any conveyance thereof by any other person and/or executed in any other manner or method shall not be effectual to convey the State's interest or estate in such real property. (1929, c. 143, s. 4.)

§ 143-151. Grant of easements to public-service corporations.—The directors of the various state institutions are authorized and empowered to grant privileges and easements to individuals or companies to run telegraph, telephone, or power transmission lines over lands belonging to such institutions, when in their judgment it is right and proper to do so, and subject to such terms and conditions as they may impose, and subject in each case to the approval of the attorney-general of the state. (1909, c. 484; C. S. 7525.)

§ 143-152. Injury to water supply misdemeanor.—If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (Rev., s. 3458; 1893, c. 63, s. 3; C. S. 7526.)

§ 143-153. Keeping swine near state institutions; penalty.—On the petition of a majority of the legal voters living within a radius of one-quarter of a mile of the administrative building of any state educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one-quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten nor more than fifty dollars. (1909, c. 706; C. S. 7527.)

§ 143-154. Expenditures for departments and institutions; accounting and warrants.—All expenditures of any character allowed by the general assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the state auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C. S. 7528.)

§ 143-155. Institutions to file monthly statements with auditor.—On the fifteenth of each month it shall be the duty of the head of each state institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the state auditor on blanks to be prepared and furnished to him by the auditor. (1911, c. 99; C. S. 7529.)

§ 143-156. Certain institutions to report to governor and general assembly.—It shall be the duty of the boards of directors, managers, or trustees of the several state institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the state prison to submit their respective reports to the governor, to be transmitted by him with his message to the general assembly. (Rev., s. 5373; 1883, c. 60, ss. 2, 4; C. S. 7530.)

§ 143-157. Reports of departments and institutions; investigations and audits. — All state departments and state institutions shall make reports to the governor from time to time as may be required by him, and the governor is empowered to have all departments of the state government and state institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C. S. 7531.)

§ 143-158. Special investigations.—At any time, upon complaint made to him or upon his own motion, the governor may appoint a special

commission to investigate any state department or state institution, which commission shall have power to subpœna witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars. (1917, c. 58, s. 8; C. S. 7532.)

§ 143-159. Governor given authority to direct investigation.—The Governor is hereby authorized and empowered to call upon and direct the Attorney-General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ 143-160. Conduct of investigation. — Whenever called upon and requested by the Governor as set out in § 143-159, the Attorney-General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpœnas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpœnas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpœnaed to attend any hearing before the Attorney-General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the Superior Court. (1927, c. 234, s. 2.)

§ 143-161. Stenographic record of proceedings.—A stenographic record of the proceedings had in such investigation shall be taken and copy thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ 143-162. State institutions to mail copies of reports.—Each state institution required by law to file biennial reports with the governor and general assembly shall prepare, print and mail copies thereof to each of the members of the general assembly elect on or before the twentieth day of November preceding the meeting of the general assembly. Said biennial reports shall embrace all receipts and disbursements up to the thirtieth of June preceding the election of said general assembly. Any officer of a state institution whose duty it is to make these reports, failing to file said biennial report, unless an extension of time is given by the governor, shall be subject to dismissal from office. (1923, c. 197, ss. 1, 3; C. S. 7534(a).)

Art. 11. Revenue Bonds and Governmental Aid.

§ 143-163. State agencies may issue bonds to finance certain public undertakings.—The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the governor of North Carolina, with the approval of the council of state, are hereby authorized to issue bonds of the several departments, agencies or commissions of the state, in such sum or sums, not to exceed in the aggregate two million dollars, at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding thirty years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no state department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; Provided, further, that no state department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June first, one thousand nine hundred forty-one. (1935, c. 479, s. 1; Ex. Sess., 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

Editor's Note.—The amendments changed the date in the proviso.

§ 143-164. Acceptance of federal loans and grants permitted.—The said State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the governor of North Carolina, with the approval of the council of state. (1935, c. 479, s. 2.)

§ 143-165. Approval by governor and council of state necessary; covenants in resolutions authorizing bonds.—The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the governor of North Carolina, which action shall be approved by the council of state before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to (a) the use and disposition of revenue of the undertaking for which the said bonds are to be issued, (b) the pledging

of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor, (c) the operation and maintenance of such undertaking, (d) the insurance to be carried thereon and the use and disposition of the insurance moneys, (e) the fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor, (f) provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid: Provided, however, that the credit of the state of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the state shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess., 1936, c. 2, s. 2.)

Editor's Note.—The 1936 amendment added the second paragraph.

Art. 12. Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law Enforcement Officers' Benefit and Retirement Fund.—In every criminal case finally disposed of in the criminal courts of this state, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, two dollars ($2.00) additional cost to be collected and paid over to the treasurer of North Carolina and held in a special fund for the purposes of this article. The local custodian of such costs shall monthly transmit such moneys to the state treasurer, with a statement of the case in which the same has been collected, provided however that the costs assessed under this article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served, provided no part of said costs or assessments shall be paid by any county or municipality.

(a) The moneys so received shall annually be set up in a special fund to be known as "The Law Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund," which shall consist of the state auditor, who shall be chairman ex-officio of said board, the state treasurer, the state insurance commissioner, and four members to be appointed by the governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law enforcement officers as hereinafter defined, employed by the state, and one representing the public at large. No member of said board of commissioners shall receive any salary, compensation or expenses other than a per diem of not exceeding seven dollars ($7.00) for each day's attendance at duly and regularly called and held meetings of the commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex-officio members shall not receive any per diem.

(c) As soon as is practicable after March 13, 1941, and after the appointment of the four members herein authorized to be appointed by the governor, the organization of said board shall be perfected by the selection from its members of a vice-chairman, and secretary, to serve for a term of one year and until their successors shall have been elected and qualified, and by the selection by the board, by a majority vote, of such employees as in the opinion of the board, with the approval of the governor, may be necessary for the proper handling of the business of the board of commissioners, such employee or such employees to hold office at the will of the board of commissioners. No employee of the board of commissioners shall during the period of such employment or during any leave of absence therefrom hold any public office, be a candidate for any public office, or engage in any political activity whatsoever for or on behalf of any candidate for public office, either in the primary or election. The violation of the restriction herein contained against political activity shall subject such employee to immediate discharge; and any such employee who shall use any funds of the commission for political purposes or shall incur any expense whatsoever in connection with any political activity, paid or payable out of the funds of said commission, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as provided by law in the case of misdemeanors. Nothing herein contained shall prevent any employee from exercising his individual right of franchise in any primary or election. Nothing in this section shall affect the right of any employee of said commission who is at present a member of the general assembly from continuing as such member for the duration of such present term.

(d) The said board of commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining

any benefits under this article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law.

(e) There shall be kept in the office of the said board of commissioners by the secretary, records which shall give a complete history and record of all actions of the board of commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or board members.

(f) On or before the first day of January of each year the said board of commissioners shall make to the governor of the state of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. There shall be annually made by the state auditor's department a complete audit and examination of the receipts and the disbursements of the board of commissioners herein created.

(g) The board of commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said fund in accordance with the purposes of this article. And the board shall have the authority to invest any funds not immediately needed in any securities which the state sinking fund commission may be authorized to invest in, or in certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the federal deposit insurance corporation not to exceed the sum of five thousand ($5,000.00) dollars in any one bank or trust company, or in the shares of federal savings and loan associations and state chartered building and loan associations not to exceed five thousand ($5,000.00) dollars in any one of such associations; provided that no such funds may be so invested in a state chartered building and loan association unless and until authorized by the insurance commissioner.

(h) In case the amount derived from the different sources mentioned and included in this article shall not be sufficient at any time to enable the said board of commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the presumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) The board of commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform their duty, as well as the amount to be paid such officers' dependents in case such officer is killed while in the discharge of his duty. The said board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said board: Provided, that any officer so voluntarily contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall voluntarily pay into the fund a monthly amount to be determined by the said board, based upon such officer's average monthly income.

(j) All officers who have contributed to the retirement fund herein provided for, and who have had twenty years continuous service as such peace officer in this state, shall be eligible for retirement benefits and the board of commissioners is authorized, in their discretion under rules and regulations promulgated by it, to determine when an officer has completed twenty years of continuous service.

(k) The board of commissioners is authorized and empowered in its discretion, upon a finding that any officer who has contributed to the retirement fund herein provided for has been discharged from the service through no fault of his own, to reimburse from the fund herein created an amount not to exceed that which such officer has contributed to the fund under the provisions of subsection (i) of this section.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this article.

(m) Law enforcement officers in the meaning of this article shall include sheriffs, deputy sheriffs, constables, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, prison foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency, and all other officers of this state, or of any political subdivision thereof, who are clothed with the power of arrest and whose duties are primarily in enforcing the criminal laws of the state.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the treasurer of the state of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge

of the judicial district in which such action was tried.

(o) No state employees participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, chapter 25, known as "The Teachers and State Employees Retirement System Act."

(p) No state employee participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by "The Teachers and State Employees Retirement System Act," § 135-1 et seq. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3, c. 233; 1941, cc. 56, 157; 1943, c. 145.)

Editor's Note.—The 1939 amendments so changed this section that a comparison here is not practical.

The first 1941 amendment added the last sentence of subsection (g) and added at the end of subsection (m) the words "and whose duties are primarily in enforcing the criminal laws of the state." The second 1941 amendment made changes in the first paragraph of the section and in subsections (a), (b) and (c), and added subsection (o).

The 1943 amendment increased the additional cost mentioned in the first paragraph from one dollar to two dollars and added the proviso to the said paragraph. Prior to the amendment part of the moneys mentioned in subsection (a) was paid into the general fund of the state.

For temporary act permitting highway patrolmen to transfer membership from law enforcement officers' benefit and retirement fund to teachers' and state employees' retirement system, see Session Laws, 1943, c. 120.

For provision relating to membership of highway patrolmen, see § 135-3.1.

Art. 13. Publications.

§ 143-167: Transferred to § 147-54.1 by Session Laws 1943, c. 543.

§ 143-168. Reports and publications; conciseness; governor and attorney general to prescribe scope of reports.—The reports and publications of every kind now authorized or required to be printed by the several state departments and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of the department. The details of the work of the departments shall not be printed when not necessary to an intelligent understanding of the work of the departments, but totals and results shall be tabulated and printed in said reports. The governor and the attorney general shall confer with the various departments and prescribe the scope of the matter to be published in any report now prescribed, required, or permitted, to the end that unnecessary matter may be eliminated. (1911, c. 211, s. 2; 1917, c. 202, s. 2; 1931, c. 261, s. 3; C. S. 7294.)

§ 143-169. Departmental reports to legislature; number printed.—Not to exceed eight hundred copies each of the annual or biennial reports of the several departments of the state government shall be printed, a copy of each of these to be furnished to each of the members and officers of the general assembly, one copy to each state officer, and five copies to the state librarian for filing, the remaining copies to be distributed in the discretion of the officer making such report: Provided, that the Division of Purchase and Contract may permit the publication of a greater number of reports if in its judgment the same are necessary. (1911, c. 211, s. 2; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15; C. S. 7302.)

§ 143-170. Reports of departments to be printed biennially.—All laws requiring reports to be made, published, and printed by any department oftener than once in two years are hereby amended to the extent that the report of any department is required or permitted to be printed only once in any biennial period: Provided, that this section shall not apply to the report of the state auditor and of the state treasurer. (1917, c. 202, s. 1; C. S. 7534.)

Art. 14. State Planning Board.

§ 143-171. Board established as an advisory agency of state. — The state planning board, as provided for by chapter four hundred eighty-eight of the Public Laws of one thousand nine hundred thirty-five is hereby established as an advisory agency of the state, under the direction of the governor and as more fully set forth hereinafter. (1937, c. 345, s. 1.)

§ 143-172. Membership; terms of office; expenses.—The state planning board shall consist of nine members, appointed by the governor, as follows: Five members to be chosen from state officers or heads of departments or boards, one of whom shall be the director of the department of conservation and development; at least one representative from the University of North Carolina, and the remaining members to be chosen from among the other citizens of the state. The members of the board shall hold office during the pleasure of the governor, and all vacancies shall be filled by the governor, when and as they may occur. The members of the said board shall serve without pay, but they shall be allowed such reasonable expenses as are authorized by the board and incurred in the immediate discharge of their duties, to be paid out of such funds as may be available. (1937, c. 345, s. 2.)

§ 143-173. Chairman and secretary; rules and regulations; employees; expenditures; office space and equipment; special surveys and studies.—The governor shall appoint one member of the board to serve as chairman. The board shall elect one member to serve as secretary of the board. The board shall adopt such rules as it may deem proper for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The board may appoint such employees as it may deem necessary for its work and fix their compensations. The board may also contract with individuals or corporations for such special services as the board may require. The expenditures of the board from funds of the state shall be limited to the amounts appropriated by the general assembly for the specific purpose, or amounts appropriated from the emergency fund. The board shall be supplied with necessary office space and necessary equipment. Upon request of the board, the governor may, from time to time, for the purpose of special surveys or studies under the direction of the board, assign or detail to the board any member of any state department or bureau or agency, or may direct any such department, bureau or agency to make special surveys and studies as requested by the state planning board. (1937, c. 345, s. 3.)

§ 143-174. Functions of board. — It shall be

the function and duty of the state planning board to make studies of any matters relating to the general development of state or regions within the state or areas of which the state is a part, with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and efficient development of the state. Upon the basis of such studies, and in accordance with the present and future needs and resources, the board shall present, from time to time, reports, plans, maps, charts, descriptive matter and recommendations relating to such conservation, wise use and planned development of the material and human resources of North Carolina as will best promote the health, safety, morals, order, convenience, prosperity and welfare of the people of the state. (1937, c. 345, s. 4.)

§ 143-175. Adoption of plans and recommendations; publicity program; co-operation with other agencies; advice and information relative to state planning; proposed legislation.—The state planning board may, from time to time, adopt, in whole or in part, such plans and recommendations as, in its judgment, may be deemed wise and proper; and may, from time to time, alter, amend and add to such plans; may, in the interest of promoting understanding of and compliance with their recommendations, publish and distribute such plans and recommendations and may employ such means of publicity and education as it may determine; may confer and co-operate with other agencies, federal, state, regional, county or municipal in the accomplishment of common purposes; may, upon request or at its own initiative, furnish advice or information to the governor, the general assembly, state, county, and municipal officers or departments on matters relating to state planning; and may prepare and submit drafts of legislation for the carrying out of any plans they may adopt. (1937, c. 345, s. 5.)

§ 143-176. Public boards and officials directed to supply information; general powers.—All public boards and officials shall, upon request, furnish to the state planning board such available information as it may require for its work. In general, the board shall have such powers as may be appropriate, to enable it to fulfill its functions and duties, to promote state planning and to carry out the purposes of this article. (1937, c. 345, s. 6.)

Editor's Note.—This section would seem to imply the power to make rules and regulations necessary for the purposes of the statute. 15 N. C. Law Rev. 323.

§ 143-177. Acceptance and disbursements of contributions. — The state planning board is authorized, in the name of the state, to accept and disburse, under the approval of the director of the budget, any contributions that may be available for the work in which it is engaged, by any state or federal agency or private or public endowment. (1937, c. 345, s. 7.)

§ 143-177.1. Allocation of funds from contingency and emergency fund.—The governor and the council of state are hereby authorized to allocate from the contingency and emergency fund to the state planning board, provided for under the provisions of this article, funds in such amount and at such time or times as they may find actually necessary for the reasonable fulfillment of the functions of such board within the provision of the statute creating the board. (1943, c. 355.)

Art. 15. Commission on Interstate Co-Operation.

§ 143-178. Senate committee on interstate co-operation.—There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on interstate co-operation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 1.)

§ 143-179. House committee on interstate co-operation.—There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on interstate co-operation, and to consist of five members of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house of representatives shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 2.)

§ 143-180. Governor's committee on interstate co-operation. — There is hereby established a committee of administrative officials and employees of this state, to be officially known as the governor's committee on interstate co-operation, and to consist of five members. Its members shall be: the budget director or the corresponding official of this state, ex officio; the attorney general, ex officio; the chief of the staff of the state planning board or the corresponding official of this state, ex officio, and two other administrative officials or employees to be designated by the governor. If there is uncertainty as to the identity of any of the ex officio members of this committee, the governor shall determine the question, and his determination and designation shall be conclusive The governor shall appoint one of the five members of this committee as its chairman. In addition to the regular members, the governor shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 3.)

§ 143-181. North Carolina commission on interstate co-operation.—There is hereby established the North Carolina commission on interstate co-operation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on interstate co-operation.

The five members of the house committee on interstate co-operation, and

The five members of the governor's committee on interstate co-operation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary non-voting members of this commission. The chairman of the governor's committee on interstate co-operation shall be ex

officio chairman of this commission. (1937, c. 374, s. 4.)

§ 143-182. Legislative committees constitute senate and house council of American Legislators' Association.—The said standing committee of the senate and the said standing committee of the house of representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American Legislators' Association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (1937, c. 374, s. 5.)

§ 143-183. Functions and purpose of commission.—It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the council of state governments.

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other state, of the federal government, and of local units of government.

(3) To endeavor to advance co-operation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal co-operation of governmental offices with one another,

(e) The personal co-operation of governmental officials and employees with one another, individually,

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose. (1937, c. 374, s. 6.)

§ 143-184. Appointment of delegations and committees; persons eligible for membership; advisory boards.—The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure inter-governmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate co-operation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (1937, c. 374, s. 7.)

§ 143-185. Reports to the governor and general assembly; expenses; employment of secretary, etc.—The commission shall report to the governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this article. The commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the council of state governments, participate with other states in maintaining the said council's district and central secretariats, and its other governmental services. (1937, c. 374, s. 8.)

§ 143-186. Names of committees designated.—The committees and the commission established by this article shall be informally known, respectively, as the senate co-operation committee, the house co-operation committee, the governor's co-operation committee and the North Carolina co-operation commission. (1937, c. 374, s. 9.)

§ 143-187. Council of state governments a joint governmental agency. — The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which co-operate through it. (1937, c. 374, s. 10.)

§ 143-188. Secretary of state to communicate text of measure to officials and governing bodies of other states. — The secretary of state shall forthwith communicate the text of this article to the governor, to the senate, and to the house of representatives of each of the other states of the Union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this article, thus establishing a similar commission, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. (1937, c. 374, s. 11.)

Art. 16. Spanish-American War Relief Fund.

§ 143-189. Governor to be trustee of fund.—Whereas, of a fund known as the "Interim Pay Fund," and as the "Spanish American War Relief Fund," appropriated by the United States Government, for pay of veterans for time served between date of their call for duty and their muster into service of the United States, during the Spanish-American War in 1898, there remains in possession of the State of North Carolina, and

unclaimed by Veterans of said War, a balance amounting to seventeen thousand six hundred thirty-seven dollars and forty-six cents, as of January 4, 1933, and Whereas, for many years there have been few claimants for any part of this fund, with the probability that the number of claims against same will become less and less, and more remote;

The Governor of the State shall be the trustee of said Interim Pay Fund, and shall, on the 30th of June, 1933, pay over to the Quartermaster of the Department of North Carolina United Spanish War Veterans the interest accruing on said sum at the rate of interest earned per annum, during the period from January 1st, 1933, to June 30th, 1933. Thereafter, the Governor, as such Trustee, shall pay over to said Department Quartermaster, semiannually each year (namely, as of 31st of December and 30th of June), interest on such portion of this fund as shall remain in the State Treasury as unexpended for legal claims against the same. Said interest, when so paid to such Department Quartermaster, shall be expended by him only on the written approval of the Department Commander, United Spanish War Veterans of North Carolina, and solely for welfare work among its needy comrades, their widows and their children, and current use of said organization. (1933, c. 554, s. 1.)

§ 143-190. Bond of department quartermaster.—Said Department Quartermaster, as the financial agent and Disbursing Officer of the United Spanish War Veterans of North Carolina, shall furnish a surety bond in the amount of five hundred dollars ($500.00) in a surety company authorized to do business in the State of North Carolina, conditioned upon the faithful performance of his duties as specified herein, and such bond to be approved by the said Department Commander. Said Trustee of the above fund shall have authority to invest same, or any part thereof, in securities as are legal for trust funds in this State. (1933, c. 554, ss. 2, 3.)

Art. 17. State Post-War Reserve Fund.

§ 143-191. Appropriation for fund.—There is hereby appropriated from the general fund of the state the sum of twenty million dollars ($20,000,000.00), the said sum, together with the investments and income therefrom, to be hereafter known and designated as the State Post-War Reserve Fund. (1943, c. 6, s. 1.)

§ 143-192. Fund to be invested by governor and council of state; state treasurer custodian.—The governor and council of state are hereby fully authorized and directed to invest the said fund exclusively in bonds of the United States of America, of such series as may be readily converted into money and notes or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, and in bonds or notes of the State of North Carolina. The interest and revenues received from such investments, or profits realized in the sale thereof, shall become a part of the said state post-war reserve fund and shall be likewise invested. Bonds of the state of North Carolina purchased for the said fund shall not be cancelled or retired but shall remain in full force and the income therefrom reinvested as hereinbefore provided. The state treasurer shall be custodian of all securities and investments made under authority of this article. (1943, c. 6, s. 2.)

§ 143-193. Fund to be held for such use as directed by general assembly.—The said state post-war reserve fund shall be held for such use as shall hereafter be directed by an act of the general assembly of North Carolina, and no other use thereof whatsoever shall be made. (1943, c. 6, s. 3.)

§ 143-194. Report to general assembly.—The governor and council of state shall make a report in writing to the general assembly, not later than the tenth day of each regular or special session thereof, stating the nature and amount of all receipts and disbursements from the said fund and the amount contained in said fund, and giving an itemized statement of all investments made as herein authorized, which report shall be spread upon the journals of the senate and house of representatives. (1943, c. 6, s. 4.)

Art. 18. Rules and Regulations Filed with Secretary of State.

§ 143-195. Certain state agencies to file administrative regulations or rules of practice with secretary of state; rate, service or tariff schedules, etc., excepted.—On or before the first day of June of one thousand nine hundred and forty-three, each agency of the state of North Carolina created by statute and authorized to exercise regulatory, administrative or semi-judicial functions, shall file with the secretary of state a complete copy of all general administrative rules and regulations or rules of practice and procedure, formulated or adopted by the agency for the performance of its functions or for the exercise of its authority and shall thereafter, immediately upon the adoption of any new general administrative rule or regulation or rule of practice and procedure, or the formulation or adoption of any amendment to any general administrative rule or regulation or rule of practice and procedure, file a copy of the same with the secretary of state: Provided that nothing contained in this article shall require any state agency to file in the office of the secretary of state any rate, service or tariff schedule or order or any administrative rule or regulation referring to any such rate, service or tariff schedule. (1943, c. 754, s. 1.)

§ 143-196. Rules and regulations effective only after filing; date of filing to be shown.—The general administrative rules and regulations or rules of practice and procedure, formulated or adopted by any of the state agencies, shall remain in full force and effect until the first day of June, one thousand nine hundred and forty-three, but thereafter shall be effective only from and after the time a copy is filed with the secretary of state. For purposes of record, it shall be the duty of the secretary of state to stamp each rule and regulation as the same is filed, showing thereon

the date the same is filed in his office. (1943, c. 754, s. 2.)

§ 143-197. Copies of rules and regulations available to public.—The secretary of state, upon the call of the commission created by resolutions twenty-seven and thirty-four of the general assembly of one thousand nine hundred and forty-one, or any member of the said commission shall supply copies of said rules and regulations filed in his office, and the said commission or any member thereof shall have access to any or all of said rules and regulations during any hour that the office of the secretary of state is open to the public. The said rules and regulations shall be available to any member of the public, but the secretary of state shall have the authority to charge the usual and customary fee for certified copies thereof. (1943, c. 754, s. 3.)

§ 143-198. Construction of article.—The provisions of this article shall not be construed as affecting or repealing any provisions in any act prescribing adoption, promulgation or approval of administrative rules or regulations and rules of practice and procedure, but the provisions of this article shall be in addition to the provisions which may be contained in any article with respect to the prescribing, adoption, promulgation or approval of such rules. (1943, c. 754, s. 4.)

Chapter 144. State Flag and Motto.

Sec.
144-1. State flag.
144-2. State Motto.
144-3. Flags to be displayed on public buildings and institutions.
144-4. Flags to be displayed at county courthouses.
144-5. Flags to conform to law.

§ 144-1. State flag.—The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one-third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one-third more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776." (Rev., s. 5321; 1885, c. 291; C. S. 7535.)

§ 144-2. State Motto. — The words "esse quam videri" are hereby adopted as the motto of this state, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat-of-arms of the state as a part thereof. On the coat-of-arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (Rev., s. 5320; 1893, c. 145; C. S. 7536.)

§ 144-3. Flags to be displayed on public buildings and institutions.—The board of trustees or managers of the several state institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any state officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place. (1907, c. 838, s. 2; C. S. 7537.)

§ 144-4. Flags to be displayed at county courthouses.—The boards of county commissioners of the several counties in this state shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the state, and the state flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C. S. 7538.)

§ 144-5. Flags to conform to law.—No state flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the state flag contained in this chapter. (1907, c. 938, s. 4; C. S. 7539.)

Chapter 145. State Flower and Bird.

Sec.
145-1. Dogwood adopted as official flower.
145-2. Cardinal declared official state bird.

§ 145-1. Dogwood adopted as official flower.—The Dogwood is hereby adopted as the official flower of the state of North Carolina. (1941, c. 289.)

§ 145-2. Cardinal declared official state bird.—The Cardinal is hereby declared to be the official state bird of North Carolina, (1943, c. 595.)

Chapter 146. State Lands.

SUBCHAPTER I. ENTRIES AND GRANTS.

Art. 1. Lands Subject to Grant.

Art. 2. Entry-Taker.

Art. 3. Entries.

Art. 4. Surveys.

Art. 5. Grants.

Art. 6. Correction of Grants.

Art. 7. Grants Vacated.

Art. 8. Phosphate Beds.

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Art. 9. Swamp Lands Reclaimed.

Art. 10. Lands Sold for Taxes.

SUBCHAPTER I. ENTRIES AND GRANTS.

Art. 1. Lands Subject to Grant.

§ 146-1. Vacant lands; exceptions. — All vacant and unappropriated lands belonging to the state shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except—

1. Lands covered by navigable waters.

2. Lands covered by the waters of any lake, or which, though now covered, may hereafter be gained therefrom by the recession, draining, or diminution of such waters, or have been so gained heretofore and not lawfully entered.

3. Marsh or swamp land, where the quantity of land in any one marsh or swamp exceeds two thousand acres, or where, if of less quantity, the same has been surveyed by the state, or by the state board of education, with a view to draining and reclaiming the same. (Rev., s. 1693; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; C. S. 7540.)

Cross Reference.—As to lands covered by "navigable water," see § 146-6 and notes thereto.

Effect of Grant.—Lands once granted by the state to individual citizens do not become "vacant lands" within the meaning of the statute, where the state subsequently acquires title to them but abandons the actual use to which they were put. State v. Bevers, 86 N. C. 588.

Swamp lands, within the meaning of this section are those too wet for cultivation except by drainage. Beer v. Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024.

Swamp lands of two creeks may be separate and not subject to the same application of this section though it appears that sometimes during freshets and high water these are all covered with one sheet of water. Beer v. Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024.

A tract of land within the area of swamp lands coming within the meaning of this section need not necessarily be free from knolls or higher and drier places. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994.

Tide-lands.—The fact that tide-lands conveyed by the state board of education are thereafter filled in and reclaimed by the purchaser does not divest the title of the purchaser, since the conveyance is of the fee and not an easement in the lands. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714.

Grant Impeding Navigation.—In respect to navigable waters the state has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 69, 197 S. E. 714.

Grants to Land Not Subject to Entry.—An entry made to swamp land when the body contains more than 2,000 acres is void, and a grant under such entry is void. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994. See Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714.

§ 146-2. What swamp lands subject to grant.— Marsh or swamp lands, lying in a swamp where the quantity of land does not in the whole swamp or marsh exceed two thousand acres, and which has not been surveyed by the state or state board of education, and marsh or swamp lands, unsurveyed as aforesaid, not exceeding fifty acres in one body, though lying within a marsh or swamp of a greater number of acres than two thousand, may be entered, when the same shall be situated altogether between the lines of tracts heretofore granted. (Rev., s. 1694; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; C. S. 7541.)

§ 146-3. Department of conservation and development to locate land subject to entry. — The State Department of Conservation and Development is hereby directed to investigate and locate all vacant and unappropriated lands now subject to entry and grant as described in §§ 146-1 and 146-2, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon, and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. If upon such report the Governor should determine that it is to the interest of the State that any particular parcel of such land should be devoted to such purposes, he shall recommend to the next succeeding session of the General Assembly the withdrawal of such parcel or parcels of land from entry, and immediately upon the publication of such proclamation, such parcel or parcels of land shall be devoted to the public purpose designed and specified. Upon such withdrawal from entry such parcel or parcels of land shall be administered for the purposes to which it is devoted by the said State Department of Conservation and Development. (1927, c. 83, s. 1.)

§ 146-4. Swamp lands defined. — The words "marsh and swamp land" wherever employed in this chapter, and the words "swamp lands" employed in the statutes creating the literary fund and literary board of North Carolina and the state board of education of North Carolina, or in any act in relation thereto, shall be construed to include all those lands which have been or may now be known and called "swamp" or "marsh" lands, "pocosin bay," "briary bay," and "savanna," and all lands which may be covered by the waters of any lake or pond. (Rev., s. 1695; 1891, c. 302; C. S. 7542.)

Cited in Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714.

§ 146-5. Investigating and locating marsh or swamp lands. — The State Department of Conservation and Development is hereby directed to

investigate and locate the body or bodies, or parcel or parcels of marsh or swamp land, the title to which is now vested in the State Board of Education under §§ 146-1 and 146-4, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. Upon such report to the Governor, he shall bring the matter to the attention of the next succeeding session of the General Assembly and if his recommendation thereupon is approved by the General Assembly, said parcel or parcels of marsh or swamp lands shall be withdrawn from sale and shall be administered for the benefit of the people of the State for the purposes set out in this act by said Department of Conservation and Development. (1927, c. 83.)

§ 146-6. Land covered by water, for wharves.—Persons owning lands on any navigable sound, river, creek or arm of the sea, for the purpose of erecting wharves on the side of the deep waters thereof, next to their lands, may make entries of the lands covered by water, adjacent to their own, as far as the deep water of such sound, river, creek, or arm of the sea, and obtain title as in other cases. But persons making such entries shall be confined to straight lines, including only the fronts of their own tracts, and shall in no respect obstruct or impair navigation. When any such entry shall be made in front of the lands in any incorporated town, the town corporation shall regulate the line on deep water to which wharves may be built. This shall not affect existing rights. For all lands thus entered there shall be paid into the treasury not less than one dollar per acre. When any person has erected a wharf on public lands of the description aforesaid, before the first of January, one thousand nine hundred and three, such person shall have liberty to enter such land, including his wharf, under the restrictions and upon the terms above set forth: Provided, no land covered by water shall be subject to entry within thirty feet of any wharf, pier or stand used as a wharf in existence, or which may hereafter be erected by any person on his own land or land under his control, or on an extended line thereof; but land covered by water as aforesaid for the space of thirty feet from the landing place or line of any wharf, pier or stand used as a wharf, as aforesaid, shall remain open for the free ingress and egress of the owner and other persons to and from such wharf, pier, or stand: Provided further, no person shall be allowed to enter and obtain a grant for any land in the waters of Onslow county, in which the tide ebbs and flows, within thirty feet of the shore at low-water mark, unless the enterer shall be the owner of the adjacent shore. (Rev., s. 1696; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; 1889, c. 555; 1891, c. 532; 1893, c. 4; 1893, c. 17; 1893, c. 349; 1901, c. 364; C. S. 7543.)

Editor's Note.—In State v. Eason, 114 N. C. 787, 19 S. E. 88, it was held that a city whose limits extended to a navigable stream has jurisdiction only to the low water mark. In view of this case it would seem that a city can only regulate the deep water line, for the purpose of entry when the stream is in the city, and it has not the power of regulating the deep water line when it extends only to the stream, unless so provided by its charter or express legislation.

Entry by Riparian Owner.—Navigable waters may be entered to the deep water line, for wharfage purposes, Barfoot v. Willis, 178 N. C. 200, 100 S. E. 303, but this right of entry is restricted to riparian owner, and applies only to this immediate water front. Bond v. Wood, 107 N. C. 139, 12 S. E. 281.

A grant to a riparian owner of land covered by navigable water conveys only an easement therein, and a deed of the land adjoining the navigable water conveys the easement in the land covered by the water. Shephard's Point Land Co. v. Atlantic Hotel, 132 N. C. 517, 44 S. E. 39.

Regulating Deep Water Line by Mandamus.—Mandamus will lie by a riparian owner of land lying within the limits of an incorporated town, or city, to compel the town or city to "regulate the deep water line to which wharves may be built" as required by this section. Wool v. Edenton, 115 N. C. 10, 20 S. E. 165.

Prior to this case the court had held, because of statute, that a riparian owner in a city could not make an entry and the secretary of state could not issue a grant until the line of deep water had been regulated by the municipal corporation. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294. But by statute now the duty of the town is "when any such entry is made," not in terms to fit the line of deep water to which entry may be extended, but to, "regulate the line of deep water to which wharves may be built."—Ed. Note.

Rights go with Land.—Riparian rights being incident to land abutting on navigable water can not be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. Zimmerman v. Robinson, 114 N. C. 39, 19 S. E. 102; Land Co. v. Hotel, 134 N. C. 397, 46 S. E. 749. A plaintiff acquires only an easement in the bed of navigable waters in front of its shore lots, for the purpose of building a wharf. Atlantic, etc., R. Co. v. Way, 172 N. C. 774, 779, 90 S. E. 937.

Same—Fishing Rights.—The right to build a wharf in front of riparian property does not give the riparian owner exclusive fishing privilege in the navigable part of the stream on which his property fronts. But the riparian owner will be protected from wrongful interference. Beil v. Smith, 171 N. C. 116, 87 S. E. 987.

Erroneous Survey of the Deep Water Line.—In case the line marked out is not the deep water line a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. Wool v. Edenton, 117 N. C. 1, 23 S. E. 40.

Cited in Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714.

§ 146-7. Certain lakes not to be sold.—White lake, Black lake, Waccamaw lake, and any other lake in Bladen, Columbus, or Cumberland counties, containing five hundred acres or more, shall never be sold nor conveyed to any person, firm, or corporation, but shall always be and remain the property of the state of North Carolina for the use and benefit of all the people of the state. (1911, c. 8; C. S. 7544.)

§ 146-8. Recreational use of State lakes regulated.—All recreation, including hunting, fishing, etc., in, upon or above, any or all of the State lakes, referred to in § 146-7 and subsequent laws, may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-9. Fish breeding protected.—For the purpose of protecting the breeding grounds of the fish inhabiting these State lakes, the administrative authority in control of said lakes may extend to the waters of all streams running into said lakes, so that such regulations relating to fishing, as in the opinion of such authority will help to

accomplish such purpose, may be put into effect. (1933, c. 516, s. 2.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-10. Erection of piers, etc.; permits.—No person, firm or corporation shall erect upon the floor of, or in or upon, the waters of any State lake which is State property, any dock, pier, pavillion, boat house, bath house, or other structure without first having secured a permit to do so from the State agency in charge of such State property. Said permit must set forth in required detail the size, cost and nature of such structure, and any person, firm or corporation erecting any such structure, without a proper permit or not in accordance with the specifications of said permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50 or imprisoned not exceeding thirty days. The State being the owner of the property may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-11. Fishing license fees for non-residents of counties in which State lakes are situated.—The Department of Conservation and Development, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Department relating to said lake, as follows: A one-day permit, 35 cents; a two-day permit, 50 cents; a weekly permit, $1. With the exception of the features of this section, the laws and regulations dealing with the issuance of fishing permits by said Department must be complied with. (1933, c. 516, s. 4.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-12. State lakes of 50 acres or more prohibited from ever being sold.—All lakes now belonging to the State, having an area of fifty acres or more, shall never be sold nor conveyed to any person, firm or corporation, but shall always be and remain the property of the State of North Carolina for the use and benefit of all the people of the State to be administered as provided for other recreational areas now owned or to be acquired by the State. (1929, c. 165.)

§ 146-13. Void grants; not color of title.—Every entry made, and every grant issued, for any lands not authorized by this subchapter to be entered or granted, shall be void; and every grant of land made since the sixth day of March, one thousand eight hundred and ninety-three, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this state, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (Rev., s. 1699; Code, s. 2755; R. C., c. 42, s. 2; 1893, c. 490; C. S. 7545.)

In General. — Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. Berry v. Lumber Co., 141 N. C. 386, 54 S. E. 278.

Under the express provisions of this statute where land in controversy has been previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. Johnston v. Kramer Bros., 203 Fed. 733, 734.

The state's grant of land was held not invalid under this section where land conveyed by the grant had not been covered by any previous grant. Peterson v. Lucro, 101 F. (2d) 282.

State Not Interested in Conflicting Grants.—A protest to the entry raises the issue of title solely between the enterer and protestant, in which the State is not interested, the burden being on the enterer to prove the protestants grant does not cover the land described in his entry. Walker v. Parker, 169 N. C. 150, 151, 85 S. E. 306.

Title by Adverse Possession.—Where upon protest to the entry of State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show, that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. Walker v. Parker, 169 N. C. 150, 151, 85 S. E. 306.

Title to Lappage by Adverse Possession.—To mature a title under the junior grant, there must be shown adverse and exclusive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. Land Co. v. Floyd, 167 N. C. 686, 83 S. E. 687; Currie v. Gilchrist, 147 N. C. 648, 61 S. E. 581; McLean v. Smith, 106 N. C. 172, 11 S. E. 184; Boomer v. Gibbs, 114 N. C. 76, 19 S. E. 226; Carolina Central Land Co. v. Potter, 189 N. C. 56, 127 S. E. 343.

Application to Grants Prior to March 6, 1893.—This section providing that a junior grant shall not be color of title so far as it covers land previously granted, applies, by the terms of that section, only to grants issued since March 6, 1893. Weaver v. Love, 146 N. C. 414, 415, 417, 59 S. E. 1041; Land Co. v. Western, 177 N. C. 248, 98 S. E. 706.

Art. 2. Entry-Taker.

§ 146-14. Election and term of office.—The board of commissioners of the several counties shall elect one person to receive entries of claims for lands within each county; and such entry-taker shall hold his office for four years. (Rev., s. 1700; Code, s. 2756; C. S. 7546.)

Deputies Not Allowed.—The duties of the entry-taker are personal and cannot be performed by a deputy or any other person. Pearson v. Powell, 100 N. C. 86, 6 S. E. 188; Maxwell v. Wallace, 38 N. C. 593.

§ 146-15. Oath of office.—The entry-taker shall take the oath of office prescribed in the chapter entitled Oaths. (Rev., s. 1703; Code, s. 2760; 1868-9, c. 173, s. 5; C. S. 7547.)

§ 146-16. Fees of entry-taker. — Entry-takers shall receive the following fees, and no other, namely: For an entry, including all services, forty cents; issuing each duplicate warrant, when thereto required, twenty-five cents; for posting and advertising, the applicant shall pay the entry-taker one dollar, and the costs of the newspaper advertisement. (Rev., s. 2801; Code, ss. 2765, 3744; R. C., c. 102, s. 32; 1870-1, c. 139, s. 3; 1903, c. 272, s. 3; C. S. 3920.)

§ 146-17. Bond required. — Every entry-taker shall enter into bond in the sum of five hundred dollars, payable to the state, with sufficient surety, approved by the county commissioners, for the faithful discharge of the duties of his office. (Rev., s. 304; Code, s. 2758; 1868-9, c. 173, s. 3; C. S. 7548.)

§ 146-18. Office of entry-taker at courthouse.—The entry-taker shall keep his office at the

courthouse of his county, or within one mile thereof, on pain of forfeiting one hundred dollars to the county, to be sued for by the county treasurer. (Rev., s. 1704; Code, s. 2759; 1868-9, c. 173, s. 4; C. S. 7549.)

§ 146-19. Annual returns. — Every entry-taker shall make return to the secretary of state annually, on the first day of January, of all lands entered with him, under a penalty of two hundred dollars. (Rev., s. 1705; Code, s. 2775; R. C., c. 42, s. 18; 1796, c. 455, s. 9; 1881, c. 265; C. S. 7550.)

§ 146-20. Penalty for failure to make returns; how recovered.—The secretary of state shall furnish the attorney-general, at every spring term of the superior court of Wake county, with a certificate of failure in every case where an entry-taker shall fail to make return according to law; and the attorney-general shall move for judgment against such entry-taker and his sureties, and the courts shall give judgment accordingly. (Rev., s. 1706; Code, s. 2776; R. C., c. 42, s. 19; 1833, c. 15; C. S. 7551.)

§ 146-21. Warrants issued by successor in office. —In all cases where an entry is made, and the entry-taker dies or resigns before a warrant is issued thereupon, his successor shall issue a warrant. (Rev., s. 1702; Code, s. 2772; R. C., c. 42, s. 15; 1835, c. 19; C. S. 7552.)

§ 146-22. Register of deeds acts in case of vacancy.—When a vacancy exists in the office of entry-taker, the register of deeds shall act as entry-taker until such vacancy is filled by an election by the commissioners. The register of deeds, in such case, shall take charge of the books belonging to the office, shall discharge all the duties and receive the emoluments, and shall be subject to the rules, regulations, and penalties prescribed for entry-takers. (Rev., s. 1701; Code, s. 2757; 1868-9, c. 100, s. 2; 1868-9, c. 173, s. 2; C. S. 7553.)

Art. 3. Entries.

§ 146-23. Who entitled to make entries. — Any citizen of this state, and all persons who come into the state with the bona fide intent of becoming residents and citizens thereof, have the right and privilege of making entries of, and obtaining grants for, vacant and unappropriated lands. (Rev., s. 1692; Code, s. 2754; 1869-70, c. 19, s. 1; C. S. 7554.)

Title of Nonresident Grantee.—A nonresident claiming under a state grant has a valid title, unless it appears that he did not conform to the statute in procuring the grant. The burden of proof is upon the plaintiff in setting aside a grant for any cause not appearing upon the face. Weaver v. Love, 146 N. C. 414, 415, 59 S. E. 1041.

How Title of Nonresident Questioned. — An alien has capacity to take, but not capacity to hold land; . . . he cannot hold it against the sovereign, should the sovereign choose to assert his claim thereto as forfeited. But against all the rest of the world the alien has full capacity to hold, and he can hold even against the sovereign until the estate be divested by an office found or some other equally solemn sovereign act. Rouche v. Williamson, 25 N. C. 141, 146; Wilson v. Land Co., 77 N. C. 457; Johnson v. Eversole Lumber Co., 144 N. C. 717, 720, 57 S. E. 518.

Rights of Alien Bona-Fide Entered.—A resident of another State coming into this State with the intention of becoming a bona fide resident, and entering vacant land, is of right entitled to recover grants for the same, provided he moved and settled here within the time required to perfect his entries. Mockridge v. Howerton, 72 N. C. 221.

Railroads Not Included.—A railroad company having no power to acquire lands except that which is limited to railroad purposes, does not come within the intent and meaning of this section. Wallace v. Moore, 178 N. C. 114, 100 S. E. 237.

Enterer Must Show Land Is Vacant.—The burden is upon the enterer to sustain his right to make entry by showing such to be in substantial form a compliance with the statute, that the lands were vacant and unappropriated. Walker v. Carpenter, 144 N. C. 674, 57 S. E. 461.

§ 146-24. Entries in writing, with description of land. — The claimant of land shall produce to the entry-taker a writing, signed by such claimant, setting forth where the land is situated, the nearest water-courses and remarkable places, and such water-courses and remarkable places as may be therein, the natural boundaries and the lines of any other person, if any, which divide it from other lands; and every such writing shall be one-quarter sheet of paper at least. (Rev., s. 1707; Code, s. 2765; R. C., c. 42, s. 11; 1777, c. 114, s. 5; 1783, c. 185, s. 11; 1885, c. 132; 1891, c. 70; 1893, cc. 120, 270; 1903, c. 272, s. 3; C. S. 7555.)

Rights Acquired by Entry.—By making the entry as prescribed by law the enterer does not acquire any title to the land, but only the right to call for a grant upon compliance with the statute. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857; Wool v. Saunders, 108 N. C. 729, 13 S. E. 294.

Rights Acquired by Floating Entry.—An entry that is so vague that the land claimed is not identified is a "floating entry" and unless the land is identified by survey in the required time such entry is not good against subsequent entry. Fisher v. Owen, 144 N. C. 649, 57 S. E. 393.

It was said in an early decision, Harris v. Ewing, 21 N. C. 369, that an entry is not absolutely void in any case, merely because it is not as "special" as the party could have made it by the use of all the indicia, internal and external, supplied by the act as evidence of identity, but it is valid or invalid in respect of a subsequent enterer according to the fact that he may or may not have sustained loss by the want of particularity in it. Cain v. Downing, 161 N. C. 592, 594, 77 S. E. 764.

Applied in Walker v. Parker, 169 N. C. 150, 85 S. E. 306.

§ 146-25. Duty of entry-taker.—The entry-taker shall immediately endorse the same with the name of the claimant, the number of acres claimed, and date of the entry; and shall copy the same in a book well bound, and ruled with a large margin into spaces of equal distance, each space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin. The entry-taker shall thereupon cause a copy of the entry to be posted for thirty days at three public places in the township or townships in which the land covered by the entry is located. A copy of the entry shall also be posted for thirty days at the courthouse door of the county in which such land lies, and advertised for thirty days in a newspaper published at the county-seat of such county. If there be no newspaper published in such county, then the advertisement provided for shall be made in the nearest newspaper. (Rev., s. 1708; Code, s. 2765; 1903, c. 272, s. 3; C. S. 7556.)

Purpose of Notice.—The purpose of this notice is to give information to the public. Any person who claims title or interest in the land covered by the entry has the right within the time provided for the publication of the notice and the advertisement, and not thereafter, to file his protest (Garrison v. Williams, 150 N. C. 674, 677, 64 S. E. 783), which should contain a denial that the land is vacant and unappropriated land belonging to the State, and allegations as to his claim or interest therein. Walker v. Parker, 169 N. C. 150, 152, 85 S. E. 306.

Entry Must Be Made by the Entry-Taker.—The entry must be made by the entry-taker and an entry made, as in

this case, by the claimant is void. The entry-taker is not authorized by statute to appoint a deputy. Pearson v. Powell, 100 N. C. 86, 87, 6 S. E. 188.

An entry made by the wife of the entry-taker in his absence is void, although he allowed her to make entries, and subsequently acquiesced to what she had done. Maxwell v. Wallace, 38 N. C. 593.

§ 146-26. Protest filed; bonds required.—If any person shall claim title to or an interest in the land covered by the entry, or any part thereof, he shall, within the time of the advertisement as above provided, file his protest in writing with the entry-taker against the issuing of a warrant thereon; and upon the filing of such protest, the entry-taker shall certify copies of the entry and protest to the superior court; thereupon a notice shall be issued by the clerk of the superior court to both parties, commanding them to appear before the clerk in twenty days and file their respective bonds for costs as in other cases where the title to real estate is in controversy, and to the claimant to appear at the next term of the court and show cause why the entry shall not be declared inoperative and void. This section shall not deprive either party of the advantage of prosecuting or defending without giving bond, as provided in other cases. (Rev., s. 1709; Code, s. 2765; 1903, c. 272, s. 3; 1907, c. 66, s. 1; C. S. 7557.)

Purpose of Section.—The purpose of this statute is to protect a landowner's estate from irreparable damages by subsequent entries that might be fraudulent or mistaken. In re Drewery, 130 N. C. 342, 41 S. E. 937.

In re Drewery, 129 N. C. 457, 40 S. E. 208, and McNeil v. Lewis, 4 N. C. 517, are overruled.—Ed. Note.

Grounds for Filing Protest. — Unless the entry by the claimant is to land claimed by the protestant, protest will not lie. This is the only ground for filing protest. Cain v. Downing, 161 N. C. 592, 77 S. E. 764.

Burden on Protestant.—"The right to protest is not given to intermeddlers, but to those who claim title to or interest in the land (Lumber Co. v. Clarke, 162 N. C. 544, 546, 67 S. E. 1057), and the protestant is therefore required to assert his title or interest." Walker v. Parker, 168 N. C. 150, 153, 85 S. E. 306.

If a protestant shows that he claims under a grant from the state and the claimant's entry is to the same land, the entry will be set aside. The protestant does not have to show a perfect claim of title as he would have to do in ejectment. Lumber Co. v. Coffey, 144 N. C. 560, 57 S. E. 344.

Protestant Can Only Show His Title.—A protestant can only enter evidence as to his title. A grant to land outside of his grant under which he claims no interest or title cannot be put in evidence to disprove claimant's right to enter the land in question. Lumber Co. v. Clarke, 152 N. C. 544, 67 S. E. 1057.

Title by Adverse Possession.—It is not necessary that the protestant claim title by grant, he may claim title by adverse possession. When a claim of adverse possession is interposed the burden of proof shifts to the protestant. Walker v. Parker, 169 N. C. 150, 85 S. E. 306.

Floating Entry Not Notice.—An entry that is so vague that the land entered cannot be identified is a floating entry and is not sufficient notice for filing protest as provided by this section. Cain v. Downing, 161 N. C. 592, 77 S. E. 764.

Applied in Walker v. Parker, 169 N. C. 150, 85 S. E. 306.

§ 146-27. Payment of price; lapse of entry.—All entries of land shall, in every event, be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event they shall be paid for within twelve months after final judgment on the protest; and all entries of land not thus paid for shall become null and void, and may be entered by any other person. (Rev., s. 1731; Code, s. 2766; R. C., c. 42, s. 8; 1854-5, c. 49; C. S. 7558.)

Editor's Note.—Prior to 1905 this section provided that "all entries of land, made in the course of any one year, shall, in every event, be paid for, on or before the thirty-first day of December, which shall happen, in the second year thereafter; and all entries of land, not thus paid for, shall become null and void, and may be entered by any other person."

In Barker v. Donton, 150 N. C. 723, 64 S. E. 774, the section is construed and prior cases cited. This case construes the section in a different light to the construction given in some of the early cases.

As the section was made clear by the code of 1905, the question of payment of entry will more often arise in regard to entries prior to that time.

This section is not applicable to Cherokee Lands as the entry and grant of this land is governed by chapter 11 of the Code of 1883. Frasier v. Gibson, 140 N. C. 272, 52 S. E. 1035; Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583.

§ 146-28. When entry lapses, subsequent entry valid.—Whenever an entry of land shall be made in any entry-taker's office, and the enterer shall fail to have the land surveyed and pay the price for the same within the time limited by law, any person who may have made a subsequent entry for the same land may have the same surveyed and pay the price and have a grant. (Rev., s. 1710; Code, s. 2767; R. C., c. 42, s. 9; 1809, c. 771; C. S. 7559.)

In General.—"Where an enterer allows his entry to lapse, before taking out his grant the entry becomes null, and any grant founded upon it is also void on its face, and, even without a direct proceeding to impeach it, will be treated by the courts as inoperative and insufficient to divest title out of the State, because it is apparent on inspection that it was issued without authority of law, when the efficacy of the entry was gone by the efflux of time, and, after the right of another, who had shown more diligence, accrued. Stanly v. Biddle, 57 N. C. 383; Wilson v. Land Co., 77 N. C. 457; Horton v. Cook, 54 N. C. 270; Bryson v. Dobson, 38 N. C. 138." Gilchrist v. Middleton, 107 N. C. 663, 678, 12 S. E. 85.

By failure to have a grant issued on an entry in the required time, the entry will lapse and a junior entry will give good title. Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583.

When Senior Enterer Trustee for Junior Enterer.—Under an entry where the purchase-money has been paid to the state in due time the enterer has a right to call on the state for a grant even 46 years after the entry. But if there has been a subsequent entry by an innocent person without notice the senior enterer will hold as trustee for the junior enterer with senior grant. Gilchrist v. Middleton, 108 N. C. 705, 13 S. E. 227.

§ 146-29. Lapsed entries not renewed within one year.—No lands entered on the books of the entry-taker, the entry of which shall be suffered to lapse by nonpayment of the price thereof, shall be reëntered within one year after the time at which such entry shall lapse, by the person in whose name such entry was made, but such reëntry shall be void. (Rev., s. 1712; Code, s. 2768; R. C., c. 42, s. 10; C. S. 7560.)

§ 146-30. Entry for benefit of entry-taker. — If any entry-taker shall desire to make an entry in his own name, the same shall be made in its proper place, before a justice of the peace of the county, not being a surveyor or assistant; which entry the justice shall return to the next meeting of the board of county commissioners, who shall insert it; and every entry made by or for such entry-taker, in any other manner, shall be void. (Rev., s. 1711; Code, s. 2773; R. C., c. 42, s. 16; 1777, c. 114, s. 17; C. S. 7561.)

Strictly Construed.—This section was passed to prohibit improper practice and therefore must be followed. An entry by an entry-taker in any other manner is void. Terrell v. Manney, 6 N. C. 375, 377.

Art. 4. Surveys.

§ 146-31. Warrant for survey issued.—If no protest be filed, or where the protest is filed

and the right of the claimant to make the entry is sustained, the entry-taker shall deliver to the party a copy of the entry with its proper number and a warrant to the surveyor to survey the same, which warrant shall contain a copy of the entry with its number and date, and a certificate that notice has been given as above provided, and that no protest has been filed, or that protest has been filed and that the court has decided in favor of the claimant. Each warrant shall be delivered to the surveyor in the order of time in which the entry was made. (Rev., s. 1713; Code, s. 2765; 1903, c. 272, s. 3; C. S. 7562.)

§ 146-32. Duplicate warrants. — When any person duly makes an entry of lands which has not become void by lapse of time, and upon which the entry-taker has issued his warrant of survey, and the same be lost by accident, the entry-taker, on due proof being made to his satisfaction, by affidavit of the claimant or the surveyor or deputy surveyor, may issue a duplicate warrant of survey, of the same tenor and date, taking care to set forth, on the face of such warrant, that the same is a duplicate; in which case such warrant shall be made as valid as the original. (Rev., s. 1714; Code, s. 2771; R. C., c. 42, s. 14; 1814, c. 878, s. 1; C. S. 7563.)

§ 146-33. Surveys according to priority of entry. —The surveyor shall survey all entries of land according to the priority of entry, paying due respect to the number of each warrant; and every grant obtained by any subsequent entry otherwise than is by this chapter directed, shall be void: Provided, nothing herein shall be construed to prevent any person who shall make a subsequent entry from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer of such land has surveyed his entry as aforesaid. (Rev., s. 1715; Code, s. 2770; R. C., c. 42, s. 13; 1787, c. 279; C. S. 7564.)

Time of Junior Entry.—It is not necessary that the prior entry lapse before the junior entry is made, for the junior entry is only good as to what remains after the survey of the prior entry, or by lapse of the prior entry. Stanly v. Biddle, 57 N. C. 383, 384.

Survey by a Deputy.—A survey by a deputy not duly sworn is not sufficient to give enterer good title under the survey. Avery v. Walker, 8 N. C. 140.

§ 146-34. Chainbearers sworn. — No survey for the purpose of obtaining a grant shall be made until the chainbearers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor. The chainbearers shall actually measure the land surveyed. The surveyor is empowered to administer the oath. (Rev., s. 1717; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; C. S. 7565.)

In General.—It is necessary that the chain-carrier be sworn before a bill for relief and conveyance of legal title will lie against one claiming under a junior entry and grant. Avery v. Walker, 8 N. C. 140.

This and the following sections do not prescribe the method to be used in measuring the lines in surveying an entry. Cody v. England, 221 N. C. 40, 19 S. E. (2d) 10.

§ 146-35. Survey made and plots prepared.— Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, within ninety days, lay off and survey the same agreeably to this chapter; and make thereof two fair plots, the scale whereof and the number of the entry shall be mentioned on such plots; and shall set down in words the beginning, angles, distances, marks, and watercourses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner that the water shall form one side of the survey, and the land be laid off back from the water. (Rev., s. 1716; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; 1903, c. 272, s. 4; C. S. 7566.)

Plots Evidence of Land Actually Surveyed.—The plots are evidence of the survey and in case of a mistake of the draughtsman in drawing the deed they are admissible to show the land actually surveyed, and intended to be included in the grant and deed. Higdon v. Rice, 119 N. C. 623, 26 S. E. 256.

A plat may be introduced to show that the grant does not include the land surveyed. Dugger v. McKesson, 100 N. C. 1, 6 S. E. 746.

The original plat is made a part of the grant for the purpose of indicating the shape and location of the boundary, and is, of course, evidence, though not conclusive, to be submitted to the jury as to the true shape and location of the land. Redmond v. Mullenax, 113 N. C. 505, 512, 18 S. E. 708.

Line on Navigable Waters.—A grant of riparian property running with a navigable stream will be construed to grant only to the low water mark. This rule applies to municipal corporations as well as to individuals. State v. Eason, 114 N. C. 787, 791, 19 S. E. 88.

§ 146-36. Plots and warrants sent to secretary of state.—The surveyor shall, within one year, transmit the plots, together with the warrant or order of survey, to the office of the secretary of state, or deliver them to the claimant. The secretary of state shall, on receipt of the plots, file one in his office, and attach the other to the grant. (Rev., ss. 1718, 1734; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114; C. S. 7567.)

Plots as Evidence.—As the county surveyor is required to send two plats to the Secretary of State, a certified copy can be used in evidence to show the shape of the land surveyed. Such evidence is not conclusive. Higdon v. Rice, 119 N. C. 623, 26 S. E. 256.

§ 146-37. Special surveyor appointed, if no county surveyor.—When the office of county surveyor is vacant, the county commissioners may appoint a special surveyor to survey any lands that may be entered; and the plots and certificates of such special surveyor, accompanied by a copy of the order of the county commissioners appointing him, shall be held valid, as if done by a county surveyor duly elected. (Rev., s. 1719; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; C. S. 7568.)

§ 146-38. Special surveyor, when county surveyor interested.—When a county surveyor wishes to have lands surveyed in a county where he acts as principal surveyor, for the purpose of obtaining a grant, the board of county commissioners of the county shall appoint some person to make the survey, and the entry-taker shall direct his warrant of survey to such person; and all certificates, surveys, and plots of the same shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases. (Rev., s. 1721; Code, s. 2774; R. C., c. 42, s. 17; 1828, c. 23; C. S. 7569.)

A deputy surveyor cannot be appointed by a county surveyor, and if properly appointed a deputy cannot survey his own land. Avery v. Walker, 8 N. C. 140.

§ 146-39. Record of surveys to be kept.—The county commissioners of the several counties of the state shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. And such record shall have an alphabetical and numerical index, the numerical index to run consecutively. And it shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the day such survey was made. (Rev., s. 1722; 1905, c. 242; C. S. 7570.)

Vague Record Not Good against Junior Enterer.—Prior to this section an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who has perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer which he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite than the original entry, did not remedy the defective description of the entry. This section provides for notice of all surveys and such will not hereafter arise. Lovin v. Carver, 150 N. C. 710, 64 S. E. 775.

§ 146-40. Former surveys recorded.—Where any ex-county surveyor is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in such record of surveys, and the county commissioners shall pay for such services ten cents for each survey so recorded and indexed. (Rev., s. 1725; 1905, c. 242, s. 2; C. S. 7571.)

§ 146-41. What record must show; received as evidence.—All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee, and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry, and the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided, that if such record differs from the original certificates of survey heretofore made or on file in office of secretary of state, such original or certified copy of the certificate in secretary of state's office shall control. (Rev., s. 1723; 1905, c. 242, ss. 2, 3, 6; C. S. 7572.)

§ 146-42. Fees for recording. — For recording and indexing such surveys the surveyor may charge twenty-five cents, which shall be paid by the party for whom the survey is made; and any surveyor shall not be required to make any survey until his fees provided by law are paid, including the twenty-five cents for recording and indexing. (Rev., s. 1724; 1905, c. 242, s. 4; C. S. 7573.)

§ 146-43. Penalty for failure to make record.—Any county surveyor or deputy surveyor failing to make such record of any survey within sixty days after he makes a survey shall forfeit and pay to any party who may sue for the same two hundred dollars, and be subject to be removed from office by the board of county commissioners, and if any surveyor is removed the county commissioners shall appoint his successor, and all papers and records of a public nature in the possession of such surveyor so removed, or who may die, shall be turned over to his successor in office. (Rev., s. 1726; 1905, c. 242, s. 5; 1907, c. 579, s. 1; C. S. 7574.)

Art. 5. Grants.

§ 146-44. Price to be paid for land.—Whenever an entry and survey of any vacant and unappropriated land belonging to the state shall be filed in the office of the secretary of state, he shall immediately investigate the character of the land and determine its market value from its character and location, and thereupon fix the price per acre for said lands. Said price so fixed by the secretary of state shall be paid by the enterer to the treasurer of the state before any grant of the same is made by the secretary of state. (Rev., s. 1733; 1909, c. 447; 1927, cc. 8, 83, s. 3; 1929, cc. 78, 210; 1931, c. 119; C. S. 7575.)

Local Modification.—Cherokee, Clay, Graham, Macon and Swain: Fees for entering land fixed at one and one-half dollars per acre. 1933, c. 72.

Moore and Avery: Fees for entering land fixed at not less than one and one-half dollars per acre. 1939, c. 125.

Prior Grants Not Affected by Subsequent Grant.—If a person lay an entry upon and procure a grant for land covered by a grant, he acquires no title thereto, as the state by the senior grant parted with its title. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857.

All vacant and unappropriated lands belonging to the state, with certain well defined exceptions, are subject to entry and grant, and when there are successive grants of the same land, the prior grant prevails. Perry v. Morgan, 219 N. C. 377, 14 S. E. (2d) 46.

§ 146-45. Price paid state treasurer.—The state treasurer shall receive the money for vacant and unappropriated lands upon the presentation to him of the certificate of the secretary of state, setting forth the number and date of the entry, and the quantity of acres found by the surveyor to be vacant, as the same may appear by the returns made to him from the surveyor or entry-taker, or from the entry-taker's warrant, or the plots of survey. (Rev., s. 1732; Code, s. 2777; R. C., c. 42, s. 20; 1827, c. 23; 1829, c. 30; C. S. 7576.)

Payment into the state treasury without the certificate of the Secretary of State is a voluntary unauthorized act and does not entitle the party to a grant, under his entry. Buchannan v. Fitzgerald, 41 N. C. 121.

§ 146-46. Grant issued on auditor's certificate.—No grant shall issue on the treasurer's receipt for the money; but the auditor shall make out and deliver to the secretary of state a certificate, conformable to each receipt by him countersigned, on which the secretary shall issue the grant. (Rev., s. 1728; Code, s. 2778; R. C., c. 42, s. 21; 1799, c. 525, s. 4; C. S. 7577.)

§ 146-47. Manner of issuing grant.—The secretary of state, on application of claimants, shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary, and recorded in his office. The date of the entry, and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every grant, and a copy of the plot shall be attached to the grant; and no grant shall issue upon any survey unless the same be signed by the surveyor of the county. Upon certificate from the entry-taker that the claimant has as-

signed his interest under the entry, a grant shall be issued in the name of the assignee: Provided, that the assignee is a citizen and resident of this state, or has come into the state with the bona fide intent of becoming a resident and citizen thereof. (Rev., ss. 1729, 1734, 1735; Code, ss. 2769, 2779; R. C. c. 42, ss. 12, 22; 1777, c. 114, s. 10; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2; 1889, c. 522; C. S. 7578.)

Grants under the State Seal. — A grant without the Great Seal of the State affixed does not show title under that grant, as it is mandatory that the seal be affixed to authenticate the signature of the Governor and Secretary of State. Howell v. Hurley, 170 N. C. 798, 83 S. E. 699.

A paper signed by the Governor and countersigned by the Secretary of State, although not bearing the Great Seal of the State, is admissible in evidence to show title. Howell v. Hurley, 170 N. C. 401, 87 S. E. 107.

This case came up twice to be heard, and it was decided that as a grant it was not admissible in evidence but as an abstract of grant it was admissible as it was entered on record, and it will be presumed that the officers performed their duty in issuing the grant. Ed. Note.

Secretary of State Must Sign.—A grant of land if not signed by the Secretary of State is void. Hunter v. Williams, 8 N. C. 221.

Deputy Signing.—It is necessary that the Secretary of State sign the grant, and if he signs it it is valid no matter if there has been an attempt to sign by one of the deputies. Fowler v. Development Co., 158 N. C. 48, 73 S. E. 488.

Section 146-62 makes valid grants signed by a deputy of the Secretary of State, provided no vested rights are interfered with. Ed. Note.

Place of Signature Immaterial.—It is not necessary that the Secretary of State countersign at any especial place on the grant to make it valid. Richards v. Lumber Co., 158 N. C. 54, 73 S. E. 485.

Secretary of State Must Issue.—Where the claimant has complied with the law, and it appears from the warrant and survey that the entry taker and surveyor have discharged their duties, the Secretary must issue the grant, and has no discretion in the matter. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294.

§ 146-48. Registration of grants.—Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the secretary of state, which shall have the same effect as if the original had been registered. (Rev., s. 1729; Code, s. 2779; R. C., c. 42, s. 22; R. S., c. 42, s. 24; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2; C. S. 7579.)

Grant Not Void for Failure to Register it.—A grant is not void because of failure to record it. A junior grant that is recorded is not valid until there has been seven years adverse possession. North Carolina Mining Co. v. Westfeldt, 151 Fed. 290.

Sufficient Evidence for Registration.—The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the great seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. Barcello v. Hapgood, 118 N. C. 712, 732, 24 S. E. 124; Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740; Ray v. Stewart, 105 N. C. 472, 11 S. E. 182.

Extension of Time for Registration.—"Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the Legislature uniformly extended the time for registration for two years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation." Janney v. Blackwell, 138 N. C. 437, 438, 439, 50 S. E. 857.

Cited in United States v. 7,405.3 Acres of Land, 97 F. (2d) 417.

§ 146-49. Grant issued in case of claimant's death.—In case of the death of any person having made an entry of lands, pending the same or before making out the grant, the secretary shall issue the grant in the name of the decedent; and those interested, as heirs at law, devisees, tenants in dower, by the curtesy, or otherwise, shall have the same estate as if the land had been granted during the life of the decedent. (Rev., s. 1730; Code, s. 2780; R. C., c. 42, s. 23; 1715, c. 44, s. 6; 1798, c. 439, s. 6; C. S. 7580.)

§ 146-50. When secretary of state may withhold grant.—When application is made for a grant, if the secretary of state has reason to believe that the land covered by any entry and the surveys made in pursuance of the same is the property of the state board of education, he may, in his discretion, withhold the issuance of a grant for same until the engineer of the state board of education or surveyor appointed by the board shall have examined into the matter and made his report. And if the engineer or surveyor shall report that the lands in question are the property of the state board of education and not subject to entry, the secretary of state shall not issue a grant on such entry and surveys. If the secretary of state has reason to believe that the land for which a grant is sought has already been granted and does not belong to the state, he shall not issue grant for the same until it appears to his satisfaction that the land does belong to the state and is subject to entry.

The secretary of state shall withhold a grant to any and all vacant and unappropriated lands lying within or immediately adjacent to the boundaries of any and all national forest purchase areas; also to lands within or near state forests and parks, and such other areas as the department of conservation and development may request to be withheld for dedication to public use as state forests, state parks, game refuges or other recreational areas. The secretary of state is further authorized to furnish to the department of conservation and development all available information on such tracts or parcels of vacant land. The department of conservation and development, after proper investigation, may then request the permanent dedication of these lands to the State as state forests and parks, game and wild life refuges or other type of economic or recreational areas. If the department of conservation and development should decide that the lands in question are too small or in other ways unsuitable for administration as such state forests and parks but are more suitable for the consolidation of publicly owned forests, parks, game refuges or other recreational areas, it may upon approval by the governor request the secretary of state and the said secretary is hereby directed, payment of the usual official and service fees therefor to be made in such manner as the said secretary may direct, to issue a grant for said land to such agency as may have the direction and supervision over such publicly owned forests, parks, game refuges or other recreational areas, or it may enter into agreement with federal or other public and private agencies for exchange of lands in order to bring about the consolidation of publicly owned forests, parks, game refuges or other recreational areas; and on approval of such agreements

for exchange by the governor, the secretary of state, on request of the department of conservation and development, shall issue grants in accordance with such agreements. (Rev., s. 1727; 1903, c. 272, s. 3; 1935, c. 173; C. S. 7581.)

Editor's Note.—The case of Wool v. Saunders, 108 N. C. 729, 13 S. E. 294, laid down the rule that the Secretary of State must issue a grant when enterer had complied with all requirements. But by this section the rule is changed.

The last paragraph of this section was added by the 1935 amendment.

§ 146-51. Cutting timber on land before obtaining a grant.—If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the state double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (Rev., s. 3741; 1903, c. 272, s. 4; C. S. 7582.)

§ 146-52: Transferred to § 104-25.

§ 146-53. Card index system for grants.—The secretary of state shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

..... County. ..... Acres
Name .....
Grant No. ..... Issued .....
Grant Book ..... Page .....
Entry No. ..... Entered .....
File No. .....
Location .....
Remarks: .....

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the secretary of state shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S. 7584.)

§ 146-54. Grant of Moore's Creek battlefield authorized.—In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684, U. S. Code, Title 16, ss. 422-422(d), the Governor of the State of North Carolina is hereby authorized to execute to the United States Government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States Government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided, that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56.)

Editor's Note.—The 1927 amendment struck the words "and that the state of North Carolina also reserves authority to prevent all violation of its criminal laws committed on said tract of land so ceded" which immediately preceded the last proviso.

Art. 6. Correction of Grants.

§ 146-55. Change of county line before grant issued or registered.—All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor, or the registration of the grants, by the change of former county lines, or the establishment of new lines, the lands so entered were placed in a county, or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grants shall have the same force and effect as if they had been registered in the county where the lands were situated; and all persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the secretary of state, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (Rev., s. 1736; 1897, c. 37; C. S. 7585.)

When the entry and survey are made in one county, the registering of the deed in that county gives good title although a new county may have been organized including the land granted before the grant was registered. Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740; McMillan v. Gombill, 106 N. C. 359, 11 S. E. 273.

§ 146-56. Entries in wrong county.—Whereas many citizens of the state, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the state or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (Rev., s. 1737; Code, s. 2784; R. C., c. 42, s. 27; 1805, c. 675; 1834, c. 17; C. S. 7586.)

Entry in County Where No Part of Land Lies.—Land can only be entered in the county where it lies, and entry and grant in another county is void. Lunsford v. Bostion, 16 N. C. 483; Harris v. Norman, 96 N. C. 59, 2 S. E. 72; Avery v. Strother, 1 N. C. 558.

Found in Two Counties.—This section only extends to cases where the entry of land lying partly in two counties, which is unknown to the grantee, is made only in one county. In such cases the statute cures the defect. Harris v. Norman, 96 N. C. 59, 2 S. E. 72.

§ 146-57. Errors in surveys of plots corrected.—Whenever there may be an error by the surveyor

in plotting or making out the certificate for the secretary's office, or the secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto; and the court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the secretary of state, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided, no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (Rev., s. 1738; Code, s. 2785; R. C., c. 42, s. 28; 1790, c. 326; 1798, c. 504; 1804, c. 655; 1814, c. 876; C. S. 7587.)

§ 146-58. Resurvey of lands to correct grants.—Persons who have heretofore entered or may hereafter enter vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors, but in every case where the purchase money has been paid into the state treasury within the time prescribed by law after entry and survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the entry-taker of the county where the land lies, and have his entry surveyed as is directed by existing laws, and on presenting a certificate of survey and two fair plots thereof to the secretary of state within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the secretary of state to issue to him, the proper grant for the lands so entered. (Rev., s. 1739; 1901, c. 734; C. S. 7588.)

§ 146-59. Lost seal replaced.—In all cases where the seal annexed to a grant is lost or destroyed the governor may, on the certificate of the secretary of state that the grant was fairly obtained, cause the seal of the state to be affixed thereto. (Rev., s. 1740; Code, s. 2781; R. C., c. 42, s. 24; 1807, c. 727; C. S. 7589.)

§ 146-60. Errors in grants corrected.—If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the secretary of state has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the secretary of state shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, he shall make the former correspond with the latter as the true facts may require. In case the party interested prefer it, the secretary of state shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the state as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (Rev., s. 1741; 1889, c. 460; C. S. 7590.)

Power to Correct Errors Not Judicial.—The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions, or correcting the names of grantees, material words or figures, etc., confers on him only a ministerial authority and not a judicial power. Herbert v. Union Development Co., 179 N. C. 662, 103 S. E. 380.

§ 146-61. Irregular entries validated.—Wherever persons have prior to January first, one thousand eight hundred and eighty-three, irregularly entered lands and have paid the fees required by law to the secretary of state, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (Rev., s. 1743; Code, s. 2761; 1868-9, c. 100, s. 4; 1868-9, c. 173, s. 6; 1874-5, c. 48; C. S. 7591.)

In General.—An irregularity in receiving grants from the state is cured by this act. Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740.

§ 146-62. Grant signed by deputy secretary of state validated.—Where state grants have heretofore been issued and the name of the secretary of state has been affixed thereto by his deputy or chief clerk, or by any one purporting to act

in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (Rev., s. 1744; 1905, c. 512; C. S. 7592.)

This section does not interfere with vested rights, and therefore a grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as between the state and the grantee, if there was no prior grant. Richard v. Ritter Lumber Co., 158 N. C. 54, 73 S. E. 485.

§ 146-63. Time for registering grants extended. —All grants from the state of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from the first day of January, nineteen hundred and eighteen, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the state of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (Rev., s. 1747; 1893, c. 40; 1901, c. 175; 1905, c. 6; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, c. 27; Ex. Sess. 1913, c. 45; 1915, c. 170; 1917, c. 84; Ex. Sess. 1920, c. 78; 1921, c. 153; C. S. 7593.)

Editor's Note.—By the Public Laws of Extra Session 1920 the time for registration was extended two years. The Public Laws of 1921 extended this time two years more.

Registration against Junior Grant.—Where neither party has possession the senior grant is valid against a junior grant duly recorded no matter how long registration may have been delayed by senior grantee. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857.

It is not necessary that a grant from the state be registered to make it valid. The retroactive statutes making grants registered after the time prescribed valid, gives good title against a junior grant duly recorded. Dew v. Pyke, 145 N. C. 300, 59 S. E. 76.

§ 146-64. Time for registering grants extended. —The time is hereby extended until September first, one thousand nine hundred and twenty-six, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided, that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and Provided further, that this section shall not affect pending litigation: Provided further, that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20.)

Cross Reference.—As to holdings prior to this section, see notes to § 146-47.

Effect on § 47-26.—Where a mother has made a deed of gift of her lands to her son, who has failed to have it registered in the time required by § 47-26, and it is for that reason void, a later curative statute extending the time for registration cannot revive the void deed to the son. Under the facts, vested rights thereunder have been acquired. Booth v. Hairston, 193 N. C. 278, 136 S. E. 879, 57 A. L. R. 1186; (rehearing) 195 N. C. 8, 141 S. E. 480.

§ 146-65. Time for registering grants extended. —The time for the registration of grants issued by the State of North Carolina be and the same is hereby extended for a period of two years from January first, nineteen hundred and twenty-five: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97.)

§ 146-66. Further extension. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from the first day of January, nineteen hundred twenty-seven, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140.)

Art. 7. Grants Vacated.

§ 146-67. Civil action to vacate grant. — When any person claiming title to lands under a grant or patent from the king of Great Britain, any of the lords proprietors of North Carolina, or from the state of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since the fourth day of July, one thousand seven hundred and seventy-six, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (Rev., s. 1748; Code, s. 2786; R. C., c. 42, s. 29; C. S. 7594.)

Collateral Attack of Grant.—If the land be not subject to entry, the grant is void and may be attacked collaterally. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857.

Plaintiff Must Claim an Interest in Land.—An action cannot be had under this section unless it is made to appear that the plaintiff has an interest in the land claimed by the defendant. Wadsworth v. Cozard, 175 N. C. 15, 94 S. E. 670. Jones v. Riggs, 104 N. C. 281, 70 S. E. 465.

Where the state has no interest in the land an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. State v. Bland, 123 N. C. 739, 31 S. E. 475.

A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the state. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955.

Action for Land in Several Counties.—When it appears in an action for the cancellation of several grants brought under the provisions of this section, some of which lay in a different county from that wherein the action was brought, that the allegation of fraud and false suggestion involve one and the same transaction, affecting each and all the grants, the subject of the litigation, it is unnecessary to bring a separate action in respect to the grants issued in the other county, some of the lands, the subject of the action lying in the county wherein the action was brought. Hardwood v. Waldo, 161 N. C. 196, 76 S. E. 680.

Only Means of Attacking Grants.—It is well settled that a grant can only be vacated by proceedings under the statute secs. 146-68, 146-69. Crow v. Holland, 15 N. C. 417. Kimsey v. Munday, 112 N. C. 816, 830, 17 S. E. 583. McNamee v. Alexander, 109 N. C. 242, 13 S. E. 777.

§ 146-68. Judgment recorded in secretary of state's office.—If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, they may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the secretary of state's office, where it shall be recorded in a book kept for that purpose; and the secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (Rev., s. 1749; Code, s. 2787; R. C., c. 42, s. 30; C. S. 7595.)

§ 146-69. Action by state to vacate grants.—An action may be brought by the attorney-general, in the name of the state, for the purpose of vacating or annulling letters patent granted by the state, in the following cases:

1. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or

2. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

3. When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (Rev., s. 1750; Code, s. 2788; C. C. P., s. 367; C. S. 7596.)

State Must Be a Party Interested.—The state can only bring action under this section to vacate a grant, when title would vest in the state upon cancellation of the grant. State v. Bland, 123 N. C. 739, 31 S. E. 475.

Attorney-General Must Bring Action.—The right to bring action to set aside a grant because of fraud practiced on the state must be brought by the attorney-general in the name of the state, and cannot be brought by any other person. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955; Jones v. Riggs, 154 N. C. 281, 70 S. E. 465.

Grounds for Vacating.—Where a grant has been in strict compliance with the law, rights of property have been acquired which can not be taken away, even by the state, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. State v. Spencer, 114 N. C. 770, 19 S. E. 93.

Applicable Only to Land Grants.—A license to sell liquor is not a letter patent to be vacated by quo warranto under this section. Hargett v. Bell, 134 N. C. 394, 46 S. E. 959.

Proceeding by the attorney-general to vacate a charter of a corporation cannot be brought under this section, or because of any authority vested by this section, but must be brought under section 55-126. Attorney-General v. Holly Shelter R. Co., 134 N. C. 481, 46 S. E. 959.

Art. 8. Phosphate Beds.

§ 146-70. Phosphate beds in navigable waters entered.—Any resident of this state who shall make affidavit before the clerk of the superior court of any county through which such navigable stream may flow, that he has discovered in any navigable stream or waters of this state any phosphate rock or phosphate deposit therein shall have authority and power to enter under the entry laws of this state so much of the bed of any such navigable stream or waters as shall not exceed in any one entry two miles in length up the middle of any such stream or water for the purpose of digging, mining, or removing any such deposit or rock. (Rev., s. 1751; 1891, c. 476; C. S. 7597.)

§ 146-71. Grant obtained; term; royalty.—Upon such affidavit being filed with the entry-taker, and upon a survey and plot being made of such entry by the county surveyor as is now required by law in cases of entry of land, being made and certified to the secretary of state with a copy of such affidavit and entry so made, the secretary of state shall issue a patent or grant to such person, his heirs or assigns, for a term of twenty-five years for the land, with the proviso and condition inserted therein that the grantee therein shall pay to the treasurer of the state at the end of every three months a royalty of one dollar per ton for every ton of the crude phosphate rock or deposit mined, dug, or removed. (Rev., s. 1752; 1891, c. 476, s. 2; C. S. 7598.)

§ 146-72. Exclusive right to mine; bond for royalty.—Such grantee, his heirs or assigns, shall have the exclusive right to mine, dig, or remove any such phosphate rock or deposit for the term of twenty-five years from the date of the patent upon paying the royalty of one dollar specified in the patent: Provided, however, that as a condition precedent to the granting of any such patent each company or person making any such entry shall enter into bond with sufficient surety in the penal sum of five thousand dollars, conditioned for the making of faithful and true returns to the treasurer of the state of the number of tons of phosphate rock and phosphate deposit so dug, mined, or removed, at the end of every month, and the punctual payment to the treasurer of the royalty of one dollar per ton upon every ton of the crude rock, without being steamed or dried, at the end of every three months, and the bond and sureties shall be subject to the approval now required by law for the bonds of state officers. (Rev., s. 1753; 1891, c. 476, s. 3; C. S. 7599.)

§ 146-73. Navigation not obstructed by grantee.—No grant issued under the provisions of this article shall confer upon the person receiving the same the right to obstruct the navigation of any

such stream or water, nor confer upon such person or his assigns any other right than that granted to take, mine, or dig phosphate rock or deposit therefrom. (Rev., s. 1754; 1891, c. 476, s. 4; C. S. 7600.)

§ 146-74. Fees for issuing grant for phosphate beds.—No fee or cost shall be charged or collected by the secretary of state of any person or corporation receiving any patent or grant under this article, except the fee allowed by law to the secretary of state for issuing a patent under the entry laws of the state. (Rev., s. 1755; 1891, c. 476, s. 5; C. S. 7601.)

§ 146-75. Failure to operate for two years vacates grant.—Any person or corporation who shall fail to dig, mine or remove phosphate rock or deposit from any such stream or water to which he or it may be entitled under any patent or grant issued under the provisions of this article for the period of two years from the date of the patent, or after beginning digging, mining, or removing the same, shall fail to continue to so dig, mine, or remove the same for the period of two years, shall forfeit all rights therein granted, and the territory shall immediately thereupon become subject to entry under the provisions of this article without making the affidavit of the discovery of any such deposits or rocks. (Rev., s. 1756; 1891, c. 476, s. 6; C. S. 7602.)

§ 146-76. Mining phosphate without grant. — Any person or corporation resident of this state shall have the right to mine, dig, or remove phosphate rock or deposits from any of the navigable streams or waters in this state to which no exclusive patent or grant may have been issued, upon such person or corporation first entering into bond in the penal sum of five thousand dollars, payable to the treasurer of the state, for the payment of the same royalty, in the same manner and under the same regulations as are prescribed in this article for persons operating under a grant; but nothing in this section shall be construed to give to any such person or corporation any exclusive franchise or privilege to dig, mine, or remove any such phosphate rock or deposit from any stream or water of this state. (Rev., s. 1757; 1891, c. 476, s. 7; C. S. 7603.)

§ 146-77. Mining phosphate rock in rivers. — If any person shall dig, mine, or remove any phosphate rock or deposit from any of the navigable waters of this state, except for the purpose of prospecting and discovering as allowed by law, he shall be guilty of a misdemeanor, and shall also forfeit and pay ten dollars per ton for every ton of phosphate rock or deposit so mined, dug, or removed, one-half to the use of the state and the other one-half to go to the informer. (Rev., s. 3744; 1891, c. 476, s. 8; C. S. 7604.)

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Art. 9. Swamp Lands Reclaimed.

§ 146-78. Power in state board of education. — The state board of education is invested with full power to adopt all necessary ways and means for causing so much of the swamp lands to be surveyed as it may deem capable of being reclaimed, and shall cause to be constructed such canals, ditches, roads, and other necessary works of improvement as it may deem proper and necessary. (Rev., s. 4036; Code, s. 2508; R. C., c. 66, s. 5; R. S., c. 67, s. 5; 1885, c. 70, ss. 1, 2, 4; 1899, c. 253, s. 5; C. S. 7605.)

§ 146-79. Expenditures limited. — The state board of education shall not lend or expend any part of the public moneys, stocks, funds, or property vested in it by law, or under its control, for the purpose of reclaiming lands, or for any other purpose whatsoever, except by the direction of the general assembly. (Rev., s. 4037; Code, ss. 2515, 2530; R. C., c. 66, s. 12; 1870-1, c. 279; C. S. 7606.)

§ 146-80. Purchase and exchange of land.— Whenever, in the process of draining, it may be necessary, in order to prevent a sacrifice of the interests of the state, to purchase small tracts owned by individuals, the corporation may buy them, or exchange for them some other portions of the swamp lands; and the lands thus acquired by the corporation shall be held by it as other swamp lands. (Rev., s. 4038; Code, s. 2517; R. C., c. 66, s. 14; C. S. 7607.)

§ 146-81. Title vested in board by written consent.—Whenever it is necessary to construct any such works on the lands of any individual proprietor, his written consent, without any formal deed of conveyance of the lands necessary to the work and its future enjoyment, shall vest the title thereof in the corporation forever; and when any infant or person non compos mentis is owner thereof, his guardian is authorized to give such consent; and a feme covert and her husband may do so without any private examination; and the consent so given shall be valid for all purposes. (Rev., s. 4039; Code, s. 2509; R. C., c. 66, s. 6; R. S., c. 67, s. 6; C. S. 7608.)

§ 146-82. Condemnation of lands. — Whenever the consent of the proprietor shall be withheld, the corporation's agents may enter on the lands and lay off so much as may be necessary to be used in such work, the value of which shall be assessed to the proprietor according to law; and, upon the payment thereof, the title shall be vested in the corporation forever. In the assessment of valuation, the benefit that will accrue to the proprietor by reason of the improvement may be likewise reckoned and set off against the damages. The proceedings for such condemnation shall be the same as are provided for condemnation of lands by railroad corporations. And the corporation's officers and agents shall have a right to enter upon the lands of all persons whomsoever, for the purpose of surveying. (Rev., s. 4040; Code, ss. 2510, 2513; R. C., c. 66, s. 7; R. S., c. 67, s. 7; C. S. 7609.)

§ 146-83. Private lands assessed for benefits. — When there are lands owned by individuals which can be reclaimed by reason of the canals, ditches, or other works of the corporation, the same shall be assessed to contribute an equitable proportion of the cost of such works; which assessment shall be made by the board or a board of commissioners appointed by them, and the same shall be charged on the lands; but the cor-

poration, by contract with individual proprietors, may agree upon the assessment, and accept payment thereof in labor or money. (Rev., s. 4041; Code, s. 2511; R. C., c. 66, s. 8; R. S., c. 67, s. 8; C. S. 7610.)

§ 146-84. Regulations for surveying, reclaiming, and assessing.—The state board of education may enact all necessary rules and regulations for surveying and reclaiming the swamp lands; for assessing the lands of individuals which may be improved by the works, and for collecting assessments; and the assessments shall be published weekly for five weeks in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the superior court of the county wherein the lands assessed are situate. If no objections are filed at the court next after such advertisement, the assessments shall be confirmed by the court and the lands adjudged liable for the amount, and execution may be issued for the sale thereof to satisfy the same, on motion to the court for that purpose; and if any reasons be shown against the assessments, they shall be heard and determined by the court, and the assessments shall be increased or diminished, as the court shall adjudge. (Rev., s. 4042; Code, s. 2512; R. C., c. 66, s. 9; R. S., c. 67, s. 9; 1899, c. 253, 1901, c. 529; C. S. 7611.)

§ 146-85. Engineer, surveyor, and other servants employed.—The state board of education may appoint an engineer and surveyor and other servants to plan the works directed by this subchapter, and such board may annually appoint an agent to superintend and supervise all the swamp lands belonging to the state board of education. (Rev., s. 4043; Code, ss. 2512, 2523; R. C., c. 66, ss. 9, 20; R. S., c. 67, s. 9; 1854, c. 48; 1899, s. 253, s. 1, 2, 5; 1901, c. 529; C. S. 7612.)

§ 146-86. Agent's duties.—Such agent shall devote his entire attention to the business; abandon all prior engagements that may conflict with the interest of the state board of education; aid and assist counsel in the preparation and trial of all suits that may be directed by the corporation; collect information as to the location and value of all such lands; survey or have surveyed such tracts of such lands, or such other lands necessary to ascertain the location of lands belonging to the corporation as he may deem necessary, under the direction of the corporation. He shall make reports from time to time to the corporation of all the information he obtains, with such suggestions as he may deem proper; and shall prepare a statement of each tract of land owned by the corporation and its location, quantity, as well as ascertained and probable value, distinguishing between those tracts the title to which is doubtful or good; and this statement shall be recorded by him in a book to be kept by the corporation and in a manner, by index or otherwise, easy for reference. (Rev., s. 4044; Code, s. 2524; R. C., c. 66, s. 21; 1899, c. 253, s. 3; C. S. 7613.)

§ 146-87. Agent may be removed.—The agent may be removed by the state board of education at any time and another appointed to supply the vacancy, the agent removed being paid a pro rata compensation. The agency may be continued in the discretion of the board. (Rev., s. 4045; Code, s. 2525; R. C., c. 66, s. 22; 1899, c. 253, s. 4; 1901, c. 529; C. S. 7614.)

Art. 10. Lands Sold for Taxes.

§ 146-88. Title vested in state board of education.—The title of all lands acquired by the state by virtue of being sold for taxes is hereby vested in the state board of education. (1917, c. 209; C. S. 7615.)

§ 146-89. Protection of interest in lands sold for taxes.—Whenever any lands in which the state board of education has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes, special assessment, or under any lien, the state board of education is authorized, if in its judgment it is necessary to protect the interest of the board, to appear at any sale of such lands and to buy the same as any other person would, and for the purpose of paying therefor use any funds which the state board of education may have on hand, or, if necessary, borrow the money with which to make such purchase and to execute its notes therefor, and may use any funds coming to the state board of education from the sale of any property or otherwise to pay such notes. (1917, c. 246; C. S. 7616.)

Art. 11. Controversies Concerning Lands.

§ 146-90. Title presumed in the board; tax titles.—In all controversies and suits for any of the swamp lands to which the state board of education or its assigns shall be a party, the title to such lands shall be taken and deemed to be in that corporation or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title to or the right of possession to any lands claimed by the state, the state board of education or the university of North Carolina, under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above the

person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (Rev., s. 4047; Code, s. 2527; R. C., c. 66, s. 24; 1842-3, c. 36, s. 3; 1889, c. 243; C. S. 7617.)

Title Presumed to Be in the Board. — When it is shown that the land is swamp land and within a swamp of more than 2,000 acres, the law presumes that the Board of Education is the owner thereof, because grants of such land are void and unauthorized. Board v. Makely, 139 N. C. 31, 34, 51 S. E. 784. State Board v. Roanoke R. Co., 158 N. C. 313, 317, 73 S. E. 994.

Presumption Rebuttable.—The presumption of title in the Board of Education lasts only until good title is shown to be in another party. Shingle Co. v. Lumber Co., 178 N. C. 221, 100 S. E. 332.

Presumption That Officers Do Their Duty.—It is entirely proper and competent for the state to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. This decision does not, in any way, conflict with the cases of King v. Cooper, 128 N. C. 347, 38 S. E. 924; Warren v. Williford, 148 N. C. 474, 62 S. E. 697; Matthews v. Fry, 141 N. C. 582, 54 S. E. 379, and Rexford v. Phillips, 159 N. C. 213, 74 S. E. 337, the facts in those cases and this one being very different. State v. Remick, 160 N. C. 562, 570, 76 S. E. 627.

§ 146-91. Statute of limitations.—No statute of limitation shall affect the title or bar the action of the state board of education or its assigns, unless the same would protect the person holding and claiming adversely against the state; and no statute of limitation shall be a bar to the state board of education or of its assigns in the trial of any action in any court of competent jurisdiction against any person, firm, or corporation for damages for timber heretofore or hereafter cut and removed from lands owned by the board of education or for any other acts of trespass committed on such lands. (Rev., s. 4048; Code, s. 2528; R. C., c. 66, s. 25; 1842, c. 36, s. 5; 1917, c. 287; C. S. 7618.)

Editor's Note.—Tillery v. Lumber Co., 172 N. C. 296, 90 S. E. 196 laid down the rule that this statute was not intended to protect an assignee of the state against the statute of limitations when the action was for damage to timber. By amendment 1917 the part of the section following the semi-colon was added making it clear that the statute of limitations was not to be applied in actions for damages to timber.

Assignee Not Barred by Statute of Limitations.—In an action for land the plaintiff is not barred by the statute of limitations, which does not run in such cases, unless the state would have been barred by adverse possession. State Board v. Roanoke R. Co., 158 N. C. 313, 315, 73 S. E. 994.

The purpose of this section providing that no statute of limitation shall affect the title or bar the action of the state board of education "or its assigns," unless the same would protect the person holding and claiming adversely against the state, was to make applicable to the state board of education the same limitations applicable to the state, and the quoted words were intended to make applicable to assigns of the board the same limitations applicable to the board, but only as applied to adverse possession had while title was in the board. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383, dicta.

Harmless Error.—In action for damages for alleged trespass in the cutting of timber on swamp land where defendants claimed adverse possession under color of title to land in dispute, and plaintiff claimed title under deeds executed by the state board of education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383.

§ 146-92. Actions by board; counsel; compromise. — The state board of education may employ counsel learned in the law to aid and assist it in the investigation and prosecution of its title to any of the swamp lands; and may compromise upon such terms as to it shall seem reasonable and just, for the title, so as to secure the corporation an indefeasible right in such lands. (Rev., s. 4051; Code, s. 2516; R. C., c. 66, s. 13; C. S. 7619.)

§ 146-93. Agreement with others to prosecute or survey.—The state board of education has full power and authority to agree with any person to prosecute its claim to any swamp lands in any county or counties, or to survey and indentify its lands in such counties, and allow to such person a share of any such land as a compensation for his services. (Rev., s. 4052; Code, s. 2526; R. C., c. 66, s. 23; 1854, s. 48; C. S. 7620.)

Art. 12. Sale of Lands.

§ 146-94. Sale of swamp lands. — The state board of education is authorized and directed to sell and convey the swamp lands at public or private sale at such times, for such prices, in such portions, and on such terms as to it may seem proper; but it shall not sell at a price less than twelve and one-half cents per acre. It shall report each sale to the next session of the general assembly. The proceeds, as also money received on entries of vacant land, shall become a part of the state literary fund. The corporation shall not sell any canal by it constructed under this subchapter. (Rev., s. 4049; Code, ss. 2514, 2515, 2529; R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; 1889, c. 243, s. 4; C. S. 7621.)

May Sell Tide-Lands.—The state board of education may sell and convey the fee in tide-lands which are not adjacent to navigable water and which comprise one tract of marsh lands of more than 2,000 acres. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714.

§ 146-95. Reservation to the state.—In any sale which shall be made by the state board of education the following powers shall be expressly reserved to the state, to be exercised under such laws as are now or may be enacted by the general assembly: 1. To make any expedient regulations respecting the repair of the canals which have been cut by the state, or enlargement of such canals. 2. To impose taxes on the lands benefited by those canals for their repair, and which shall not be closed. 3. That the navigation of the canal shall be free to all persons, subject to a right in the state to impose tolls. 4. That all landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter

may be made by the general assembly in such cases. 5. That the roads along the banks of the canal shall be public roads. (Rev., s. 4050; Code, s. 2534; 1872-3, c. 118; C. S. 7622.)

§ 146-96. Forfeiture for failure to register deeds. —All the grants and deeds for swamp lands, heretofore made, must have been proved and registered in the county where the lands are situate, within twelve months from November first, one thousand eight hundred and eighty-three, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the state; but the provisions of this section shall be applicable to the swamp lands only which have been surveyed or taken possession of by, or are vested in, the state board of education or its agents. (Rev., s. 4046; Code, ss. 2513, 3866; R. C., c. 66, s. 10; R. S., c. 67, s. 10; C. S. 7623.)

§ 146-97. Withdrawal of swamp lands from sale under certain conditions; lease or sale to department of conservation and development. — When it shall be reported to the state board of education, after investigation by the department of conservation and development, that any part of the lands now known as "swamp lands" should be retained and reserved from sale in the public interest because of the suitability of the waters thereupon for oyster culture, or for game refuge, or other purposes consistent with public use, the board of education shall, if upon examination it is found that the reservation of the said lands for such purpose is proper and to the public interest, reserve the same and make such disposition as will best conserve the public interest by lease or sale to the department of conservation and development as may be thought proper. Such lease or sale to the department of conservation and development may be upon such terms as may be determined upon by the board of education: Provided, that no lands now belonging to the state board of education upon which there is any natural oyster bed, or which is suitable for oyster culture, shall be subject to sale by the said board of education without first giving to the department of conservation and development an opportunity to investigate and to report to the board of education as to whether it is desirable to make a reservation thereof under this section. (1935, c. 342.)

§ 146-98. State Board of Education authorized to transfer lands, Pender and Onslow Counties, for development as game refuge. — The State Board of Education is authorized and empowered in its discretion to transfer or lease to the Department of Conservation and Development that certain swamp land now owned by the State Board of Education in Pender and Onslow Counties, known as Holly Shelter Pocosin, for the purpose of development, supervision and administration as a game refuge, or game preserve, and as a public hunting ground, in accordance with the provisions of the laws of North Carolina relating to game refuges, game preserves and public hunting grounds.

In the event the above described swamp lands, known as Holly Shelter Pocosin, should hereafter cease to be used as a game refuge, or game preserve, and public hunting ground, the Department of Conservation and Development shall lose all of the rights conferred by this section and the said swamp lands shall revert to the State Board of Education. (1939, c. 232.)

Chapter 147. State Officers.

Art. 1. Classification and General Provisions.

Art. 2. Expenses of State Officers and State Departments.

Art. 3. The Governor.

Art. 1. Classification and General Provisions.

§ 147-1. Public state officials classified. — The public officers of the state are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (Rev., s. 5323; Code, s. 3317; 1868-9, c. 270, ss. 1, 2; C. S. 7624.)

§ 147-2. Legislative officers. — The legislative officers are:

1. Fifty senators; 2. One hundred and twenty members of the house of representatives. 3. A speaker of the house of representatives; 4. A clerk and assistants in each house; 5. A doorkeeper and assistants in each house; 6. As many

subordinates in each house as may be deemed necessary. (Rev., s. 5324; Code, s. 3318; 1868-9, c. 270, s. 3; C. S. 7625.)

§ 147-3. Executive officers. — Executive officers are either: 1. Civil. 2. Military. Civil executive officers are: 1. General, or for the whole state. 2. Special, or for special duties in different parts of the state. 3. Local, or for a particular part of the state.

The general civil executive officers of this state are as follows: 1. A governor. 2. A lieutenant governor. 3. Private secretary for the governor. 4. A secretary of state. 5. An auditor. 6. A treasurer. 7. An attorney-general. 8. A superintendent of public instruction. 9. The members of the governor's council. 10. A commissioner of agriculture. 11. A commissioner of labor. 12. A commissioner of insurance. (Rev., s. 5325; Code, s. 3319; 1868-9, c. 270, ss. 24, 25, 26; 1899, c. 373, c. 54, ss. 3, 4; 1901, c. 479, s. 4; 1931, c. 312, s. 5; 1943, c. 170; C. S. 7626.)

§ 147-4. Executive officers; election; term; induction into office.—The executive department shall consist of a governor, a lieutenant governor, a secretary of state, an auditor, a treasurer, a superintendent of public instruction, and an attorney-general, who shall be elected for a term of four years by the qualified electors of the state, at the same time and places and in the same manner as members of the general assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint ballot of both houses of the general assembly in such manner as shall be prescribed by law. On the first Tuesday after the convening of the general assembly, the person duly elected governor shall, in the presence of a joint session of the two houses of the general assembly, take the oath of office prescribed by law and be immediately inducted into the office of governor. Should the governor-elect not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the supreme or judge of the superior court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article three, section one, of the constitution, and as to the commissioner of agriculture, the commissioner of insurance, and the commissioner of labor shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Rev., s. 5326; Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; 1931, c. 312, s. 5; C. S. 7627.)

For cases see notes Art. III, secs. 1 and 3 of the Constitution.

§ 147-5. Executive officers and certain boards report to governor; reports transmitted to general assembly.—It shall be the duty of the officers of the executive department to submit their respective reports to the governor to be transmitted by him with his message to the general assembly. (Rev., s. 5373; 1813, c. 60, s. 2; C. S. 7628.)

Art. 2. Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants of state auditor; statements filed. — All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the state auditor on the state treasurer. The officer of state or the head of any department thereof shall file with the state auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the state auditor shall draw warrants on the state treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of state or head of any department thereof, as evidenced by statements so approved and filed. The state treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C. S. 7630.)

§ 147-7. Traveling expenses on state's business. —When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this state, and provide for the expenses thereof, it is required that any officer of the state or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C. S. 7631.)

§ 147-8. Mileage allowance to officers or employees using public or private automobiles. — Where it is provided by any law affecting the State of North Carolina, or any sub-division thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any sub-division thereof or by any such employee or officer of the State or any sub-division thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed six cents per mile. (1931, c. 382, s. 1.)

§ 147-9. Unlawful to pay more than allowance.—It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any sub-division thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any sub-division thereof or by any person and used in the pursuit of his employment or office in excess of six cents per mile as set out in § 147-8 and any officer, auditor, bookkeeper, clerk

or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2.)

Art. 3. The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories.—The governor shall reside in the city of Raleigh during his continuance in office. A convenient and commodious furnished dwelling-house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion. (Rev., s. 5327; Code, ss. 3325, 3326; 1868-69, c. 270, ss. 32, 33; 1885, c. 244; 1919, c. 307; C. S. 7635.)

§ 147-11. Salary of governor.—The salary of the governor shall be ten thousand five hundred dollars per annum. He shall be allowed annually the sum of six hundred dollars as traveling expenses in attending to the business for the state and for expenses out of the state and in the state in representing the interest of the state and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the governor while traveling outside the state on business incident to his office shall be paid by the state treasurer on a warrant issued by the auditor. (Rev., s. 2736; Code, s. 3720; 1879, c. 240; 1901, c. 8; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; 1929, c. 276, s. 1; C. S. 3858.)

Editor's Note.—The Act of 1929 raised the governor's salary from six thousand five hundred dollars to the present amount.

§ 147-12. Powers and duties of governor.—In addition to the powers and duties prescribed by the constitution, the governor has the powers and duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all state institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the auditor is hereby directed to draw an order on the treasurer in favor of the governor to pay his expenses for each visitation.

2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the general assembly therewith.

3. He is to make the appointments and supply the vacancies not otherwise provided for in all departments.

4. He is the sole official organ between the government of this state and other states, or the government of the United States.

5. He has the custody of the great seal of the state.

6. If he be apprised by the affidavits of two responsible citizens of the state that there is imminent danger that the statute of this state forbidding prize fighting is about to be violated, he shall use, as far as necessary, the civil and military power of the state to prevent it, and to have the offenders arrested and bound to keep the peace. (Rev., s. 5328; Code, s. 3320; 1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; 1895, c. 28, s. 5; 1905, c. 446; C. S. 7636.)

Cross References.—For sections placing governor and council of state in charge of state's interest in all railroads, canals and other works of internal improvements, and prescribing their duties with relation thereto, see §§ 124-1 to 124-7. As to governor's power to appoint, see Art. III, §§ 10 and 13; Art. IV, sec. 25; Art. XIV, sec. 5 of the state constitution.

As to investment of surplus state funds, see § 147-69.1.

Editor's Note.—Public Laws of 1935, chapter 492, makes provision for the governor and council of state to set up machinery for administering unemployment compensation fund.

Mandamus to Compel Performance of Duties.—Under paragraphs 1 and 2 of this section the Governor has the right to bring mandamus proceedings against the State Auditor to compel the performance of the ministerial duties prescribed by statute which do not involve any official discretion. Russell v. Ayer, 120 N. C. 180, 27 S. E. 133.

Par. 3—Appointments.—The governor making appointments under par. 3 of this section, can only do so when the Senate is not in session, and then the appointment is only for the interval until the Senate meets. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354.

The right of the governor to appoint officers is limited to constitutional officers, and then only when the constitution expressly provides for such an appointment. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354.

§ 147-13. May convene council of state. — The governor may convene his council for consultation whenever he may deem it proper. (Rev., s. 5329; Code, s. 3335; 1868-9, c. 270, s. 40; C. S. 7637.)

§ 147-14. Private secretary; official correspondence preserved; books produced before general assembly.—The governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the governor, as are official and important, and such other letters as the governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the governor shall produce the same before the general assembly whenever requested. (Rev., s. 5330; Code, ss. 3326, 3327; 1868-9, c. 270, ss. 33, 34; C. S. 7638.)

§ 147-15. Private secretary to governor; salary; fees.—The salary of the Private Secretary to the Governor is hereby fixed at forty-five hundred dollars ($4500) per annum, payable monthly, commencing February 1, 1929. This salary shall be full compensation for all services performed by the secretary. The secretary shall charge and collect the following fees, to be paid by the persons for whom the services are rendered, namely: For the commission of a judge, solicitor, senator in congress, representative in congress, notary public, or a place of profit, two dollars and fifty cents each; for a testimonial, one dollar; for affixing the seal to a grant, twenty-five cents; for affixing the great seal of the state to state bonds, ten cents. He shall cover the whole of the fees collected into the state treasury. He shall be ex officio secretary of the board of internal improvements, but shall receive no compensation for such service. (Rev., s. 2737; Code, ss. 1689, 3721; R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Pr. 1901, c. 405; 1903, c. 729; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; 1921, c. 227; 1929, c. 322, ss. 1, 2; C. S. 3859.)

§ 147-16. Records kept; certain original applications preserved.—The governor shall cause to be kept the following records:

1. A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (Rev., s. 5331; Code, ss. 3322, 3323; 1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; C. S. 7639.)

§ 147-17. May employ counsel in cases wherein state is interested.—No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except by and with the consent and approval of the Governor. In any case, civil or criminal, in any court in the State or in any other state or territory or in any United States court, or in any other matter, thing, or controversy, of whatever nature or kind, in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation as he may fix for their services. The Attorney-General, with his assistants, shall be counsel for all such departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State, and whenever the Attorney-General shall advise the Governor that it is impracticable for him and his assistants to render legal services to any State agency, institution, commission, bureau or other organized activity, the Governor may employ such counsel as, in his judgment, should be employed to render such services, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation for their services as he may fix, and he may direct that such warrant be paid out of the appropriations to such department, agency, institution, commission, bureau or other organized activity of the State, or out of the contingent fund. (Rev., s. 5332; Code, ss. 3320, 3324; 1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; 1901, c. 744; 1925, c. 207, s. 3; C. S. 7640.)

Editor's Note.—No material change in the effect of this section is made by the Public Laws of 1925, ch. 207, sec. 3, although the wording is greatly altered.

§ 147-18. To designate "Indian Day." — The governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the state and among the citizens of North Carolina. (Resolution 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving. — The governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a state and a nation. (Rev., s. 5333; Code, s. 3334; 1868-9, c. 270, s. 39; C. S. 7641.)

§ 147-20. Governor granted exclusive parole power over inmates of state's institutions. — To the end that greater efficiency and uniformity may be observed in the matter of paroling persons imprisoned or detained under authority of law, exclusive authority is hereby given to the governor with respect to parole of all persons confined, held, or detained in any prison, reformatory, penal or corrective institution, in the State of North Carolina, by whatsoever name called, where such person is held in such institution by virtue of any final order or judgment of any court in this State, including juvenile courts. (1935, c. 273.)

§ 147-21. Form and contents of applications for pardon.—Every application for pardon must be made to the governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (Rev., s. 5334; Code, s. 3336; 1869-70, c. 171; 1870-1, c. 61; C. S. 7642.)

Cross Reference.—As to governor's power to pardon, see Art. III, sec. 6 of the Constitution.

§ 147-22. Application for pardon to include record.—Any application for the pardon of a prisoner committed to the discharge of the State Highway and Public Works Commission shall include a record of such prisoner since he was committed to the charge of the commission; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; 1925, c. 163; C. S. 7739.)

§ 147-23. Conditional pardons may be granted. —In any case in which the governor is authorized by the constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper, (Rev., s. 5335; 1905, c. 356; C. S. 7643.)

§ 147-24. Governor's duties when conditions of pardon violated.—If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the governor may require that he has violated the condition of his pardon, the gover-

nor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (Rev., s. 5336; 1905, c. 356, ss. 2, 3; C. S. 7644.)

Editor's Note.—This section is reviewed and its merits considered in an able article appearing in 1 N. C. Law Rev. 47, 48, where the law of parole generally is fully discussed.

Conditional Pardon.—The Governor may grant a pardon upon a condition precedent that the prisoner pay costs of trial; and upon condition subsequent, that he remain of good character, and be sober and industrious. See Constitution, sec. 6, Art. 3. In re Williams, 149 N. C. 436, 63 S. E. 108.

Same—Revocation.—After delivery and acceptance of a pardon with conditions precedent and subsequent, it is irrevocable upon the compliance by the prisoner with the condition precedent, unless he shall violate the conditions subsequent by his conduct after the release. In re Williams, 149 N. C. 436, 63 S. E. 108.

Rearrest of Paroled Prisoner.—Under the provisions of our State Constitution and Statutes, a "parole" granted by the governor to a prisoner imports a conditional pardon, and the governor may cause his rearrest either upon his own admissions, or on such evidence as he may require, for violating the conditions which the prisoner has accepted under the terms of the parole. State v. Yates, 183 N. C. 753, 111 S. E. 337.

Reasonable Conditions Imposed.—The power of the governor to grant a conditional pardon is generally subject to the limitation that the conditions imposed must not be illegal, immoral or impossible of performance, which does not apply to cases wherein he is only required not to violate the statute law, and remain of good conduct. State v. Yates, 183 N. C. 753, 111 S. E. 337.

Same—Breach by Prisoner.—Where the prisoner has accepted his freedom upon the terms of the conditional pardon from the governor, his breach of such conditions avoids the pardon and cancels his right to further immunity from punishment. State v. Yates, 183 N. C. 753, 111 S. E. 337.

The essential part of a sentence for a violation of the criminal law is the punishment for the offense committed, and not the time the sentence shall begin and end; and where the prisoner has accepted a conditional pardon from the governor and has obtained his freedom, the breaking of the condition after the term would have otherwise expired, affords no legal excuse why he should not be recommitted to serve out the balance of his sentence. State v. Yates, 183 N. C. 753, 111 S. E. 337.

§ 147-25. Duty of sheriff and clerk on pardon granted.—If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (Rev., s. 5337; 1905, c. 356, s. 4; C. S. 7645.)

When Sheriff Cannot Defeat Pardon.—The sheriff, by returning a pardon after its delivery and acceptance by the prisoner, cannot defeat or impair its legal results. In re Williams, 149 N. C. 436, 63 S. E. 108.

Recovery of Fine Paid before Pardon.—Where one convicted of a crime has paid the fine imposed by the court and then has obtained a pardon from the Governor, it is the duty of the court to return the fine upon his application and presenting the pardon, so long as the money remains in its possession and the rights of third persons have not intervened; but where the fine collected has reached its final destination, it is beyond the reach of executive clemency, and may not be recovered. Bynum v. Turner, 171 N. C. 86, 87 S. E. 975.

§ 147-26. To procure great seal of state; its description.—The governor shall procure for the state a seal, which shall be called the great seal of the state of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of wheat in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out; there shall also be inserted thereon the words "esse quam videri." It shall be the duty of the governor to file in the office of secretary of state an impression of the great seal, certified to under his hand and attested by the secretary of state, which impression so certified the secretary of state shall carefully preserve among the records of his office. (Rev., s. 5339; Code, ss. 3328, 3329; 1868-9, c. 270, s. 35; 1883, c. 392; 1893, c. 145; C. S. 7646.)

§ 147-27. Affixing great seal a second time to public papers.—In all cases where any person may find it necessary to have the great seal of the state put again to any public paper, other than a grant for lands, he may prefer his petition to the governor and council, who shall, if they deem the same proper, direct the seal to be put thereto. (Rev., s. 5338; Code, s. 3333; 1868-9, c. 270, s. 38; C. S. 7647.)

§ 147-28. To procure seals for departments and courts.—The governor shall also procure a seal for each department of the state government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the state, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe-keeping. (Rev., s. 5340; Code, ss. 3328, 3332; 1868-9, c. 270, ss. 35, 37; 1883, c. 71; C. S. 7648.)

§ 147-29. Seal of department of state described.—The seal of the department of state shall be two inches in diameter and shall be of the same design as the great seal of the state, with the words "State of North Carolina, Department of State," surrounding the figures. (Rev., s. 5341; Code, s. 3330; 1883, c. 238; C. S. 7649.)

§ 147-30. To provide new seals when necessary.—Whenever the great seal of the state shall be lost or so worn or defaced as to render it unfit for use, the governor shall provide a new one and when such new one is provided the former one, if it can be found, shall be destroyed in the

presence of the governor. Whenever the seal of any department of the state shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county. (Rev., s. 5342; Code, s. 3331; 1868-9, c. 270, s. 36; 1943, c. 632; C. S. 7650.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 147-31. Payment for seals. — The treasurer shall pay the expense of procuring all seals provided for in this chapter, upon the warrant of the auditor. (Rev., s. 5343; Code, s. 3332; 1868-9, c. 270, s. 37; 1883, c. 71; C. S. 7651.)

§ 147-32. Compensation for widows of governors.—All widows of the governors of the state of North Carolina who were married to said governors before or during their term of office as governor of the state of North Carolina and who have attained, or shall hereafter attain, the age of sixty-five years, shall be paid the sum of twelve hundred ($1,200.00) dollars per annum during the term of their natural lives, the same to be paid in equal monthly installments of one hundred ($100.00) dollars per month out of the state treasury upon warrant duly drawn thereon: Provided, that no payment shall be made under this section unless and until the council of state shall find that the beneficiary does not have an income adequate for her support. (1937, c. 416.)

§ 147-33. Compensation when attending meetings.—Whenever the lieutenant-governor shall attend any meeting of state officials or otherwise, which he is required by law to attend, he shall be entitled to receive as compensation the per diem allowed him under the constitution as president of the senate for the time required in attending said meeting, together with his necessary traveling expenses in going to and from said meeting. The amount to which he shall be entitled shall be certified to by him, and shall be paid to him by the state treasurer upon the proper warrant. (1911, c. 103; C. S. 3862.)

Art. 3A. Emergency War Powers of Governor.

§ 147-33.1. Short title.—This article may be cited as the "North Carolina Emergency War Powers Act." (1943, c. 706, s. 1.)

§ 147-33.2. Emergency war powers of the governor.—Upon his own initiative, or on the request or recommendation of the president of the United States, the army, navy or any other branch of the armed forces of the United States, the federal director of civilian defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the state, or for the defense and security of the state or nation, or for the proper conduct of the war and the successful prosecution thereof, the governor may, with the approval of the council of state, at any time and from time to time during the existing state of war:

(a) Formulate and execute plans for:

(1) the inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessaries of life and health, and of land, labor, materials, industries, facilities and other resources of the state necessary or useful in the prosecution of the war;

(2) organization and coordination of civilian defense in the state in reasonable conformity with the program of civilian defense as promulgated from time to time by the office of civilian defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the state for the duration of the war and in the interest of state and national defense.

(b) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.

(c) Mobilize, coordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the state, of the political subdivisions of the state, and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the state in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

(d) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities.

(e) Accept, or authorize any officer or department of the state to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.

(f) Authorize any department or agency of the state to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the state upon such terms and conditions as he may impose, or, on behalf of the state, to make a contract directly therefor.

(g) Authorize the temporary transfer of personnel of the state for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.

(h) At any time when the general assembly is

not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearing as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

(1) The use of the roads, streets and highways of the state, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the state; provided that any changes in the laws referred to in this subsection shall be first approved by the state highway and public works commission and the commissioner of motor vehicles of the state.

(2) Public health, in so far as suspension or modification of the laws in reference thereto may be stipulated by the United States public health service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the state board of health.

(3) Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the commissioner of labor of the state as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this state except with the approval of the contracting parties.

(4) Whenever it should be certified by the adjutant general of the state that emergency conditions require such procedure, the governor, with the approval of the council of state, shall have the power to call up and mobilize state militia in addition to the existing units of the state guard; to provide transportation and facilities for mobilization and full utilization of the state guard, or other units of militia, in such emergency, and to allocate from the contingency and emergency fund such amounts as may be necessary for such purposes during the period of such emergency.

(5) Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms.

(i) Cooperate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and coordinate and direct the work of the offices and agencies of the state having duties and responsibilities directly connected with the war effort and the protection of the civilian population.

(j) Aid in the administration and enforcement in this state of any rationing, freezing, price-fixing or similar order or regulation duly promulgated by any federal officer or agency under or pursuant to the authority of any act of congress or of any order or proclamation of the president of the United States, by making temporarily available personnel and facilities of the state to assist in the administration thereof and/or by adopting and promulgating in this state an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the secretary of state, prescribing the penalties for the violation thereof, and specifying the state and local officers and agencies to be charged with the enforcement thereof.

(k) Formulate and execute plans and adopt rules for:

(1) the organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air raid warnings and signals;

(2) the organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.

(l) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this article, and amend or rescind the same.

(m) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of revelant books, papers, records or documents, in connection with any investigation made by him under the authority of this article. (1943, c. 706, s. 2.)

§ 147-33.3. Orders, rules and regulations.—All orders, rules and regulations promulgated by the governor pursuant to this article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the secretary of state. All laws, ordinances, rules and regulations, in so far as they are inconsistent with the provisions of this article or of any rule, order or regulation made pursuant to this article, shall be suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. (1943, c. 706, s. 3.)

§ 147-33.4. Immunity.—Neither the state nor any political subdivision thereof, nor the agents or representatives of the state or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or

other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this article, shall be liable for the death of or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under workmen's compensation law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4.)

§ 147-33.5. Federal action controlling.—All action taken under this article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5.)

§ 147-33.6. Construction of article.—This article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6.)

§ 147-33.7. Duration of article.—This article shall be in full force and effect while the existing state of war continues with any foreign power and for six months thereafter, or until the convening of the next general assembly, and none of the powers herein granted shall be thereafter exercised and no contract, order, rule or regulation made or other action taken pursuant to this article shall thereafter be enforceable or effective, except for the performance of an obligation theretofore incurred thereunder or the prosecution of an act theretofore committed in violation thereof. (1943, c. 706, s. 8.)

Art. 4. Secretary of State.

§ 147-34. Office and office hours.—The secretary of state shall attend at his office, in the city of Raleigh, between the hours of ten o'clock a. m. and three o'clock p. m., on every day of the year, Sundays and legal holidays excepted. (Rev., s. 5344; Code, s. 3339; 1868-9, c. 270, s. 44; 1870-1, c. 111; C. S. 7652.)

§ 147-35. Salary of secretary of state. — The salary of the secretary of state shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2741; Code, s. 3724; 1879, c. 240, s. 6; 1881, p. 632, res.; 1907, c. 994; 1919, c. 247, s. 2; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; C. S. 3863.)

Cross Reference.—As to bond of secretary of state, see § 128-8.

Editor's Note.—The amendment of 1935 increased the salary of the secretary of state from $4,500 to $6,000, and added the provision making such salary payable monthly.

The 1941 amendment provided that, effective January 1, 1941, the salary should be $6,600.00 per annum, payable monthly.

§ 147-36. Duties of secretary of state.—It is the duty of the secretary of state:

1. To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two houses, or either of them. 2. To attend the governor, whenever required by him, for the purpose of receiving documents which have passed the great seal. 3. To receive and keep all conveyances and mortgages belonging to the state. 4. To distribute annually the statutes, the legislative journals and the reports of the supreme court. 5. To distribute the acts of congress received at his office in the manner prescribed for the statutes of the state. 6. To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book. 7. To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the state and maintain a record thereof. 8. To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof. 9. To maintain a division of publications to compile data on the state's several governmental agencies and for legislative reference. 10. To receive, enroll and safely preserve the constitution of the state and all amendments thereto. 11. To serve as a member of such boards and commissions as the constitution and laws of the state may designate. 12. To administer the securities law of the state, regulating the issuance and sale of securities, as is now or may be directed. 13. To receive and keep all oaths of public officials required by law to be filed in his office, and as secretary of state, he is fully empowered to administer official oaths to any public official of whom an oath is required. (Rev., s. 5345; Code, s. 3340; 1868-9, c. 270, s. 45; 1881, c. 63; 1941, c. 379, s. 6; 1943, cc. 480, 543; C. S. 7654.)

Cross Reference.—As to issuing grants, see § 146-47.

Editor's Note.—The 1941 amendment struck out the words "and documents" formerly appearing after the word "journals" in subsection 4.

The second 1943 amendment added items 7 to 12, inclusive, and the first 1943 amendment added item 13.

For act authorizing secretary of state to enroll in a book the Constitution of 1868 and amendments thereto, see Session Laws 1943, c. 107.

§ 147-37. Secretary of state; fees to be collected.—The secretary of state shall collect the following fees, namely: copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents, and for every additional copy-sheet,

ten cents; correcting an error not made by himself in a patent, fifty cents; copying and certifying a plot and survey, fifty cents for each warrant or for each six hundred and forty acres contained in the plot or survey, not to exceed five dollars for one copy; receiving surveyor's return, making out, recording and endorsing grants, sixty cents; each certificate, ten cents; filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents; copying an entry from the journals of the assembly, forty cents; copying and certifying the laws of other states, twenty cents for each copy-sheet; and in all cases not otherwise provided for, the secretary of state shall receive for copies of records from his office, one dollar for the first three copy-sheets and ten cents a copy-sheet thereafter. (Rev., s. 2742; Code, s. 3725; R. C. c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; C. S. 3864.)

§ 147-38. Copy-sheet defined. — A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1855," "$250.90," shall be estimated and charged as one word. (Rev., s. 2805; Code, s. 3757; R. C., c. 102, s. 42; 1868-9, c. 279, s. 556; C. S. 3851.)

§ 147-39. Custodian of statutes, records, deeds, etc.—The secretary of state is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. (Rev., s. 5347; Code, s. 3337; R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; C. S. 7656.)

§ 147-40. Compensation of indexer of laws. — The assistant to the secretary of state who indexes the laws and prepares the laws and captions for publication shall receive a compensation to be fixed by the budget bureau. (Rev., s. 2733; 1903, c. 3; 1931, c. 277; 1933, c. 46; C. S. 3866.)

§ 147-41. To keep records of oyster grants.— The secretary of state shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of chapter 119 of the laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (Rev., s. 2381; 1887, c. 119, s. 14; C. S. 7657.)

§ 147-42. Binding original statutes, resolutions, and documents.—The original statutes and joint resolutions passed at each session of the general assembly the secretary of state shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (Rev., s. 5348; Code, s. 3343; 1866-7, c. 71; 1868-9, c. 270, s. 46; C. S. 7658.)

§ 147-43. Reports of state officers.—The secretary of state shall file and keep in his office one copy of each of the reports of state officers in the best binding in which any such report is issued, and the state librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C. S. 7300.)

§ 147-43.1. Secretary of state to prepare index to acts.—The secretary of state shall biennially, at the beginning of each regular session of the general assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes, and side or marginal notes, to the acts and resolutions, both public and private, ratified by the general assembly. (Rev., s. 4423; 1903, c. 3; 1927, c. 217, s. 1; C. S. 6109.)

Editor's Note.—This section formerly appeared as § 120-23 and was transferred to its present position by Session Laws 1943, c. 543.

Prior to the amendment of 1927 the captions of the acts and resolutions were also required to be indexed and published.

§ 147-43.2. Secretary of state to have laws printed.—The secretary of state, immediately upon the termination of each session of the general assembly, shall cause to be published in one volume all the laws and joint resolutions passed at such session, whether public, private, general or special within the meaning of the constitution and without regard to classification, except that the laws and resolutions shall be kept separate and indexed separately; and the volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing, he shall omit the certificate required to be endorsed upon the original bills and resolutions; but he shall insert immediately at the end of each law or resolution the word "ratified," adding the day, month and year. (Rev., s. 4425; Code, s. 2869; 1868-9, c. 270, s. 14; 1943, c. 48, s. 1; C. S. 6111.)

Editor's Note.—The 1943 amendment rewrote the section. This section formerly appeared as § 120-24 and was transferred to its present position by Section Laws 1943, c. 543.

Session Laws 1943, c. 33, being an act revising and consolidating the public and general statutes of the state of North Carolina, was exempted from the provisions of this section by Session Laws 1943, c. 15, s. 2. The said act is in a separate bound volume on file in the office of the secretary of state.

§ 147-43.3. Number to be printed.—There shall not be printed more than four thousand (4,000) volumes of Session Laws, twenty-five hundred (2500) to full bound and fifteen hundred (1500) to half bound; six hundred (600) volumes of House Journals and six hundred (600) volumes of Senate Journals of each session of the General Assembly. (1929, c. 85, s. 1; 1941, c. 379, s. 6; 1943, c. 48, s. 5.)

Editor's Note.—The 1943 amendment substituted "session" for "public" in line three and omitted a former provision relating to Public-Local and Private Laws.

This section formerly appeared as § 120-25 and was transferred to its present position by Session Laws 1943, c. 543.

The 1941 amendment increased the authorized printing of the House and Senate Journals from five to six hundred volumes.

§ 147-44: Repealed by Session Laws 1943, c. 48, s. 2.

§ 147-45. Distribution of copies of session laws, and other state publications by secretary of state. —The secretary of state shall, at the state's expense, as soon as possible after publication, distribute such number of copies of the session laws, senate and house journals, and supreme court reports to federal, state and local governmental

officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Supreme Court Reports
State Departments and Officials:			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	7	1	5
Commissioner of Agriculture	3	1	1
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
State Board of Health	3	1	0
State Highway and Public Works Commission	3	1	1
State Board of Charity and Public Welfare	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Commissioner of Revenue	5	0	1
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	3	1	3
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Director of Probation	2	0	1
Commissioner of Paroles	2	0	1
Department of Conservation and Development	3	1	0
North Carolina Library Commission	2	0	0
Veterans' Loan Commission	1	0	0
Industrial Commission	3	0	3
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Justices of the Supreme Court	1 each	1 each	1 each
Clerk of the Supreme Court	1	1	0
Judges of the Superior Court	1 each	0	1 each
Emergency Judges of the Superior Court	1 each	0	1 each
Special Judges of the Superior Court	1 each	0	1 each
Solicitors of the Superior Courts	1 each	0	1 each
Unemployment Compensation Commission	1	1	1
State Employment Service	1	0	0
State Commission for the Blind	1	0	1
State Prison	1	0	0
Western North Carolina Sanatorium	1	0	0
Eastern North Carolina Sanatorium	1	0	0
North Carolina Historical Commission	1	0	0
State Library	20	20	2
Supreme Court Library	as many as requested		
Supreme Court Reporter	0	0	1
General Assembly Members and Officials:			
Representatives of General Assembly	1 each	1 each	0
State Senators	1 each	1 each	0
Principal Clerk—Senate	1	1	0
Reading Clerk—Senate	1	1	0
Sergeant-at-Arms—Senate	1	1	0
Principal Clerk—House	1	1	0
Reading Clerk—House	1	1	0
Sergeant-at-Arms—House	1	1	0
Enrolling Clerk	1	0	0
Engrossing Clerk—House	1	1	0
Indexer of the Laws	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill	59	54	65
North Carolina State College of Agriculture and Engineering of the University of North Carolina	5	1	1
Woman's College of the University of North Carolina	3	1	1
Duke University	25	25	25
Davidson College	1	1	1
Wake Forest College	5	5	7
Lenoir Rhyne College	1	1	1
Elon College	1	1	1
Guilford College	1	1	1
East Carolina Teachers College	1	1	1
Catawba College	0	0	1
North Carolina School for the Deaf	1	0	0
State Hospital at Raleigh	1	0	0
State Hospital at Morgantown	1	0	0
State Hospital at Goldsboro	1	0	0
Caswell Training School	1	0	0
School for the Blind and Deaf	1	0	0
State Normal School at Fayetteville	1	0	1
North Carolina College for Negroes	5	5	5
Local Officials:			
Clerks of the Superior Courts	1 each	1 each	1 each
Sheriffs of the Counties	1 each	0	0
Registers of Deeds of the Counties	1 each	1 each	0
Chairmen of the Boards of County Commissioners	1 each	0	0

	Session Laws	House and Senate Journals	Supreme Court Reports
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President	1	0	1
Secretary of State	1	1	1
Secretary of War	1	0	1
Secretary of Navy	1	0	1
Secretary of Agriculture	1	0	1
Attorney General	1	0	1
Postmaster General	1	0	1
Marshal of United States Supreme Court	1	0	1
Department of Justice	1	0	1
Bureau of Census	1	0	1
Treasury Department	1	0	1
Department of Internal Revenue	1	0	1
Department of Labor	1	1	1
Bureau of Public Roads	1	0	1
Department of Commerce	1	1	1
Department of Interior	1	0	1
Veterans' Administration	1	0	1
Securities and Exchange Commission	1	0	1
Social Security Board	1	0	1
Work Projects Administration	1	0	1
Farm Credit Administration	1	0	1
Library of Congress	8	2	5
Federal Judges resident in North Carolina	1 each	0	1 each
Federal District Attorneys resident in North Carolina	1 each	0	1 each
Clerks of Federal Court resident in North Carolina	1 each	0	1 each
Chief executives or designated libraries of governments of other states, territories and countries, including Canada, Canal Zone, Porto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library	1 each	0	1 each

Upon his appointment or election each justice of the supreme court shall receive for his private use one complete and up-to-date set of the reports of the supreme court. The copies of reports furnished each justice as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of reports.

One copy each of the public laws, the public-local laws and the supreme court reports shall be furnished the head of any department of state government created in the future.

Five complete sets of the public laws, the public-local and private laws, the senate and house journals and the supreme court reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 1; 1943, c. 48, s. 4.)

Editor's Note.—The 1943 amendment substituted "session laws" for "public laws, public-local and private laws" in the introductory paragraph. It also substituted "session laws" for "public laws" in the table and struck out of the table the former column relating to Public-Local and Private Laws.

Session Laws 1943, c. 48, s. 6, provided that wherever the words "public," "public-local" and "private" or a combination of these words appear in the Consolidated Statutes and acts amendatory thereto, relating to the printing and distribution of the acts of the general assembly, the same be stricken out and the words "session laws" be inserted in lieu thereof.

§ 147-46. Publications furnished institutions of learning.—The secretary of state, upon application made by any chartered institution of learning in this state, for which provision is not elsewhere made in § 147-45, having a library of not less than five thousand volumes, shall furnish and transmit to each of such institutions, to be kept in its library, a copy of all future current supreme court reports, session laws of the general assembly and journals of both houses, whenever the same shall be ready for distribution. He shall furnish to each of such institutions, if he have them on hand, or when reprinted or otherwise obtained, one volume each of such of the supreme court reports, public laws, public-local and private laws, and journals as have not been theretofore furnished. (1941, c. 379, s. 2; 1943, c. 48, s. 4.)

Editor's Note.—The 1943 amendment substituted in the first sentence the words "session laws" for the words "public-local and private laws."

§ 147-47. Apportionment of half bound volumes of session laws among justices of the peace.—The secretary of state shall apportion the fifteen hundred copies of half bound session laws among the justices of the peace of the state on a county population basis and distribute them to the justices. The secretary of state shall notify all the clerks of the superior court of the number of copies of session laws available for distribution for justices of the peace in their respective counties, and the clerk shall thereupon certify to the secretary of state the names and post office addresses of a like number of qualified and active justices of the peace thus entitled to receive said laws. (1941, c. 379, s. 3; 1943, c. 48, s. 4.)

Editor's Note.—The 1943 amendment substituted "session laws" for "public laws."

§ 147-48. Sale of laws and journals and supreme court reports.—Such laws and journals as may be printed in excess of the number directed to be distributed the secretary of state may sell at such price as he deems reasonable, not exceeding two dollars for full bound copies of the session laws; and not exceeding ten per centum in advance of the cost for copies of the journals.

The secretary of state shall sell any and all of the supreme court reports, both the current reports and the reprints, at such price as he deems reasonable, not less than one dollar and fifty cents per volume. The secretary of state may allow to regular licensed booksellers in this state a discount on laws, journals and supreme court reports not exceeding twelve and one-half per centum. All proceeds received from sales made pursuant to this section shall be paid into the

state treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4.)

Editor's Note.—The 1943 amendment substituted "session laws" for "public laws" in the first paragraph.

§ 147-49. Disposition of damaged and unsaleable publications.—The Secretary of State is hereby authorized and empowered to dispose of such damaged and unsaleable North Carolina Supreme Court Reports, House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State, the Supreme Court Reporter and the Marshall-Librarian of the Supreme Court. (1939, c. 345.)

§ 147-50. Publications of state officials and department heads furnished to certain institutions, agencies, etc.—Every state official and every head of a state department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina College for Negroes	5 copies;
Library of Congress	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 5.)

§ 147-51. Clerks of superior courts to furnish inventory of reports; lending prohibited.—On or before the first Monday in June of each and every year after March 9, 1927, the clerks of the Superior Courts of the State are required to furnish to the Secretary of State an inventory of the volumes of the reports of the Supreme Court of North Carolina which they have on hand.

From and after March 9, 1927, the clerks of the Superior Courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Supreme Court reports furnished and to be furnished them by the said State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259.)

§ 147-52. Reprints of Supreme Court reports.—The Supreme Court is authorized to have such of the reports of the Supreme Court of the State of North Carolina as are not on hand for sale, republished and numbered consecutively, retaining the present numbers and names of the reporters and by means of star pages in the margin retaining the original numbering of the pages. The Supreme Court is authorized and directed to have such reports reprinted without any alteration from the original edition thereof, except as may be directed by the Supreme Court. The contract for such reprinting and republishing shall be made by the Supreme Court in the manner prescribed in § 7-34. Such republication shall thus continue until the State shall have for sale all of such reports; and hereafter when the editions of any number or volume of the Supreme Court reports shall be exhausted, it shall be the duty of the Supreme Court to have the same reprinted under the provisions of this section and § 7-34. In reprinting the reports that have already been annotated, the annotations and the additional indexes therein shall be retained and such reports shall be further annotated so as to make the annotations in all reprints complete up to the date of the reprinting thereof. In reprinting reports the Supreme Court is authorized to provide for, and to secure, such further annotations for reports that have been heretofore annotated and for the annotating of the reports that have not been heretofore annotated and the costs thereof as provided in the contract made by the Supreme Court with the annotator selected by it, shall be paid as a part of the cost of reprinting the said reports. (Rev., s. 5361; Code, s. 3634; 1885, c. 309; 1889, c. 473, ss. 1-4, 6; 1907, c. 503; 1917, cc. 201, 292; 1923, c. 176; 1929, c. 39, s. 2; C. S. 7671.)

§ 147-53: Superseded by 1943, c. 716.

§ 147-54. Payment of proceeds of sales to Treasurer.—The secretary of state, as often as now provided by law, shall pay over to the treasurer of the state the proceeds of any and all sales which may be made by him under authorization of § 147-53. (1933, c. 115, s. 2.)

§ 147-54.1. Division of publications; duties.—The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the assistant to the Secretary of State. This division shall collect, tabulate, annotate, and digest information for the use of members and committees of the General Assembly, and other officials of the State and of the various counties and cities, upon all questions of state, county, and municipal legislation; make references and analytical comparisons of legislation upon similar questions in other states and nations; and have at hand for the use of the members of the General Assembly the laws of other states and nations as well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions under consideration.

It shall also be the duty of the Division of Publication to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the General Assembly. Upon request by members of the General Assembly, the Division shall secure all available information on any particular subject.

The Division shall also perform all such other duties as may be assigned by the Secretary of State.

The several departments of the state government shall, upon request of the Division of Publications, supply said Division with such copies of their reports and other publications as may be

necessary to effect exchanges with other states for their publications of a similar character for the use of the said Division. (1915, c. 202, ss. 1, 2; 1939, c. 316; C. S., ss. 6147, 6148.)

Editor's Note.—This section formerly appeared as § 143-167 and was transferred to its present number by Session Laws 1943, c. 543.

Art. 5. Auditor.

§ 147-55. Salary of auditor.—The salary of the state auditor shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2744; Code, s. 3726; 1879, c. 240, s. 7; 1881, c. 213; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; 1907, c. 830, s. 5; 1907, c. 994, s. 2; 1911, c. 108, s. 1; 1911, c. 136, s. 1; 1913, c. 172; 1919, c. 149; 1919, c. 247, s. 7; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; C. S. 3867.)

Editor's Note.—The 1941 amendment increased the salary of the state auditor from $6,000 to $6,600 per annum.

§ 147-56. Office and office hours. — The auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. (Rev., s. 5364; Code, s. 3353; 1868-9, c. 270, ss. 69, 70; C. S. 7674.)

§ 147-57. Bond.—The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. (1929, c. 337, s. 1.)

§ 147-58. Duties of auditor. — It is the duty of the auditor:

1. To superintend the fiscal concerns of the state.

2. To report to the governor, annually, and to the general assembly at the beginning of each biennial session thereof, a complete statement of the funds of the state, of its revenues and of the public expenditures during the preceding fiscal year, and, as far as practicable, an account of the same down to the termination of the current calendar year, together with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing fiscal year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.

3. To suggest plans for the improvement and management of the public revenue.

4. To keep and state all accounts in which the state is interested.

5. To examine and settle the accounts of all persons indebted to the state, and to certify the amount of balance to the treasurer.

6. To direct and superintend the collection of all moneys due to the state.

7. To examine and liquidate the claims of all persons against the state, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereon, to the general assembly.

8. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

9. To have the exclusive power and authority to issue all warrants for the payment of money upon the state treasurer; and it shall be the auditor's duty, before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants; and to this end he shall have the power to administer oaths, and he shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant.

10. To procure from the books of the banks in which the treasurer makes his deposits, monthly statements of the moneys received and paid on account of the treasurer.

11. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

12. To examine carefully on the first Tuesday of every month, or oftener if he deems it necessary, the accounts of the debts and credits in the bank book kept by the treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, to report the same forthwith, in writing, to the governor.

13. To require, from time to time, all persons who have received moneys or securities, or have had the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

14. To require any person presenting an account for settlement to be sworn before him and to answer orally as to any facts relating to its correctness. (Rev., s. 5365; Code, s. 3350; 1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; 1919, c. 153; 1929, c. 268; C. S. 7675.)

Cross References.—As to being constitutional office, see Const., Art. III, secs. 1 and 13; as to mandamus by governor to compel performance of certain duties, see note to § 147-12; as to reports to be furnished the director of the budget, see § 143-8.

Par. 7—Mandamus to Compel Payment.—The duty of the auditor under par. 7 is not a ministerial duty but is one involving judgment and discretion, and mandamus will not lie against him for refusal to issue a warrant for payment of a claim he does not approve. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443.

Where a Clerk of the General Assembly had received a warrant for the entire number of days to which he was entitled, at seven dollars per day, he had no right to a writ of mandamus against the Auditor of the State because he refused to give him a warrant for three dollars per day additional for the same number of days for which he had heretofore obtained a warrant. Boner v. Adams, 65 N. C. 639.

Report to the General Assembly.—The Auditor of the State is not a mere ministerial officer; when a claim is presented to him against the state, he is to decide whether there is a sufficient provision of law for its payment, and if in his opinion there is not sufficient provision of law, he must examine the claim and report the fact, with his opinion, to the General Assembly. Boner v. Adams, 65 N. C. 639.

Cited in Bank v. Worth, 117 N. C. 146, 147, 155, 23 S. E. 160.

§ 147-59. Warrants to bear limitations; presented within sixty days.—All warrants drawn by the State Auditor on the Treasurer shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to-wit: "This warrant will not be paid if presented to the Treasurer after the expiration of sixty (60) days from the date hereof;" and the State Treasurer shall not pay, and he is hereby prohibited from paying any warrant drawn by the Auditor unless the same shall be presented within sixty (60) days from the date of such warrant. (1925, c. 246, s. 1.)

§ 147-60. Surrender of barred warrant; issue of new warrant.—Any person, firm or corporation holding a warrant drawn by the State Auditor which cannot be paid because of the provisions of §§ 147-59, 147-60 and 147-61 may present the same to the State Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligations for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof. (1925, c. 246, s. 2.)

§ 147-61. Warrants issued before March 10, 1925.—Every person, firm or corporation holding a warrant, drawn and issued by the State Auditor prior to March 10, 1925, shall present the same for payment on or before May 1, 1925. If such warrant is not presented to the State Treasurer for payment prior to May 1, 1925, the same shall not be paid, but the holder thereof shall be notified of the provisions of §§ 147-59, 147-60 and 147-61, and upon satisfactory proof that the holder thereof is the proper owner and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, the warrant may be surrendered to the Auditor and cancelled and the Auditor is authorized and empowered to issue another and new warrant for like amount in lieu thereof. (1925, c. 246, s. 3.)

§ 147-62. Assignments of claims against state.—All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof, shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, and life insurance companies: Provided, further, that employees of the state or of any of its institutions, departments, bureaus or commissions who are members of the state employees credit union may in writing authorize any periodical payment or obligation to such credit union to be deducted from their salaries or wages as such employee, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, Motor Vehicle Inspectors of the Revenue Department, and State Prison Guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128.)

Editor's Note.—The first proviso was added by the 1935 amendment, and the 1939 amendment added the second proviso. The 1941 amendment added the proviso at the end of this section.

For assignments in general, see 13 N. C. Law Rev., 113, 118.

§ 147-63. Warrants for money paid into treasury by mistake.—Whenever the governor and council of state are satisfied that moneys have been paid into the treasury through mistake, they may direct the auditor to draw his warrant therefor on the treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages. (Rev., s. 5366; Code, s. 3351; 1868-9, c. 270, s. 66; C. S. 7676.)

§ 147-64. Warrants for surplus proceeds of sale of property mortgaged to state.—Whenever any real property mortgaged to the state, or bought in for the benefit of the state, of which a certificate shall have been given to a former purchaser, is sold by the attorney-general on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the state, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (Rev., s. 5368; Code, s. 3352; 1868-9, c. 270, s. 68; C. S. 7678.)

Art. 6. Treasurer.

§ 147-65. Salary of state treasurer.—The salary of the state treasurer shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2739; Code, s. 3723; 1891, c. 505; 1907, c. 830, s. 3; 1907, c. 994, s. 2; 1917, c. 161; 1919, c. 233; 1919, c. 247, s. 3; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; C. S. 3868.)

Cross Reference.—As to bonds required of state treasurer, see § 128-8.

Editor's Note.—The 1941 amendment increased the salary of the state treasurer from $6,000 to $6,600 per annum.

Bond of Clerk Not Official Bond.—A bond by a clerk executed to the State Treasurer individually is not an official bond and does not extend beyond the term during which the clerk was appointed. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672.

Same—Limitation.—An action against the sureties on the bond of a clerk for defalcations in the office of the State Treasurer is barred after three years. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672.

§ 147-66. Office and office hours.—The treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (Rev., s. 5369; Code, s. 3362; 1868-9, c. 270, ss. 80, 81; C. S. 7679.)

§ 147-67. Bonds of treasurer's clerks. — The clerks in the treasurer's office shall enter into good and sufficient bonds, payable to the state of North Carolina, as provided in § 128-8. These several bonds shall be in addition and cumulative to the official bond of the state treasurer, and shall not be construed to affect in any way the liability of the state treasurer upon his official bond. (Rev., s. 289; 1919, c. 8; 1921, c. 175; C. S. 7681.)

§ 147-68. To receive and disburse moneys; to make reports.—It is the duty of the treasurer to receive all moneys which shall from time to time be paid into the treasury of this state; to pay all warrants legally drawn on the treasurer by the auditor; and no moneys shall be paid out of the treasury except on the warrant of the auditor; to report to the governor annually and to the general assembly at the beginning of each biennial session thereof the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year. (Rev., s. 5370; Code, s. 3356; 1868-9, c. 270, s. 71; C. S. 7682.)

Editor's Note.—For an act providing that the state treasurer shall settle with counties for the ad valorem school taxes for 1931, see P. L. 1935, ch. 397.

Duty to Pay Warrants.—As it is the duty of the State Treasurer to keep his accounts, showing the transactions of each fiscal year ending December 31st, he has no right to pay out money except upon proper warrants drawn upon the proper funds in the treasury. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232.

The public treasurer is not required to pay any and every warrant which the auditor may sign, but only those which are legally drawn, and the fact that the auditor finds that a claim for which he issues a warrant on the public treasurer is authorized by law is not binding upon or a protection to the latter. Bank v. Worth, 117 N. C. 146, 147, 23 S. E. 160.

Mandamus for Payment of Warrant.—The State Treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn, and he is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232.

Same—When Fraud Is Alleged.—Where the State Treasurer denies the correctness of a claim audited by the State Auditor and alleges fraud in the creation of the indebtedness or that the services for which a warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the Legislature, and not the courts, to determine. Garner v. Worth, 122 N. C. 250, 29 S. E. 364.

Mandamus without Warrant.—Mandamus will not lie to compel the treasurer to pay a claim as he can only pay on the warrant of the auditor. See § 147-58 as to auditor. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443.

Court Compelling Payment of Claim.—The courts cannot direct the State Treasurer to pay a claim against the State, however just and unquestioned, when there is no legislative appropriation to pay the same; and when there is such an appropriation the coercive power is applied not to compel the payment of the State liability but to compel a public servant to discharge his duty by obedience to a legislative enactment. Garner v. Worth, 122 N. C. 250, 29 S. E. 364.

§ 147-69. Deposits of state funds in banks regulated.—Banks having state deposits shall furnish to the auditor of the state, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the auditor. The treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No depository bank shall make any charge for exchange or for the collection of the treasurer's checks or for the transmission of any funds which may come into his hands as state treasurer. The commissioner of banks and the bank examiners, when so required by the state treasurer, shall keep the state treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the state from loss. The state treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The payment of interest on deposits of state money in any bank or banks shall be controlled by the governor and council of state, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. The interest collected on the bank balances from time to time shall be paid into the state's general fund; but the treasurer shall credit to the funds of the agricultural department all money which is received as interest on the funds of the department, and he shall notify the commissioner of agriculture when such amounts are paid. (Rev., s. 5371; 1905, c. 520; 1915, c. 168; 1917, c. 159; 1931, c. 127, s. 1; 1931, c. 243, s. 5; 1933, c. 175, s. 1; C. S. 7684.)

Editor's Note.—Public Laws of 1933, c. 175, struck out the first sentence of the last paragraph of this section and substituted the present reading in lieu thereof.

The interest rate on state deposits which was temporarily fixed by P. L. 1931, ch. 127, at 2½% is by the 1933 amendment left to determination of the Governor's Council of State and a corresponding change is made in relation to deposit by the Commissioner of Banks of funds from the liquidation of banks. See 11 N. C. Law Rev. 202.

§ 147-69.1. Investment of surplus state fund; report to general assembly.—The governor and the state treasurer, acting jointly, with the approval of the council of state, are hereby authorized and empowered whenever in their opinions there is cash in the general fund of the state in excess of the amount required to meet the current needs and demands on the said fund of the state, to invest said excess funds in bonds or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the state of North Carolina. The said funds shall be invested in such obligations as in the judgment of the governor and state treasurer may be readily converted into money.

The state treasurer shall include in his biennial reports to the general assembly a full and complete statement of all funds invested by virtue of

the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the general assembly with reference thereto. (1943, c. 2.)

§ 147-70. To make short-term notes in emergencies.—Subject to the approval of the governor and council of state, the state treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the general assembly. (1915, c. 168, s. 3; C. S. 7685.)

§ 147-71. May demand and sue for money and property of state.—The treasurer is authorized to demand, sue for, collect and receive all money and property of the state not held by some person under authority of law. (Rev., s. 5375; Code, s. 3359; 1866, c. 46; C. S. 7688.)

§ 147-72. Ex officio treasurer of state institutions; duties as such.—The treasurer shall be ex-officio the treasurer of the department of agriculture, of the North Carolina state college of agriculture and engineering, of the North Carolina school for the deaf and dumb at Morganton, of the North Carolina institution for the deaf and dumb and the blind at Raleigh, for the state hospitals (for the insane) at Raleigh, Morganton, and Goldsboro, for the state's prison and soldiers home. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees, or directors, with the approval of the governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (Rev., s. 5376; Code, ss. 2235, 2251, 3723; 1879, c. 240, s. 2; 1881, c. 211, s. 9, c. 128; 1883, c. 156, s. 12, c. 405; 1895, c. 434; 1899, c. 1, s. 11; 1919, c. 314, s. 6; C. S. 7689.)

§ 147-73. Office of treasurer of each State Institution abolished.—The office of Treasurer of each of the several State institutions of which the State Treasurer is ex-officio Treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ 147-74. Office of State Treasurer declared office of deposit and disbursement.—The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ 147-75. May authorize chief clerk to act for him; treasurer liable. — The treasurer may authorize his chief clerk to perform any duties pertaining to the office, except signing checks; but the treasurer is responsible for the conduct of all his clerks. (Rev., s. 5377; Code, s. 3358; 1868-9, c. 270, s. 76; C. S. 7690.)

§ 147-76. Liability for false entries in his books.—If the treasurer of the state shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the governor, the general assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the auditor, with intent, in any of said instances, to defraud the state or any person, such treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years. (Rev., s. 3606; Code, s. 1119; R. C., c. 34, s. 68; C. S. 7691.)

§ 147-77. Daily deposit of funds to credit of treasurer.—All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State, or any agency, department, division or commission thereof, except officers and the clerk of the Supreme Court, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, or other designated depository, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days trial. (1925, c. 128, s. 1.)

§ 147-78. Treasurer to select depositories; bond.—The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State, and the said Treasurer shall require of such depository a bond, or in lieu thereof of collateral security for such deposit, consisting of such bonds as are approved for investment by the State sinking fund, as provided for in §§ 142-31 to 142-43, payable to the State of North Carolina, in a sufficient amount to protect the State on account of any deposit of State funds made therein. (1925, c. 128, s. 2.)

§ 147-79. Deposits of state funds in banks that have provided for safety of deposits without requiring depository bonds.—Where any bank or

trust company, state or national, has come within the provisions of the national banking laws, providing guarantee or insurance on security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the state of North Carolina, or of any county, city, town, or other political subdivision of the state of North Carolina, it shall be permissible and lawful to deposit the moneys of the state, or of such county, city, town, or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand. as now required by law: Provided, however, that the council of state shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the state of North Carolina must be given by the council of state, and approval by the local government commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the state: Provided further, that any action in regard to these matters shall be discretionary with the council of state as far as this section applies to them, and with the local government commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

Editor's Note.—See 11 N. C. Law Rev. 201, for review of this section.

§ 147-80. Deposit in other banks unlawful; liability.—It shall be unlawful for any funds of the State to be deposited by any person, institution, or department or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court, and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney-General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six per cent per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3.)

§ 147-81. Number of depositories; contract. — The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such treasurer and the Governor. (1925, c. 128, s. 4.)

§ 147-82. Accounts of funds kept separate.—In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by state departments, institutions, commissions, and other agencies or divisions of the state which collect or receive funds belonging to the state, or funds handled or maintained as trust funds in any form by such department, division or institution, shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ 147-83. Receipts from Federal government and gifts not affected.—Sections 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the Federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the Federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said sections shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

§ 147-84. Auditor to furnish forms; reports; refund of excess payments. — The State Auditor, by and with the advice, consent and approval of the Governor, shall prescribe and furnish all forms necessary for full compliance with §§ 147-

77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and the cost of printing and furnishing the same shall be charged in the printing account of the several departments, institutions and agencies receiving and using such forms; and such daily reports shall be made by mail by those departments, institutions and collecting agencies and officers and employees who are not in the city of Raleigh, when required to make such daily deposits and reports; and, in addition to such daily reports, the treasurer may require a report, as to the amount deposited, by wire, and all such departments, institutions, agencies, officers and employees, who are at or in the city of Raleigh, when required to make such deposits and reports, shall deliver the same, in person or by messenger, to the State Treasurer; whenever taxes of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount found to be legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate from the head of the department through which said tax was collected, or his successor in the performance of the functions of that department, and the Treasurer shall pay said warrant. (1925, c. 128, s. 7.)

§ 147-85. Fiscal year.—The fiscal year of the state government shall annually close on the thirtieth day of June. The accounts of the treasurer, the auditor and the charitable and penal institutions of the state shall be annually closed on that date. (Rev., s. 5378; Code, s. 3360; 1868-9, c. 270, s. 77; 1883, c. 60; 1885, c. 334; 1905, c. 430; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21; C. S. 7692.)

Editor's Note.—Prior to the amendment Ex. Sess. 1921, ch. 7, the fiscal year closed on the thirtieth day of November; by that amendment it was changed to June thirtieth. By Public Laws 1925, ch. 89, sec. 21, a sentence providing for examination of the accounts of the treasurer, auditor and insurance commissioner by commissioner appointed by the legislature, was omitted.

Applied, as fixing salary of sheriff, in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843.

§ 147-86. Additional clerical assistance authorized; compensation and duties.—The state treasurer, by and with the consent and advice of the governor and council of state, is authorized to employ an additional clerk in the treasury department, whose compensation and duties shall be fixed by the state treasurer, by and with the consent and advice of the governor and council of state. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C. S. 7693(a).)

Art. 7. Commissioner of Revenue.

§ 147-87. Commissioner of Revenue; appointment; salary. — A commissioner of revenue shall be appointed by the governor on January 1, 1933, and quadrennially thereafter. The term of office of the commissioner shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the Governor, with the approval of the Advisory Budget Commission. (1921, c. 40, ss. 2, 6; 1929, c. 232.)

§ 147-88. Duties as to revenue laws. — In addition to the other duties of the Commissioner of Revenue, it shall be his duty to prepare for the legislative committees of the General Assembly such revision of the revenue laws of the state as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first ten days of the session. (1921, c. 40, s. 5.)

Art. 8. Solicitors.

§ 147-89. To prosecute cases removed to federal courts. — It shall be the duty of the solicitors of this state, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this state, and have moved their cases from the state to the federal courts under the provisions of the various acts of congress on such subjects. (Rev., s. 5381; Code, s. 1239; 1874-5, c. 164, s. 1; C. S. 7696.)

Chapter 148. State Prison System.

Art. 1. Government by Highway and Public Works Commission.

Art. 2. Prison Regulations.

Art. 1. Government by Highway and Public Works Commission.

§ 148-1. Commission to employ servants and agents. — The state highway and public works commission may employ a director and such supervisors, inspectors, superintendents, wardens, physicians, overseers, guards, and other servants and agents as it may deem necessary for the management of the affairs of the state prison system and the safekeeping and employment of the prisoners therein confined. The compensation and duties of these employees shall be fixed under the provisions of the budget act and the personnel act. The commission may discharge the director with the consent and approval of the governor, and may discharge any other servants or agents at will. (Rev., s. 5388; 1901, c. 472, s. 3; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; C. S. 7703.)

Editor's Note.—Public Laws of 1933, c. 172, §§ 2, 18, created the state highway and public works commission and conferred upon it all the powers and duties formerly exercised by the state prison department. And section 18 of said chapter further provided for the substitution of the terms "highway and public works commission," etc., for "prison department," etc., throughout this chapter.

The 1943 amendment rewrote the section.

§ 148-2. Employees' bonds; money paid to state treasurer. — The state highway and public works commission shall require its officers, employees, or agents, who may be authorized by law, or hereafter authorized by the commission, to collect or receive the moneys and earnings of the state prison, to enter into bonds payable to the State of North Carolina in such penal sums and with such security as may be approved by the commission, conditioned upon the faithful performance of their duties in collecting and receiving, and paying over the moneys and earnings of the prison. Only such corporate security shall be accepted as is with sureties licensed to do business in North Carolina. (Rev., s. 5389; 1901, c. 472, s. 7; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7704.)

§ 148-3. Acquisition and alienation of property. —Whenever it may be necessary or convenient in the operation of the state prison system, or whenever expressly authorized by law, such property, both real and personal, as may be deemed necessary by the state highway and public works commission may be acquired by gift, devise, purchase, or lease; and whenever it may be necessary or convenient in the opinion of the state highway and public works commission, the commission may dispose of any such property, either real or personal, or any interest or estate therein, but all sales of real property shall be subject to the approval of the governor and council of state and deeds shall be executed in accordance with the provisions of General Statutes, §§ 143-147 to 143-150. (Rev., s. 5392; 1901, c. 472, ss. 2, 6; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; C. S. 7705.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 148-4. Management of convicts and prison property; recapture of escaped convicts. — The Commission shall have control and custody of all prisoners serving sentence in the state prison or in state prison camps, and such prisoners shall be subject to all the rules and regulations legally adopted by the commission. The authorized agents of the commission shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners; and may be commissioned by the governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. The commission shall manage and have charge of all the property and effects of the state prison, and conduct all its affairs subject to the provisions of this chapter. It may adopt and enforce such rules and regulations for the government of the state prison, its agents and employees and the convicts therein confined as to them may seem just and proper. (Rev., s. 5390; 1901, c. 472, s. 4; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; C. S. 7706.)

Editor's Note.—The 1943 amendment inserted the word "and" in line eleven and changed a comma in line thirteen to a semicolon.

§ 148-5. Commission to have control over prison property.—The state highway and public works commission shall have control and custody of all state highway prison camps, together with all property of every kind assigned thereto, the central prison at Raleigh, and all state prison farms, camps and other places for detention and employment of prisoners, together with all property of every kind and description, and all books, accounts, and records of such establishments. (1933, c. 172, s. 4.)

§ 148-6. Custody, employment and hiring out of convicts.—The state highway and public works commission shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The commission shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the commission: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (Rev., s. 5391; 1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7707.)

Editor's Note.—By amendment, Public Laws 1925, the provision for work on any property owned by the state replaced a provision for work on property owned by the state prison. There was also a former provision restricting prisoners to be hired out to those not necessary to be detained in the prison near Raleigh, which was omitted by the Public Laws 1925.

§ 148-7. Inspection of mines.—The state highway and public works commission is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which state convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2.)

§ 148-8. Automobile license tags to be manufactured by Commission.—The state highway and

public works commission is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the commission may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the state highway and public works commission for the state automobile license tag requirements from year to year.

The price to be paid to the state highway and public works commission for such tags shall be fixed and agreed upon by the Governor, the state highway and public works commission, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36.)

§ 148-9. State board of charities and public welfare to supervise prison.—The state board of charities and public welfare shall exercise a supervision over the state prison as contemplated by the Constitution, under proper rules and regulations, to be prescribed by the Governor. (1925, c. 163; 1933, c. 172.)

§ 148-10. Board of health to supervise sanitary and health conditions of prisoners.—The state board of health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the division of prisons, and shall make periodic examinations of the same and report to the State Highway and Public Works Commission the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; C. S. 7714.)

Editor's Note.—The 1943 amendment struck out the former last sentence which provided: "The commission shall do such things as may be necessary to carry out the recommendations of the board of health."

Art. 2. Prison Regulations.

§ 148-11. State highway and public works commission to make regulations.—The state highway and public works commission may adopt such rules and regulations for enforcing discipline as their judgment may indicate, not inconsistent with the constitution and laws of the state. They shall print and post these regulations in the cells of the convicts, and the same shall be read to every convict in the state prison when received. (Rev., s. 5401; Code, s. 3444; 1873-4, c. 158, s. 15; 1925, c 163; 1933, c. 172, s. 18; C. S. 7721.)

Editor's Note.—This section was re-enacted without material change by Public Laws 1925.

§ 148-12. Record of conduct of prisoners.—The director of the state prison system and the superintendents of county chain gangs or road forces, under rules and regulations of the state highway and public works commission, shall keep a record of the conduct and demeanor of all prisoners held in the state prison system and on county chain gangs. (1917, c. 278, s. 2; 1919, c. 191, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7750.)

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc. — The state highway and public works commission may, with the approval of the Governor, make rules and regulations relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their discharge or parole.

Uniforms of stripes to designate felons may be used by the prison authorities of the commission as a matter of discipline only; and prisoners, even though convicted of felony, need not be clothed in such stripes except as a form of discipline for violation of prison rules. No person not convicted of a felony shall be required to wear a uniform of stripes such as is usually used to designate felons. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409.)

Editor's Note.—The 1943 amendment struck out at the end of the first paragraph the words "and until such rules are so made by the commission, the regulations set out in §§ 148-14 to 148-16 and 148-18 shall govern these matters."

§§ 148-14 to 148-17: Repealed by Session Laws 1943, c. 409.

§ 148-18. Money and other allowances for prisoners discharged; certificates of competency.—All prisoners upon being discharged, except short-term prisoners convicted of misdemeanors, paroled or pardoned from prison, shall be given a small sum of money, transportation to the place in North Carolina designated in parole or discharge papers, and sufficient clothing for neat and comfortable appearance. If any prisoner demonstrated during his prison service that he is competent or proficient in any gainful trade, he shall also be given upon his discharge, parole, or pardon a certificate of competency in such trade signed by the proper prison authorities. (1935, c. 414, s. 19.)

§ 148-19. Prisoners examined for assignment to work.—Each prisoner committed to the charge of the state highway and public works commission shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to labor and the work he is required to do shall be dependent upon the report of said physician as to his physical and mental capacity. (1917, c. 286, s. 22; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7727.)

§ 148-20. Whipping or flogging prisoners. — It is unlawful for the state highway and public works commission to whip or flog, or have whipped or flogged, any prisoner committed to their charge until twenty-four hours after the report of the offense or disobedience, and only then in the presence of the prison physician or prison chaplain; and no prisoner other than those of the third class as defined in this article shall be whipped or flogged at any time. (1917, c. 286, s. 7; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7728.)

Cross Reference.—As to control of county convicts, see §§ 153-196.

Editor's Note.—In State v. Nipper, 166 N. C. 272, 81 S. E. 164, decided in 1914, it was held that there was no law which allowed flogging of convicts to enforce discipline, and that its infliction was contrary to law. Clark, C. J., in writing the opinion discusses prison conditions in other countries and how most of them have abolished flogging in all cases, where formerly they allowed it in the armies, navies, schools and homes. Although it seemed that flogging had been a custom so well established in controlling prisons that the right to

administer it had never been formerly questioned, there was no direct statute allowing it. The above section was enacted in 1917 and though the right and power to punish by flogging is guarded and limited it shows that the legislature still leaves flogging power in the guards as means of control, and enforcing discipline.

Constitutionality.—Where a public-local law provides for whipping to be administered to convicts sentenced to work upon the roads as an extreme necessary means to enforce discipline, safeguarded in respect to its being humanely administered after due notice to the offender, under proper rules and regulations, with report to the commissioners of the county to which the local law applies, making it a misdemeanor for the one designated to do so brutally or without mercy: Held, the statute is not inhibited by any provision of our Constitution and is a valid enactment. Constitution, Art. XI, sec. 1. State v. Revis, 193 N. C. 192, 193, 136 S. E. 346.

Excessive Punishment.—Where a guard is charged with an assault upon a convict, and it is shown that his superior officer instructed him to take the convict over the hill away from the rest of the prisoners and give him five or six licks for refractory conduct; but that the guard used a leather strap 2½ inches wide, 2½ feet long, and ¼ inch thick, upon the prisoner's bare back, with other prisoners holding his head, legs, and feet, in the presence of the "whole crowd," and administered "fifteen or twenty licks," it is held that the guard exceeded his authority, and the punishment inflicted was excessive and unnecessarily humiliating. State v. Mincher, 172 N. C. 895, 896, 90 S. E. 429.

§ 148-21. Prisoner's supplies and clothes to be marked.—The prisoner's number shall be used for marking all clothes, bedclothing, beds, and other supplies used by prisoners, so that when such clothes, bedclothing, and supplies are washed and cleaned they shall be always returned for the use of the same prisoner. (1917, c. 286, s. 9; 1925, c. 163; C. S. 7729.)

§ 148-22. Recreation and instruction of prisoners.—The state highway and public works commission shall arrange certain forms of recreation for the prisoners, and arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, to attend lectures, and to take part in other forms of amusement that may be provided by the commission. The commission shall organize classes among the prisoners so that those who desire may receive instruction in various lines of educational pursuits. They shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes; such services, however, shall be voluntary on the part of the prisoner. This section shall apply to the state prison and to the state farms and state camps. (1917, c. 286, s. 15; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7732.)

§ 148-23. Prison employees not to use intoxicants or profanity.—No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the state highway and public works commission, where such position requires the incumbent to have any charge or direction of the prisoners; and any one holding such position, or any one who may be employed in any other capacity in the state prison system, who shall come under the influence of intoxicating liquors, shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the state highway and public works commission who curses a prisoner under his charge shall at once cease to be an employee and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7733.)

§ 148-24. Religious services; Sunday school. — The state highway and public works commission shall make such arrangements as are necessary to hold religious services for the prisoners in the state prison and in the state farms and camps, on Sunday and at such other times as may be deemed wise. Attendance of the prisoners at such religious services shall be voluntary. The commission shall if possible secure the visits of some minister at the hospital to administer to the spiritual wants of the sick. In order to provide religious worship for the prisoners confined in the state prison, known as the Caledonia farm, the commission shall employ a resident minister of the gospel and provide for his residence and support. (Rev., s. 5405; Code, s. 3446; 1873-4, c. 158, s. 18; 1883, c. 349; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; 1925, c. 163; 1925, c. 275, s. 6; 1933, c. 172, s. 18; C. S. 7735.)

Editor's Note.—A former provision for five hundred dollars appropriation for administering to the spiritual wants of the sick, and fifty dollars for the Sunday school was omitted by the Public Laws 1925.

§ 148-25. Commission to investigate death of convicts.—The state highway and public works commission, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the commission may administer oaths and send for persons and papers. (Rev., s. 5409; 1885, c. 379, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7746.)

Art. 3. Labor of Prisoners.

§ 148-26. Intent of State to maintain public roads with prison labor.—It is hereby declared to be the public policy of this state to build and maintain a state system of dependable highways and to maintain and improve the public roads in the several counties at the state's expense; and to that end to make the most economical use of the prison labor of the state in the construction, improvement and maintenance of said highways and roads.

It is further declared to be the intent and purpose of this chapter to provide for the gainful employment of all able-bodied prisoners of the state; and to this end the highway and public works commission is directed to provide for the employment in the maintenance and construction of the public roads of the state of as many of the male prisoners as, under the terms of their sentences, may be thus employed and are physically fit for such work, and as the commission can arrange economically to use for such purpose, and the remainder of the inmates of such prison division shall be employed as far as practicable, with due regard to their physical condition, in agriculture, prison industries, and forestry work, giving preference to the production of food supplies and necessary articles of use in the state highway department and other state supported institutions or activities, and the development and improvement of state owned properties. (1933, c. 172, ss. 1, 14.)

Editor's Note.—For review of this section and those following, see 11 N. C. Law Rev. 252.

§ 148-27. Women prisoners; limitations on labor of prisoners.—The state highway and public works commission may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the state may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the state highway and public works commission whose term of imprisonment is less than six months, or who is under eighteen years of age. (1931, c. 145, s. 32; 1933, c. 39; 1933, c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409.)

Editor's Note.—Prior to the amendment of 1935, this section provided for sentencing persons for felonies and misdemeanors. This section was so radically changed that no comparison can be made.

The 1943 amendment transferred from the end of this section to the end of § 148-30 the following language, to-wit: "No male person shall be so assigned whose term of imprisonment is less than thirty days." It also struck out the following proviso: "Provided, that in criminal actions in which a justice of the peace has final jurisdiction, no county shall be liable for or taxed with any costs."

§ 148-28. Sentencing of prisoners to central prison.—The several judges of the superior courts of this state are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offence or the character or condition of the defendant makes it advisable to do so, to sentence such person to the central prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the central prison. (1933, c. 172, s. 7.)

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; state not liable for maintenance expenses until convict received.—The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the auditor as true copies of those on file in his office. The state is not liable for the expenses of maintaining convicts until they have been received by the state highway and public works commission authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (Rev., ss. 5398, 5399, 5400; Code, ss. 3432, 3437, 3438; 1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7718, 7719, 7720.)

Expense of Conveying.—This section only applies to expense of maintenance and does not apply to expense of conveying convicts to the penitentiary. By the Acts of 1869-70 it was especially provided that the expense of conveying should be paid by the state and this section did not repeal that act. Taylor v. Adams, 66 N. C. 338.

§ 148-30. Sentencing to public roads.—In all cases not provided for in §§ 148-28 and 148-32, the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the state highway and public works commission, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the commission as he may be advised by them is the proper person to receive such notice. Whereupon, the commission shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the commission shall designate: Provided, however, the commission shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male person shall be so assigned whose term of imprisonment is less than thirty days. (1933, c. 172, s. 8; 1943, c. 409.)

Editor's Note.—The 1943 amendment added the last sentence.

§ 148-31. Maintenance of central prison; warden; powers and duties.—The central prison shall be maintained in such a manner as to conform to all the requirements of Article 11 of the State Constitution, relating to a state's prison. A suitable person shall be appointed warden of the central prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the state's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this article. (1933, c. 172, s. 14.)

§ 148-32. Prisoners may be sentenced to work on city and county properties; commission may provide prisoners for county.—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the state highway and public works commission, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The commission may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the division of prisons. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243.)

§ 148-33. Prison labor furnished other state agencies.—The state highway and public works commission may furnish to any of the other state departments, state institutions, or agencies, upon such conditions as may be agreed upon from time to time between the commission and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison

labor in the furtherance of the purposes of any state department, institution or agency, and such other employment as is now provided by law for inmates of the state's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such commission. (1933, c. 172, s. 30.)

§ 148-34. Establishment of prison districts and camps. — There shall be established in this State by the state highway and public works commission such number of prison districts as it shall determine advisable. The state highway and public works commission shall, as soon thereafter as practicable, locate the prison camp or camps in each of said districts. Until such time as it shall be feasible for the commission to build and construct prison camps in accordance with the provisions of this article, it shall be the duty of the commission to take over and acquire by contract such county or road district prison camps as in their opinion shall be necessary for the use of the county prisoners on the public roads of the several county road systems as hereafter provided. The state highway and public works commission, in lieu of locating and constructing prison camps in any of the districts, may acquire by contract and take over prison camps in any county or road district and may make such alterations and additions thereto as shall be necessary to render the same suitable for a district prison camp. (1931, c. 145, s. 26; 1933, c. 172, s. 17; 1943, c. 409.)

Editor's Note.—Prior to the 1943 amendment the duties required of the commission were to be performed with the approval of the governor, and the prison districts were limited to "not less than five."

§ 148-35. Plans and specifications for original prison camps. — All district prison camps authorized by § 148-34, and all additions made to county camps taken over by the state highway and public works commission as authorized by § 148-34, shall be constructed, altered or changed, under plans and specifications prepared by the commission. The construction, alterations or changes shall be done by the highway and public works commission and, as far as shall be practicable, prisoners shall be used to do the work. (1931, c. 145, s. 27; 1933, c. 172, s. 17; 1943, c. 409.)

Editor's Note.—The 1943 amendment struck out at the end of the first sentence the words "with the approval of the governor, the state board of health, and the state board of charities and public welfare."

§ 148-36. Highway and public works commission to control camps.—The district prison camps and all county prison camps acquired by the state highway and public works commission in lieu of district prison camps shall be under the control and direction of the commission, and operated under rules and regulations to be made by the commission, and approved by the governor, and subject to such rules and regulations so adopted and approved, the commission shall establish grades for prisoners according to conduct, and so far as possible introduce the honor system, and may transfer honor prisoners to honor camps. Prisoners may be transferred from one district camp to another, and the state highway and public works commission may where it is deemed practical to do so establish separate camps for white prisoners and colored prisoners. In each district camp quarters shall be provided for the care and maintenance of such prisoners as may be sick, and a physician may be employed for such portion of his time as may be necessary and assigned to each of the several camps, and such of the prisoners as may be chosen may be used as attendants or nurses notwithstanding that such prisoners may not have qualified for such work as may be required by law; and any such prisoners as may have special qualifications to perform labor other than labor upon the public roads may be assigned to such special duties as the commission may determine. All necessary directors, physicians, guards or supervisors, or any other necessary employees for the proper care, keep and handling of such prisoners, shall be employed by the commission and serve at the pleasure of the commission. (1931, c. 145, s. 28; 1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4; 1933, c. 172, ss. 4, 17; 1943, c 409.)

Editor's Note.—The 1943 amendment struck out the words "and the state board of charities and public welfare" formerly appearing after the word "governor" in line eight. The amendment also struck out the words "by and with the consent and approval of the governor and the division of personnel of the budget bureau" formerly appearing after the words "by the commission" in the last sentence.

§ 148-37. Additional prison camps authorized.— The commission may establish such additional camps as are necessary for use by the division of prisons, such camps to be either of a permanent type of construction, or of temporary or movable type as the commission may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the state as to render their employment most economical and profitable, the commission to be the sole judges of the type and character of such buildings without the control of any other department. For this purpose, the commission may purchase or lease camp sites and suitable lands adjacent thereto and erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the budget bureau for this purpose. (1933, c. 172, s. 19.)

§ 148-38. Employment of prisoners assigned to camps. — All able-bodied prisoners committed or assigned to the district prison camps shall be employed in the maintenance and construction of roads in the public road system of the several counties, or upon the state highway system, or assigned to such special duty in connection with the prison camps, or the preparation and repair of all road equipment and supplies as the state highway and public works commission may determine. (1931, c. 145, s. 29; 1933, c. 172, s. 17.)

§ 148-39. Cost of keeping prisoners borne by state highway and public works commission. — The cost and expense of construction of the various prison camps, the care, transportation and maintenance of prisoners and their guarding and supervision shall be paid by the state highway and public works commission from the county road maintenance funds provided in the Budget Appropriations Act: Provided, however, when prisoners are used upon the state highway systems in construction or maintenance, the cost and expense of transportation and maintenance of such prisoners, their guarding and supervision, shall be paid from

the funds appropriated for the maintenance of state highways. (1931, c. 145, s. 33; 1933, c. 172, s. 17.)

§ 148-40. Recapture of escaped prisoners. — State highway and public works commission may, in the rules and regulations to be adopted by it, provide for the recapture of convicts that may escape, or any convicts that may have escaped from the state's prison or highway prison camps, or county road camps of this state, and may pay such reward or expense of recapture as the commission may by regulation provide to any person making the same. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the division of prisons. (1933, c. 172, s. 21.)

Cited in State v. Payne, 213 N. C. 719, 197 S. E. 573.

§ 148-41. Recapture of escaping prisoners; reward; punishment for escape.—The state highway and public works commission shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the state prisons, camps, or farms. When any person who has been confined or placed to work escapes from the state prison system, the commission shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem advisable and necessary for the recapture and return to the state prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the state highway and public works commission and accounted for as a part of the expense of maintaining the state's prisons.

If a prisoner of Class A or Class B attempts to escape or leaves the state prison or any state farm or state camp without permission, he shall, upon being recaptured, be reduced to Class C and shall permanently lose all his accumulated time and money. (Rev., s. 5407; Code, s. 3442; 1873-4, c. 158, s. 13; 1917, c. 236; 1917, c. 286, s. 13; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; C. S. 7742, 7743.)

Editor's Note.—Prior to the 1943 amendment the last sentence of the first paragraph read: "Such reward earned shall be paid by the treasurer of the state on the warrant of the governor and charged to the state highway and public works commission, and by the commission shall be repaid to the state treasurer, and accounted for as a part of the expense of maintaining the state's prisoners."

§ 148-42. Indeterminate sentences. — The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the commission is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoners' conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior which his conduct may justify. (1933, c. 172, s. 24.)

§ 148-43. Prisoners of different races kept separate.—White and colored prisoners shall not be confined or shackled together in the same room of any building or tent, either in the State Prison or at any State or county convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable. Any officer or employee of either the State or any county in the State having charge of convicts or prisoners who shall violate or permit the violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 832, ss. 1, 2; 1917, c. 286, s. 24; 1925, c. 163; C. S. 7740.)

Cross Reference.—As to subsequent statute on this subject, see § 148-44.

§ 148-44. Segregation as to race, sex and age. —The commission shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and, in so far as it is practical to do so, shall provide for youthful convicts to segregate to themselves. (1933, c. 172, s. 25.)

§ 148-45. Penalty for escaping or assisting in. —Any prisoner who escapes or attempts to escape, or in any manner connives, aids or assists in helping other prisoners to escape or attempt to escape shall be guilty of a misdemeanor, and upon conviction shall be imprisoned at the discretion of the court, such term of imprisonment to commence at the termination of the sentence being served at the time of the offense, and such offending prisoner shall likewise forfeit all gained time that he has earned by previous good conduct. (1933, c. 172, s. 26.)

§ 148-46. Degree of protection against violence allowed.—When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape. (1933, c. 172, s. 27.)

§ 148-47. Disposition of child born of female prisoner.—Any child born of a female convict while she is in custody shall upon the arrival of a suitable age be surrendered to the clerk of the superior court of Wake county for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. (1933, c. 172, s. 28.)

§ 148-48. Parole powers of governor unaffected. —Nothing in this chapter shall be construed to limit or restrict the power of the governor to parole prisoners under such conditions as he may himself impose or prevent the reimprisonment of such prisoners upon the violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29.)

§ 148-49. Prison indebtedness not assumed by commission. — The state highway and public works commission shall not assume or pay off any part of the deficit of the state prison existing on March 22, 1933. (1933, c. 172, s. 33.)

Art. 4. Paroles.

§ 148-50. Advisory board of paroles created; term of office; vacancy appointments. — The governor of North Carolina is hereby authorized and empowered to name an advisory board of paroles of six members, consisting of the attorney general, the chairman of the state highway and public works commission, the superintendent of public welfare, and three others, who are not state office holders and who are not connected officially with the state highway and public works commission, to be selected by the governor and to serve for the term of his appointment, and to perform such duties in the state prison program as may be assigned to them by the governor. The members of the board, other than ex-officio members, shall be appointed as follows: One for a term of one year, one for a term of two years, and one for a term of three years. Appointments to fill any and all vacancies shall be made by the governor. (1935, c. 414, s. 1.)

§ 148-51. Board meetings; quorum; chairman and secretary; pay of members.—The board shall meet at the call of the governor at times and places designated by him. At said meetings three members shall constitute a quorum. The governor shall be chairman and the commissioner of paroles shall be secretary of the board. The governor and other ex-officio members may designate some other person to act for them at the meetings of the board. The members of the board, other than the ex-officio members, shall receive as compensation the sum of seven dollars per day and actual expenses while attending the meetings of the board, or while performing such other duties as may be assigned to them by the governor: Provided, however, the compensation may be raised to the sum of ten dollars per day by the governor at his discretion. (1935, c. 414, s. 1.)

§ 148-52. Commissioner of paroles; assistants. —The governor of North Carolina is authorized and empowered to appoint a commissioner of paroles and one or more assistants to said commissioner as he may deem wise and expedient, who shall, under the governor's direction, aid the governor in more fully performing all of the duties required of him in the exercise of the powers contemplated herein, and to perform such other services as may be assigned by the governor. The parole commissioner shall be provided with reasonable clerical assistance, whose compensation shall be fixed in accordance with the provisions of § 148-55. The salary of the parole commissioner shall be fixed by the governor. (1935, c. 414, s. 2; 1939, c. 335.)

§ 148-53. Investigators and investigations of cases of prisoners, prisons and prison camps. — For the purpose of investigating the cases of all prisoners serving both determinate and indeterminate sentences in the state prison, in prison camps, and on prison farms, the governor is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the governor's direction, investigate all cases designated by him, and otherwise aid the governor in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair and just consideration. The governor may cause an investigation to be made by the said investigators of any prison, prison camp, prison farm, and/or any penal and correctional institution in the State when, in his judgment, the situation warrants an investigation. Each and every investigator provided for herein shall perform his duties under the sole direction of the governor. (1935, c. 414, s. 3.)

§ 148-54. Parole supervisors provided for; duties. — The governor is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the governor and under regulations prescribed by him exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law abiding citizens. The supervisors shall also, under the direction of the governor, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the governor may require. The number of supervisors may be increased by the governor as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4.)

§ 148-55. Pay and expenses of assistants, investigators and supervisors.—The salaries and expense allowances of all personnel appointed under §§ 148-52 to 148-54 shall be fixed by the governor with the approval of the advisory budget commission, and all such salaries and expenses, other than that of the parole commissioner, shall be paid by the state highway and public works commission upon vouchers approved by the commissioner of paroles. (1935, c. 414, s. 5.)

§ 148-56. Preparation of case histories for commissioner of paroles.—The governor is authorized and empowered to direct any employees of the state department of public welfare, and of the state highway and public works commission, and any county superintendent of public welfare, and any member of the staff investigators provided for in this article to prepare and submit to the commissioner of paroles case histories or other information in connection with any case under consideration for parole, such work to be done without extra compensation, and such work shall be considered as a part of the regular duties of such employees or superintendents of welfare. (1935, c. 414, s. 6.)

§ 148-57. Rules and regulations for parole applications. — The governor of North Carolina is hereby authorized and empowered to set up and establish rules and regulations, in accordance with which applications for paroles may be heard and by which such proceedings may be initiated and heard. (1935, c. 414, s. 7.)

§ 148-58. Time of eligibility of prisoners for hearing on applications.—All prisoners shall be eligible for a hearing on application for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate: Provided, that any prisoner serving a sentence for life shall be eligible for such hearing when he has served ten years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner, but shall be construed only as guaranteeing to every prisoner a hearing of his case upon its merits. (1935, c. 414, s. 8.)

§ 148-59. Duties of clerks of all courts as to commitments; statements filed with commissioner of paroles.—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the governor shall by regulations prescribe, which information shall contain, among other things, the following: (1) The court in which the prisoner was tried; (2) the name of the prisoner and of all co-defendants; (3) the date or term when the prisoner was tried; (4) the offense with which the prisoner was charged and the offense for which convicted; (5) the judgment of the court and the date of the beginning of the sentence; (6) the name and address of the presiding judge; (7) the name and address of the prosecuting solicitor; (8) the name and address of private prosecuting attorney, if any; (9) the name and address of the arresting officer; and (10) all available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the commissioner of paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the state highway and public works commission without charge. (1935, c. 414, s. 9.)

§ 148-60. Time for release of prisoners discretionary.—The time of releasing each prisoner eligible for consideration for parole as provided for herein shall be discretionary, and due consideration shall be given to the reasonable probability that the prisoner will live and remain in liberty without violating the law; that the release of the prisoner is not incompatible with the welfare of society, and that the record of the prisoner during his confinement established that the prisoner is obedient to prison rules and regulations, and has shown the proper respect for prison officials, and due regard and consideration for his fellow prisoners; and that the prisoner harbors no resentment against society or the judge, prosecuting attorneys, or jury that convicted the prisoner. (1935, c. 414, s. 10.)

§ 148-61. Contents of release order. — When a prisoner is released on parole, the parole instrument shall specify in writing the conditions of the parole, the place of residence of the parolee, within or without the State, the name and address of the party to whom the parolee is to report, and times and places when and where the said parolee shall report to the said party during the entire period of the parole. (1935, c. 414, s. 11.)

§ 148-62. Automatic revocation of parole upon conviction of crime. — Upon the parolee's conviction and sentence to a term of imprisonment in any court of record in the State of North Carolina and/or in any other State, and/or in any federal court, the parole of the parolee shall become automatically revoked and the parolee, if without the State of North Carolina, shall become forthwith a fugitive from justice. (1935, c. 414, s. 12.)

§ 148-63. Arrest powers of police officers. — Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked. (1935 c. 414, s. 13.)

§ 148-64. Coöperation of prison officials; information to be furnished. — The warden of each prison and the superintendent of each camp and farm and all officers and employees thereof and all other public officials shall at all times coöperate with the governer and parole commissioner and shall furnish to them all information that may be requested from time to time that will assist them in performing their functions, and all such wardens and other employees shall at all times give to the governor and parole commissioner and his staff free access to all prisoners. (1935, c. 414, s. 14.)

§ 148-65. Time of appointments by governor; board meetings. — The appointments provided herein to be made by the governor shall be made by the governor as soon as he conveniently can after this article takes effect. The board shall meet at the call of the governor at times and places designated by him. (1935, c. 414, s. 21.)

Art. 5. Farming Out Convicts.

§ 148-66. Cities and towns and board of agriculture may contract for prison labor.—The corporate authorities of any city or town may contract in writing with the state highway and public works commission for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the attorney-general may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The board of agriculture of the state of North Carolina is hereby authorized and empowered to

contract, in writing, with the state highway and public works commission for the employment and use of convicts under its supervision to be worked on the state test farms and/or State experimental stations. (Rev., s. 5410; Code, s. 3449; 1881, c. 127, s. 1; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; C. S. 7758.)

Editor's Note.—The 1943 amendment added the second paragraph.

Cited in Watson v. Durham, 207 N. C. 624, 625, 178 S. E. 218.

§ 148-67. Hiring to cities and towns and board of agriculture.—The state highway and public works commission shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the commission; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the commission.

Upon application to it, it shall be the duty of the state highway and public works commission, in its discretion, to hire to the board of agriculture of the state of North Carolina for the purposes of working on the state test farms and/or state experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the state highway and public works commission. (Rev., s. 5411; Code, s. 3450; 1881, c. 127, s. 2; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; C. S. 7759.)

Editor's Note.—The 1943 amendment added the second paragraph.

§ 148-68. Payment of contract price; interest; enforcement of contracts.—The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the state for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the state money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six per cent per annum; and an action to recover the same may be instituted by the attorney-general in the name of the state in the courts of Wake County. (Rev., s. 5412; Code, s. 3451; 1881, c. 127, s. 3; 1925, c. 163; 1931, c. 145, s. 35; C. S. 7760.)

§ 148-69. Agents; levy of taxes; payment of costs and expenses.—The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (Rev., s. 5413; Code, s. 3452; 1881, c. 127, s. 4; 1925, c. 163; 1931, c. 145, s. 35; C. S. 7761.)

§ 148-70. Management and care of convicts; prison industries; disposition of products of convict labor.—The state highway and public works commission in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the commission shall provide for the guarding and working of such convicts under its sole supervision and control. The commission may make such contracts for the hire of the convicts confined in the state prison as may in its discretion be proper and will promote the purpose and duty to make the state prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in section eleven, article eleven of the Constitution. The commission may use the labor of convicts confined in the state prison in such work on farms, in manufacturing, either within or without the state prison, as the commission may find proper and profitable to be carried on by the state prison; and the commission may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the state prison, to or for any public institution owned, managed, or controlled by the state, or to or for any county, city or town in the state; and the commission may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable. (1917, c. 286, s. 2; 1919, c. 80, s. 1; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; C. S. 7762.)

Art. 5A. Prison Labor for Farm Work.

§ 148-70.1. Commission authorized to furnish prison labor to farmers.—The state highway and public works commission is hereby authorized, subject to the conditions hereinafter contained, to furnish prison labor to assist farmers in the production and harvesting of food and feed crops. (1943, c. 452, s. 1.)

§ 148-70.2. When governor declares extraordinary emergency.—Whenever the governor shall find and declare that there exists an extraordinary emergency in any particular section due to the lack of available labor in the work of producing and harvesting food and feed crops, and the chairman of the state highway and public works commission shall find that it is possible to release certain prisoners from highway work without serious prejudice to the maintenance of the public roads, the commission may make such prisoners available for assistance to farmers in such production and harvesting work. (1943, c. 452, s. 2.)

§ 148-70.3. Prerequisites to work on particular farm; county agent as intermediary.—Before any prisoners are furnished for such farm work, the county farm agent in said county shall ascertain and determine that such work is needed upon the particular farm and shall negotiate with the designated representative of the prison department of the state highway and public works commission as to the number of prisoners that may be available for such work, and shall act as an intermediary between the owner of the farm and such designated representative of the prison department of the commission as to the number of prisoners to be employed, the estimated time for which they are to be employed, and the place and character of their work. No prisoners shall be assigned to work on any farm until the owner

thereof has deposited with the county farm agent a sum of money sufficient to cover the estimated cost of such work; and when the work is completed, the county farm agent shall remit to the state highway and public works commission pay for such work upon the basis agreed upon. (1943, c. 452, s. 3.)

§ 148-70.4. Commission to establish price for labor.—Before any work is done under the provisions of this article, the state highway and public works commission shall establish a price for such prison labor, which price shall be sufficient to include the custodial care of such prisoners, including pay for guards and foremen, transportation, and other expenses incident to the said work. (1943, c. 452, s. 4.)

§ 148-70.5. Authority of commission to suspend farm work.—Notwithstanding any agreement made for the furnishing of prison labor under the terms of this article, if there shall arise any emergency in the highway work which renders it impracticable to furnish such prison labor without serious prejudice to the maintenance of public roads, then and in that event the commission shall have a right to suspend such farm work and recall the prisoners to highway work. (1943, c. 452, s. 5.)

§ 148-70.6. Prisoners to remain under control of prison department.—Any prisoners furnished for farm work under the provisions of this article shall at all times be under the control of the duly appointed agents of the prison department of the state highway and public works commission and shall be fed and otherwise cared for by the said prison department to the same extent as if they were engaged in highway work. (1943, c. 452, s. 6.)

§ 148-70.7. Duration of article.—This article shall be in force and effect during the present war and for six months thereafter, and no longer. (1943, c. 452, s. 7.)

Art. 6. Reformatory.

§ 148-71. Directors may establish reformatory.—There may be established in connection with the North Carolina State Prison Department, under the control and direction of the state highway and public works commission, a reformatory either within the enclosure of the penitentiary or elsewhere as the commission shall deem most practicable and economical, in which reformatory convicts under the age of eighteen years sentenced to the penitentiary shall be confined separate and apart from other convicts. (Rev., s. 5414; 1887, c. 356, s. 1; 1913, c. 72; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7764.)

§ 148-72. May exempt from convict garb.—It shall be in the discretion of the commission to exempt the convicts confined in the reformatory from the requirement of wearing the usual convict garb. (Rev., s. 5415; 1887, c. 356, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7765.)

§ 148-73. Not to apply to certain crimes.—Nothing in §§ 148-71 and 148-72 shall apply to convicts sentenced for crimes of murder, arson, rape, or burglary. (Rev., s. 5416; 1887, c. 356, s. 3; 1925, c. 163; C. S. 7766.)

Art. 7. Bureau of Identification.

§ 148-74. Bureau established.—A state bureau to be entitled the Bureau of Identification is hereby established. (1925, c. 228, s. 1.)

Cross Reference.—As to subsequent statute affecting this article, see § 114-18.

§ 148-75. Director.—A deputy warden of the State Prison is hereby designated as director of said bureau, who shall be a finger-print expert and familiar with other means of identifying criminals and who shall have complete control of said bureau within the limits hereinafter prescribed, said director to devote a sufficient portion of his time to the purposes of said bureau and shall maintain the principal offices of the same at the State Prison, and the said bureau with full equipment as herein provided for shall be established and maintained by the board of trustees of the penitentiary out of the general appropriation to the State Prison. (1925, c. 228, s. 2.)

§ 148-76. Duty of bureau.—It shall be the duty of the said bureau of identification to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or coöperative action on the part of the criminals, reporting such conditions, and to coöperate with all officials in detecting and preventing. (1925, c. 228, s. 3.)

§ 148-77. Henry system maintained. — The director is required to use and maintain the Henry system. (1925, c. 228, s. 4.)

§ 148-78. Annual report.—The director of the bureau is directed to submit in his annual report as a part of the report of the State Prison, a full account of all funds received and expenses to the Governor, and an estimate of what is necessary to carry out the provisions of this article. (1925, c. 228, s. 5.)

§ 148-79. Finger prints taken. — Every chief of police and sheriff in the State of North Carolina is hereby required to take or cause to be taken on forms furnished by this bureau the finger prints of every person convicted of a felony, and to forward the same immediately by mail to the said bureau of identification. That the said officers are hereby required to take the finger prints of any other person when arrested for a crime when the same is deemed advisable by any chief of police or sheriff, and forward the same for record to the said bureau. (1925, c. 228, s. 6.)

§ 148-80. Seal of bureau; certification of records.—The director shall provide a seal to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records

of said bureau of identification and when so certified under seal such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7.)

§ 148-81. Report of disposition of persons finger printed.—Every chief of police and sheriff shall advise said bureau of final disposition of all persons finger printed. (1925, c. 228, s. 8.)

Chapter 149. State Song.

Sec.
149-1. "The Old North State."

§ 149-1. "The Old North State."—The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! the good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region as on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

Chapter 150. Uniform Revocation of Licenses.

Sec.
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§ 150-1. Procedure for hearings on suspension or revocation of licenses by certain state boards and commissions.—No license issued by the state board of examiners of electrical contractors, state licensing board for contractors, state board of accountancy, state board of embalmers, board of chiropody examiners, North Carolina board of veterinary medical examiners, board of barber examiners, state board of registration for engineers and land surveyors, cosmetologists board, tile contractors board, plumbing and heating board, board of boiler rules, and board of photographic examiners shall be revoked or suspended except according to a procedure which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references and shall include (1) a notice in writing to the person whose license is involved, stating the charge or charges against the said licensee and fixing a date and place for a hearing which shall not be less than thirty days from the issuance of said notice upon the person to whom it is issued, and shall be served upon the person named therein by an officer authorized by law to serve process, or by mailing by registered mail to the person named therein at the address given in the license or the last known address; (2) a hearing before the board, or a member thereof specifically designated by the board for the purpose of hearing the matters involved, at which hearing the accused shall have the right to be present to enter his defense, if any, and be represented by counsel and produce evidence by witnesses or records; (3) notice of action by the board which shall be a written report containing findings of fact and conclusions of law thereon; (4) appeal from the action of the board to the superior court of the county in which the hearing was held or to the superior court of

Wake county upon filing of an appeal bond in the sum of fifty dollars which shall act as a supersedeas. (1939, c. 218, s. 1.)

Cross Reference.—As to compulsory reference generally, see § 1-189 et seq.

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 331; 19 N. C. Law Rev. 438.

§ 150-2. Venue of hearings.—All hearings shall be in the county of the residence of the person whose license is involved; provided that after notice such person and the board may agree that the hearing may be held in some other county. (1939, c. 218, c. 2.)

§ 150-3. Authority of boards to issue subpoenas, etc.—For all hearings the board shall have authority to issue subpoenas to witnesses to appear in person and to produce books, records, papers and other evidence as may be necessary or requested. (1939, c. 218, s. 3.)

§ 150-4. Notice of appeal. — When appeal is taken from the decision of the board, the person whose license is involved shall give notice in writing of appeal and shall state therein the exceptions to the decision of the board. Within thirty days the board shall cause to be filed in the office of the clerk of the court in the proper county a complete transcript, including the notice of charges, evidence taken at the hearing, the order or decision of the board and the exceptions filed thereto. The person whose license is involved shall upon his appeal have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the trial committee or counsel.

If after the action of the board new evidence shall be discovered by the person whose license is involved or by the board, motion may be made that the matter be remanded to the board for the taking of further evidence, and order thereon may be entered in the discretion of the judge of the superior court in which the matter is pending. (1939, c. 218, s. 4.)

§ 150-5. Right of appeal to supreme court.—From any decision of the superior court either the board or the person whose license is involved shall have the right of appeal to the supreme court. Whenever any notice of appeal is given and the bond required herein is filed, the order of the board shall be superseded until the appeal is finally determined, whereupon, unless reversed, modified or changed, the order shall become binding. (1939, c. 218, s. 5.)

§ 150-6. Power of board to restore licenses. — Whenever any license has been suspended or revoked by any of the boards named in § 150-1, the board shall have the right to restore the license upon satisfactory evidence that the person whose license has been suspended or revoked intends to comply with the law and the rules and regulations of the board. (1939, c. 218, s. 6.)

§ 150-7. Additional powers of boards.—The board is empowered and authorized to sue or be sued in its own name and to apply for such writs as may be desired to prevent the violations of the provisions of the act establishing said board and the amendments thereto. (1939, c. 218, s. 7.)

§ 150-8. Construction of chapter.—Nothing in this chapter shall be construed to remove any additional procedural requirement which may be provided in the laws creating any of the boards named in § 150-1, nor as preventing any of such boards from providing additional rules and regulations concerning the procedure for the suspension or revocation of license. (1939, c. 218, s. 8.)

Division XVII. County and City Government.

Chapter 151. Constables.

§ 151-1. Election and term.—In each township there shall be a constable, elected by the voters thereof, who shall hold his office for two years. (Rev., s. 933; Const., Art. 4, s. 24; C. S. 971.)

Cross References.—See § 153-9, subsecs. 10-12. See also, Const. Art. IV, § 24.

Term of Office.—The provision of Art. IV, § 25 of the Constitution that officers shall hold office until their successors are qualified, does not embrace the office of constable. State v. McLure, 84 N. C. 153.

§ 151-2. Oaths to be taken.—All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office. (Rev., s. 934; Code, s. 642; R. C., c. 24, s. 8; C. S. 972.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const. Art. VI, § 7. As to penalty for failure, see § 128-5.

§ 151-3. Bond; where registered; how fees paid.—The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the state of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for the faithful discharge of his duty as constable as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered and, after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. (Rev., s. 302; Code, s. 647; R. C., c. 24, s. 7; 1818, c. 980; 1820, c. 1045, s. 2; 1833, c. 17; 1869-70, c. 185; 1899, c. 54, s. 52; 1891, c. 229; C. S. 973.)

Local Modification.—Stanly: C. S. 973.

Cross References.—See §§ 109-3 to 109-15; 153-9, subsecs. 10-12.

See also, §§ 128-8 et seq. and notes thereto.

Liability Where No Execution Issued.—The securities on a constable's bond are accountable for his default in paying the moneys collected, even though no execution was issued for the purpose of collecting the same. Holcomb v. Franklin, 11 N. C. 274, 277.

Failure to Pay over Money.—Where a claim against a nonresident of the state, but subject to a single justice's jurisdiction, was put into a constable's hands for collection, and he collected the money, it was held that a failure to pay over such money on demand was a breach of his official bond. Dunton v. Doxey, 52 N. C. 222, distinguishing Dade v. Morris, 7 N. C. 146.

Money in Excess of Amount of Execution.—Where a sale of property under execution is made by a sheriff or a constable, and the property brings more than the amount of execution, it is the duty of such sheriff or constable to see that the excess is paid to the owner of the property. If he fails to do so, he is liable on his official bond. State v. Reed, 27 N. C. 357.

Failure to Collect.—Where a person put into the constable's hands for collection a note, the amount of which exceeded the jurisdiction of a justice of the peace, and the constable procured the maker to substitute for it two notes, each within the jurisdiction of a justice, and afterwards failed to collect the same when he might have done so, it was held that he was liable on his bond. State v. Stephens, 25 N. C. 92.

Failure to Return Uncollected Notes.—Where a constable received notes to collect, and for want of time did not collect them before his term of office expired, and afterwards refused to deliver them up, it was held that his surties were liable therefor on his official bond. State v. Johnson, 29 N. C. 77.

Constable Becoming Surety.—If an insolvent constable become surety for stay of execution committed to him for collection, it is a breach of his bond. The law requires him to take responsible sureties. Governor v. Davidson, 14 N. C. 361. See also, Governor v. Coble, 13 N. C. 489.

Necessity of Demand.—In an action upon a constable's bond for failing to pay over money collected by him, it is necessary to prove a demand on him. White v. Miller, 20 N. C. 50.

Where negligence in failing to collect is the breach assigned in a suit on a constable's bond, no demand is necessary. Nixon v. Bagby, 52 N. C. 4.

Defense to Suit on Constable's Bond.—It is a sufficient defense to a suit on a constable's bond for failing to return a note given him for collection that the note had been sued and judgment obtained upon it. The note is thus sufficiently accounted for. Miller v. Pharr, 87 N. C. 396. See also, State v. Hooks, 33 N. C. 371.

Limitation of Action.—An action by warrant against a constable's sureties to recover moneys collected by a constable by virtue of his office can only be barred by the same length of time that bars an action on the bond. Wilson v. Coffield, 27 N. C. 513.

Parties.—Where a debt is due to A., and he places it in the hands of a constable for collection, A. is the only person who can maintain, as relator, an action on the official bond of the constable for a breach of duty, notwithstanding A. may have afterwards assigned his interest in the debt to another. Governor v. Deavor, 25 N. C. 56.

Nature of Damages.—In an action on the official bond of a constable for his failure to collect notes placed in his hands for collection, the plaintiff is entitled to recover only nominal damages, unless he shows some actual injury sustained. State v. Skinner, 25 N. C. 564.

§ 151-4. Fees of constables. — Constables shall be allowed the same fees as sheriffs. (Rev., s. 2787; Code, s. 3742; 1883, c. 108; C. S. 3922.)

§ 151-5. Special constables.—For the better executing of any precept or mandate in extraordinary cases, any justice of the peace may direct the same, in the absence of or for want of a constable, to any person not being a party, who shall be obliged to execute the same under like penalty that any constable would be liable to. (Rev., s. 935; Code, s. 645; C. S. 974.)

Decision of Justice Conclusive as to Extraordinary Case.—The decision of the justice of the peace is conclusive as to the existence of an "extraordinary case" for which he is, under this section, authorized to appoint anyone a special constable to execute his mandate. State v. Wynne, 118 N. C. 1206, 1208, 24 S. E. 216; State v. Armistead, 106 N. C. 639, 641, 10 S. E. 872.

However, while what has been stated in the preceding paragraph is true, it is always well to state that the person specifically appointed is so appointed for the want of a regularly constituted officer; as the section does not contemplate the appointment of special constables except on "ex-

traordinary cases." State v. Dula, 100 N. C. 423, 428, 6 S. E. 89.

Defective Deputation of Special Officer.—Though the process be defective because it is not signed, or the deputation of the special officer is not in writing, as this section by fair intendment would seem to require, the defect may be waived by the defendant by his appearance before the court. In such a case, whatever may be the rights of the defendant making the arrest, the validity of the judgment is not thereby affected. State v. Cale, 150 N. C. 805, 63 S. E. 958.

Powers and Duties of Special Constables.—When a special constable is appointed under this section, in writing and without words restricting his authority, it confers upon him a general power to serve all processes and perform all the duties in regard to the particular case as those of a regular constable. State v. Armistead, 106 N. C. 639, 10 S. E. 872.

What Validity of Arrest Dependent upon.—The validity of the prisoner's arrest by the special constable depends upon the validity of the officer's deputation and not upon the sufficiency of the mittimus which is to terminate his duties. State v. Armistead, 106 N. C. 639, 640, 10 S. E. 872.

In Civil Actions.—A justice of the peace has no authority to depute a special officer to serve process in a civil action. McKee v. Angel, 90 N. C. 60.

§ 151-6. Vacancies in office.—Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, or upon the failure of the voters of a township to elect a constable as required in § 151-1, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables. (Rev., s. 936; Code, s. 646; R. C., c. 24, s. 6; 1925 c. 206; C. S. 975.)

Local Modification.—Washington: 1925, c. 206, s. 2.

Cross Reference.—See Const. Art. IV, § 24.

Editor's Note. — The clause providing for appointment in case of failure to elect was inserted by the Public Laws of 1925.

County commissioners have the power to fill vacancies under the Constitution, Art. IV, section 24. State v. McLure, 84 N. C. 153.

§ 151-7. Powers and duties. — Constables are hereby invested with and may execute the same power and authority as they have been by law heretofore vested with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority. (Rev., s. 937; Code, s. 643; R. C., c. 24, s. 9; C. S. 976.)

Local Modification.—Henderson, Rutherford: 1941, c. 364.

Cross References.—See § 162-14. As to town constables, see § 160-17 et seq. As to contempt for certain omissions of duty, see § 5-8.

Common Law Rule Not Changed.—This section and section 162-14 do not change the common law rule that an escaped convict may be rearrested in any county of the State, without new process, by the officer in charge of him. State v. Finch, 177 N. C. 599, 99 S. E. 409.

Effect of Constitutional Requirement.—Section 24, Article IV, of the Constitution of North Carolina, was not meant to restrict the powers and duties of the constables to the township in which they were elected, but to intersperse the constables throughout every part of the county. State v. Corpening, 207 N. C. 805, 806, 178 S. E. 564.

How Process Addressed to Officer.—To make a valid service of process from the superior courts by constables, the same should be specially addressed to such officer by his official title. Carson v. Woodrow, 160 N. C. 143, 147, 75 S. E. 996.

§ 151-8. To execute notices within justice's jurisdiction. — Constables shall likewise execute, within the places aforesaid, all notices tendered to them which are required by law to be given for the commencement or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued. (Rev., s. 938; Code, s. 644; R. C., c. 24, s. 10; C. S. 977.)

Town Constable's Authority to Serve Papers Other Than Process.—A town constable is given no authority to serve any papers for the superior court except process, and that only when expressly directed to him by the court. Forte v. Boone, 114 N. C. 177, 19 S. E. 632.

Chapter 152. Coroners.

§ 152-1. Election; Vacancies in office; Appointment by clerk in special cases.—In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the County Commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county

probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Rev., ss. 1047, 1049; Const. Art. IV, s. 24; 1903, c. 661; Ex. Sess. 1924, c. 65; 1935, c. 376; C. S. 1014, 1018.)

Cross References.—See § 153-9, subsections 10-12. See also, Const. Art. IV, § 24.

Editor's Note.—The provision in this section that the coroner shall hold office "until his successor is elected and qualified" is new with the Acts of 1924. The provision for filling vacancies "occurring for any reason" is also new. The old section provided only for appointment by the clerk for special cases, but since the Acts of 1924 the clerk appoints a coroner to fill the vacancy "until his successor is elected and qualified."

The amendment of 1935 adds the proviso at the end of this section relating to appointment when the coroner is out of the county or for any reason is unable to hold the inquest.

§ 152-2. Oaths to be taken. — Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Rev., s. 1048, Code, s. 661; Ex. Sess. 1924, c. 65; C. S. 1015.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const. Art. VI, § 7. As to penalty for failure to take oath, see § 128-5.

Editor's Note.—This section was not changed by Acts of 1924.

§ 152-3. Coroner's bond. — Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (Rev., s. 299; Code, s. 661; R. C., c. 25, s. 2; 1791, c. 342, ss. 1, 2; 1820, c. 1047, ss. 1, 2; 1899, c. 54, s. 52; Ex. Sess. 1924, c. 65; C. S. 1016.)

Editor's Note.—The words "and sufficient" and "penal sum" in this section were added by the Acts of 1924.

Want of Official Bond.—Where one has been appointed coroner of a county, though it may appear he has not renewed his official bonds, as required by law, yet his acts as coroner de facto are valid, at least as regards third persons. Mabry v. Turrentine, 30 N. C. 201.

§ 152-4. Coroners' bonds registered; certified copies evidence.—All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (Rev., s. 300; Code, s. 662; 1860-1, c. 18; Ex. Sess. 1924, c. 65; C. S. 1017.)

Cross References.—See §§ 109-3 to 109-15; 153-9, subsecs. 10-12.

See also, §§ 128-8 et seq. and notes thereto.

Editor's Note.—The Acts of 1924 substituted in this section the words "certified by the register of deeds with official seal attached" in lieu of "from the register's office."

§ 152-5. Fees of coroners.—Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. It is the duty of every coroner, where he or any juryman deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services ten dollars, and such further sum as the commissioners of the county may deem reasonable. (Rev., s. 2775; Code, s. 3743; 1903, c. 781; C. S. 3905.)

Local Modification.—Caldwell: Pub. Loc. 1939, c. 191; Cumberland: 1941, c. 73; Davidson: Pub. Loc. 1923, c. 402; Johnston: Pub. Loc. 1927, c. 113; Pub. Loc. 1933, c. 365; Lenoir: 1941, c. 84; Pasquotank: Pub. Loc. 1939, c. 102; 1943, c. 630; Cleveland, Union: Pub. Loc. 1921, c. 75, s. 1; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137.

§ 152-6. Powers, penalties, and liabilities of special coroner.—The special coroner appointed under the provisions of § 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (Rev., s. 1050; 1903, c. 661, s. 2; Ex. Sess. 1924, c. 65; C. S. 1019.)

Editor's Note.—This section was not changed by the Act of 1924.

§ 152-7. The duties of coroners with respect to inquests and preliminary hearings. — The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

1. Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased.

2. To summon forthwith a jury of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the deceased by blood or marriage, or to any person suspected of guilt in connection with such death, and the coroner, upon the oath of the jury at the said place, which oath may be taken by him or any other person authorized to administer oaths, shall make further inquiry as to when, how and by what means such deceased person came to his death, and shall cause to come before himself and the said jury all such persons as may be necessary in order to complete said inquiry.

3. If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as princi-

pal or accessory, or otherwise, if known; and the cause and manner of his death.

4. Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such person and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings before justices of the peace, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such person to jail, if it appears that such person is probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

5. As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next Superior Court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

6. To summon a physician or surgeon and to cause him to make such examination as may be necessary whenever it appears to such coroner as proper to have such examination made, or, upon request of his jury, or upon the request of the solicitor of his district or counsel for any accused or any member of the family of the deceased: Provided, however, that when the coroner shall himself be a physician or surgeon, he may make such examination himself.

7. Immediately upon information of the death of a person within his county under such circumstances as, in the opinion of the coroner, may make it necessary for him to investigate the same, to notify the solicitor of his district, and to make such additional investigation as he may be directed to do by such solicitor.

8. To permit counsel for the family of the deceased, the solicitor of his district, or any one designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

9. To begin his inquiry with his jury where the body of the deceased shall be, but said hearing may be adjourned to other times and places, and the body of the deceased need not be present at such further hearing.

10. To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the solicitor of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the solicitor of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. (Rev., s. 1051; Code, s. 657; 1899, c. 478; 1905, c. 628; 1909, c. 707, s. 1; Ex. Sess. 1924, c. 65; C. S. 1020.)

Cross References.—As to contempt for certain omissions of duty, see § 5-8. As to limitation on right to perform autopsy, see § 90-217. As to duty to report death involving motor vehicle, see § 20-166.

Editor's Note.—No radical changes were made to the old section by the Act of 1924. The same procedural steps are retained but are set out in much greater detail. Subsections 7, 8, 9, and the portions of 10 referring to stenographic reports are new.

The Inquest a Judicial Proceeding.—The inquest is the coroner's court and it is an indispensable requisite that the jury which is summoned be sworn and charged by the coroner in the presence of the body of the deceased. Though the coroner is judge of the court and the power and authority to administer oaths to the witnesses rests in him, the administration of oaths is a ministerial act and may be performed by anyone by the direction and in the presence of the court. State v. Knight, 84 N. C. 790.

Autopsy.—A coroner has no authority to perform an autopsy in cases where there is no suspicion of foul play. Gurganious v. Simpson, 213 N. C. 613, 197 S. E. 163.

§ 152-8. Acts as sheriff in certain cases; special coroner.—If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties as hereinabove provided for. (Rev., s. 1052; Code, s. 658; 1891, c. 173; Ex. Sess. 1924, c. 65; C. S. 1021.)

Editor's Note. — This section was re-enacted without change by the laws of 1924.

Service of Summons by Coroner when Sheriff is Party.—In an action to which the sheriff is a party it is proper that the summons be addressed to and served by the coroner, State v. Baird, 118 N. C. 854, 862, 24 S. E. 668, or by his deputy since the service of a summons is the discharge of a purely ministerial duty. Yeargin v. Siler, 83 N. C. 348.

Deputization of Special Officers.—The words "any proceedings in any court" contained in the provision for deputizing special officers where the sheriff and coroner are interested, have been given a literal interpretation and the provision is held applicable to courts of justices of the peace as well as to the higher courts. Baker v. Brem, 127 N. C. 322, 37 S. E. 454.

§ 152-9. Compensation of jurors at inquest.—All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the Superior Courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the Superior Courts. (Rev., s. 1053; Code, ss. 659, 660; Ex. Sess. 1924, c. 65; C. S. 1022.)

Cross Reference.—As to fees of jurors in superior court, see § 9-5.

Editor's Note. — This section was re-enacted without change by the Laws of 1924.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus. — All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing before a justice of the peace or a recorder, and such cases shall be immediately sent to the clerk of the Superior Court of such county and docketed by him in the same manner as warrants from justices of the peace. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the Superior Court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65.)

§ 152-11. Service of process issued by coroner. —All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Chapter 153. Counties and County Commissioners.

Art. 1. Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.—Every county is a body politic and corporate, and has the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them. (Rev., s. 1309; Code, ss. 702, 703, 1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; C. S. 1290.)

Editor's Note. — Counties are of, and constitute a part of, the state government. Their chief purpose is to establish its political organization, and effectuate the local civil administration of its powers and authority. They are in their general nature governmental—mere instrumentalities of government—and possess corporate powers adapted to its purposes. It is not their purpose to create civil liability on their part, and become answerable to individuals civilly or otherwise. Indeed, they are not, in a strict legal sense, municipal corporations, like towns and cities organized under charters or particular statutes, and invested with more of the junctions of corporate existence, intended to serve, not so much the purpose of the state, as, subject to its general laws, the advantage of particular communities in particular localities in the promotion and regulation more or less of trade, commerce, industries, and the business transactions and business relations in some respects of the people residing or going there collectively and severally—their purposes are more general, and partake more largely of the purpose and powers of government proper. Manuel v. Board, 98 N. C. 9, 10, 31 S. E. 829; White v. Commissioners, 90 N. C. 437; McCormack v. Commissioners, 90 N. C. 441.

The Legislature, subject to constitutional limitations, may confer upon counties such corporate powers to make contracts, create civil liabilities, and serve such business purposes, as it may deem expedient and wise, and make them answerable in damages for the negligence of their officers and agents in failing to properly exercise the powers with which they are charged, or for exercising them improperly, to the injury of individuals. But such corporate authority and liability must be especially created by and appear from statutory provision, expressed in terms or necessarily implied. Manuel v. Board, 98 N. C. 9, 11, 3 S. E. 829.

The county revenue is safe from seizure by creditors, or even for taxes due the Federal government, because, to admit the right to appropriate them in satisfaction of a claim would be to concede the power to destroy the state government by depriving its agencies of the means of performing their proper functions. Subject to the restrictions contained in the Federal Constitution, the state is a sovereignty, and it is essential to its preservation to give to

all property held for it by such agencies as counties, the same protection as is given to that held in its own name Vaughn v. Commissioners, 118 N. C. 636, 639, 24 S. E. 425; Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465; Meriwether v. Garnett, 102 U. S. 472, 473, 26 L. Ed. 197; United States v. Railroad Co., 17 Wall., 322, 21 L. Ed. 597.

Counties are a branch of the State government. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136.

Constitutional Power of Legislature to Create. — Under our Constitution, the legislature is given power to create special public quasi corporations for governmental purposes in certain designed portions of the state's territory subject to like control, and in the exercise of such power county lines may be disregarded. Board v. Webb, 155 N. C. 379, 71 S. E. 520.

In McCormac v. Commissioners, 90 N. C. 441, quoted with approval in Board v. Webb, 155 N. C. 379, 71 S. E. 520, Merrimon, J., said: "That it is within the power and is the province of the Legislature to subdivide the territory of the state and invest the inhabitants of such subdivisions with the corporate functions, more or less extensive and varied in their character, for the purpose of government, is too well settled to admit of any serious question. * * The Constitution of the State was formed in view of this and like fundamental principles. They permeate its provisions, and all statutory enactments should be interpreted in the light of them when they apply. It is in the exercise of such power that the Legislature alone can create, directly or indirectly, counties, * * * and invest them, and agencies in them, with powers, corporate or otherwise in their nature, to effectuate the purposes of the government, whether these be local or general, or both. Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them unless the same shall be restricted by some constitutional limitations." Woodall v. Western Wake Highway Commission, 176 N. C. 377, 384, 97 S. E. 226; Commissioners v. Commissioners, 157 N. C. 514, 73 S. E. 195; Board v. Webb, 155 N. C. 379, 71 S. E. 520.

Counties as Municipal Corporations. — By the Constitution (1868) Art. VII, counties are regarded as municipal corporations. Winslow v. Commissioners, 64 N. C. 218, 220.

A county is a municipal corporation created by law for public and political purposes, and constitutes a part of the government of the State. Its powers are expressly defined by law, and, where they are not fixed by the Constitution, they may be enlarged or modified at any time by the Legislature. Gooch v. Gregory, 65 N. C. 142, 143.

Same—Differs from Cities and Towns.—Counties are not, in a strictly legal sense, municipal corporations, like cities and towns. Bell v. Commissioners, 127 N. C. 85, 91, 37 S. E. 136; Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777.

Powers Strictly Construed.—Corporations which exercise delegated governmental authority, such as counties, must be confined to a strict construction of the statutes granting their powers. There is nothing in the nature of their duties to give rise to the implication that the State intends to clothe them with any other power than that expressly conferred, and the further right to do what is necessary to the complete exercise of the express powers. Vaughan v. Commissioners, 118 N. C. 636, 641, 24 S. E. 425.

Functions Vary.—The functions of counties are not always the same, and they may be enlarged, abridged or modified at the will of the Legislature. White v. Commissioners, 90 N. C. 437, 438.

Legislature May Direct. — The Legislature may direct counties to perform as duties all things which it can empower them to do. State v. Board, 122 N. C. 812, 30 S. E. 352.

Body Politic and Corporate to Exercise Powers Granted. —A county is a body politic and corporate to exercise as an agent for the State only such powers as are prescribed by statute and those which are necessarily implied therefrom by law, essential to the exercise of the powers specifically conferred. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28. See Board v. Hauchett Bond Co. 194 N. C. 137, 138 S. E. 614.

Must Act through Commissioners in Legal Session.— For a county to exercise its power to contract, it is essential that it act through its county commissioners as a body convened in legal session, regular, adjourned or special, and, as a rule, authorized meetings are prerequisite to corporate action, which should be based upon deliberate conference and intelligent discussion of proposed measures. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28.

The members of a corporation cannot, separately and individually, give their consent in such manner as to bind it as a collective body, and by the express terms of this section every county is a corporate body. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 240, 17 S. E. (2d) 1.

Contract for Employment of Detective.—The commissioners of a county are without authority, constitutional or statutory, to enter into a joint meeting with other State governmental agencies functioning as entirely separate departments respectively of the county and the State, and therein make a binding corporate contract by the adoption of a joint verbal agreement to pledge the faith and credit of the county for its part in the payment for the employment of a person to render service in the capacity of a detective to determine and procure evidence against those who have committed a criminal offense. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28.

May Issue Bonds to Make Repairs to Buildings.—This section when construed with § 153-77 gives the county statutory power to issue bonds to repair and make additions to the county jail or public schools, the greater power to "erect" necessarily including the lesser power to "repair." Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614.

§ 153-2. Corporate powers of counties. — A county is authorized—

1. To sue and be sued in the name of the county.

2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the general assembly.

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require. (Rev., s. 1310; Code, s. 704; 1868, c. 20, s. 3; C. S. 1291.)

Cross References.—As to corporate powers of a municipal corporation, see § 160-2. As to procedure for letting public contracts, see § 143-129.

Editor's Note.—In Pegram v. Commissioners, 65 N. C. 114, and in Askew v. Pollock, 66 N. C. 49, it was held that all actions and proceedings, either by or against a county, in its corporate capacity, must be in the name of the board of commissioners. These decisions, based on the Acts of 1868, ch. 20, sec. 704, of the Code of 1883, provided that a county should "sue and be sued in the name of the board of commissioners." However, this was changed by the amendment, and in the Revisal of 1905, sec. 1310, a county must sue and be sued in its own name. Fountain v. Pitt, 171 N. C. 113, 114, 87 S. E. 990.

Suits in Name of County.—A county is not required in an action for mandatory injunction to bring the suit in the name of the county commissioners, but it should be brought in the name of the county. Lenoir County v. Crabtree, 158 N. C. 357, 358, 74 S. E. 105.

Liability of Counties.—Counties are not ordinarily liable to be sued civilly for the manner in which they exercise, or fail to exercise, their corporate powers. White v. Commissioners, 90 N. C. 437, 439.

A county is not liable in damages for an injury to the plaintiff, occasioned by a defective bridge forming a part of the highway across a stream, in the absence of any statutory provision. White v. Commissioners, 90 N. C. 437; Moffitt v. Asheville, 103 N. C. 237, 259, 9 S. E. 695.

Same—Torts of Agents.—It is now well settled that counties are not liable in damages for the torts of their officials, in the absence of statutory provisions giving a right of action against them. Keenan v. Commissioners, 167 N. C. 356, 358, 83 S. E. 556.

Generally a county is not liable for damages sustained by individuals by reason of the neglect of its officers or agents, and there is no statute in this State creating such liability. Manuel v. Board, 98 N. C. 9, 11, 3 S. E. 829.

Commissioner's Supervisory Control.—Under the Constitution and Public Laws of North Carolina the boards of county commissioners are generally given supervision and control of governmental matters in the several counties. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048.

Action Brought in County Sued. — Actions against a board of county commissioners must be brought in the county of such commissioners. Steele v. Commissioners, 70 N. C. 137.

Action on Treasurer's Bond.—An action upon a county treasurer's bond to recover an amount alleged to be due the

county must be brought on the relation of the commissioners. State v. Thees, 89 N. C. 55, 58.

Suits against Board of Financial Control.—For the purpose of liquidating securities held by the county of Buncombe, the Board of Financial Control for Buncombe County is nothing more nor less than a liquidating agent designated by law for that purpose and is sued as provided by this section. Bourne v. Board of Financial Control, 207 N. C. 170, 177, 176 S. E. 306.

Counties may be sued only in such cases as may be allowed by statute. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136; White v. Commissioners, 90 N. C. 437, 439.

Form of Suit.—A municipal corporation may be sued in any form appropriate to the cause of action, and its liability does not differ as respects the form of the action from that of a private corporation or of an individual. Winslow v. Commissioners, 64 N. C. 218, 219.

Writ of Mandamus to Commissioners.—An order to show cause, which is in the nature of an alternative writ of mandamus, ought not to be directed to the individuals composing the board of commissioners. It is only in case of disobedience that they can be proceeded against individually. Askew v. Pollock, 66 N. C. 49.

Power to Compromise.—The power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits. Board v. Tollman, 145 Fed. 753, 772, citing 1 Dill Mun. Crop. (4th Ed.), sec. 477 and notes; and 15 Am. & Eng. Ency. (1st Ed.), 1050.

Power to Enter Consent Judgment.—Under this section the commissioners have the authority to assent to the entry of a consent judgment in an action pending against the county, when such judgment is entered in good faith, and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N. C. 42, 167 S. E. 484.

Necessary Property Not Subject to Execution.—A county can only acquire and hold property for necessary public purposes and for the benefit of all its citizens, and the principles of public policy prevent such property from being sold under execution to satisfy the debt of an individual. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465; Gooch v. Gregory, 65 N. C. 142, 143; Bouv. Inst. 176.

What Constitutes Binding Contract of County.—In order to make a binding pecuniary obligation on the county, there must be a contract to that effect, express in its terms, or the service must be done at the express request of an officer or agent charged with the duty and having the power to make contracts concerning it. Copple v. Commissioners, 138 N. C. 127, 131, 50 S. E. 574.

When Commissioners May Not Sell Property. — County commissioners have no power to sell property held for corporate purposes, where its alienation would tend to embarrass or prevent the performance of its duties to the public. Vaughan v. Commissioners, 118 N. C. 636, 24 S. E. 425.

Cited in O'Neal v. Wake County, 196 N. C. 184, 186, 145 S. E. 28.

§ 153-3. Reconveyance of property donated to county, etc., for specific purpose. — Any county, city or town to which any real property has been conveyed, without consideration, to be used for a specific purpose set out in the deed, shall have authority to reconvey the same without consideration to the grantor, his heirs, assigns or nominees whenever the governing body of such municipality shall officially determine that the said property will not be used for the purpose for which it was given: Provided, that due notice of such proposed conveyance shall be given by advertisement for two successive weeks in some newspaper of general circulation in the county. (1937, c. 441.)

Cross Reference.—As to abandonment of property dedicated to public use, see § 136-96.

Art. 2. County Commissioners.

§ 153-4. Election and number of commissioners. —There shall be elected in each county of the state, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified voters thereof, three persons to be chosen from the body of the county, who shall be styled "the board of commissioners for the county of ....." and shall hold their office for two years from date of their qualification and until their successors are elected and qualified. (Rev., s. 1311; C. S. 1292.)

Local Modification.—Cumberland: 1943, c. 44.

Cross References.—As to acting as commissioner before qualifying as such, see § 14-229. As to time of election of county commissioners, see § 163-4. As to provision that county commissioner can not practice law, see § 84-2.

Remedy in Nature of Quo Warranto.—Where a plaintiff sues for the office of county commissioner which is occupied by another, his remedy is an action in the nature of quo warranto; but if he sues to be restored to an unoccupied office, his remedy is an action for a mandamus, and he should show that he has a present clear legal right to the thing claimed, and that it is the duty of the defendant to render it to him. Lyon v. Board, 120 N. C. 237, 242, 26 S. E. 929.

Who May Try Commissioner's Title.—In an action to try the title to the office of county commissioner held by a defendant, only citizens and tax-payers of the county can be relators. State v. Taylor, 122 N. C. 141, 29 S. E. 101.

Where persons, who have been elected and qualified as county commissioners, bring an action in the nature of quo warranto against persons appointed by the judge of the district to try the defendants' title to the office, the complaint must allege that the plaintiffs are citizens and tax-payers of the county. State v. Taylor, 122 N. C. 141, 29 S. E. 101.

§ 153-5. Local modifications as to term and number. — The number of commissioners shall be five instead of three in the counties of Alamance, Beaufort, Bertie, Brunswick, Buncombe, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenberg, Nash, New Hanover, Perquimans, Pitt, Richmond, Rockingham, Rowan, Tyrrell, Vance, Warren, Wayne and Wilson.

Only one member of the board of commissioners of Brunswick County shall be from any one township of said county.

In Gaston county six persons shall be elected, one of whom must be a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowders Mountain township, one a resident of Cherryville township, and one a resident of Dallas township. If at any time the board of commissioners of Gaston county are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

In Wake county five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and ten, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and twelve. (Rev., ss. 1311, 1312; Code, s. 716; 1876-7, c. 141, s. 5; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 790; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; 1917, cc. 32, 175, 381;

1931, c. 68; 1941, c. 34; 1943, cc. 18, 43, 103, 109, 217, 345; C. S. 1293.)

Editor's Note.—The 1941 amendment, which added a paragraph relating to Person county, was repealed by Session Laws 1943, c. 109. Session Laws 1943, c. 103, added "Lee" to the list of counties in the first paragraph.

"Caswell" was impliedly inserted in the said list by Session Laws 1943, c. 43, and by c. 18 the qualified voters of Gates county are to elect five county commissioners at general elections beginning in 1944. Robeson county was impliedly stricken from the list by virtue of Session Laws 1943, c. 217, providing for the formation of a sixth commissioner's district in said county.

Session Laws 1943, c. 345, which impliedly struck Pasquotank from the list of counties in the first paragraph, provided that in the general primary, or primaries, hereafter held preceding the general election in Pasquotank county, there shall be nominated by each of the political parties participating therein one candidate from each of the five rural townships and two from Elizabeth City township for the office of county commissioner, to be voted on by the qualified voters of the entire county.

Session Laws 1943, c. 368, s. 2, provided that at the general election to be held in the year 1946, and biennially thereafter, there shall be elected in Brunswick county by the qualified voters thereof, a board of county commissioners consisting of three members who shall serve for a term of two years from the first Monday in December after their election, or until their successors are elected and qualified.

Cited in Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777.

§ 153-6. Vacancies in board; how filled.—In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office some person for the unexpired term. (Rev., s. 1314; Code, s. 719; 1895, c. 135, s. 7; 1909, c. 490, s. 1; C. S. 1294.)

Scope of Authority of Superior Court Clerk.—A tender of resignation by a county commissioner to the clerk of the superior court is a tender to a proper authority. And while the mere filing of the resignation does not vacate the office, its acceptance by the clerk is final, and a commissioner appointed by the clerk to fill such vacancy is a de facto officer, and any action taken by him in the regular meetings of the board is binding on the county. Rockingham County v. Luten Bridge Co., 35 F. (2d) 301, 302.

§ 153-7. When to qualify; oath to be filed.—The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and subscribed by them shall be deposited with the clerk of the superior court. (Rev., s. 1316; Code, s. 708; 1895, c. 135, s. 4; C. S. 1295.)

Cross References.—As to how commissioners are sworn, see § 153-12. As to oaths required, see §§ 11-6, 11-7, and 11-11. As to penalty for failure to take oath, see § 128-5.

Powers of De Facto Board. — An old board of commissioners, holding over, as de facto officers, have the right and the duty of performing, to the fullest extent, all the appropriate functions of office. State v. Jones, 80 N. C. 127, 130.

§ 153-8. Meetings of the board of commissioners.—The board of commissioners in each county shall hold a regular meeting at the courthouse, on the first Mondays in December and June. Special meetings may be held on the first Monday in every month, but shall not continue longer in session than two days. Meetings may be held at other times for the more convenient dispatch of business at the call of the chairman, on the written request of one member of the board, but public notice of the time and place of all such called meetings shall be posted at the courthouse door for not less than six days, and published one time in a county newspaper, if there is one. The board shall receive no compensation for attending such called meetings. The board may adjourn its regular meetings in December and June from day to day until the business before it is disposed of. Every meeting shall be open to all persons. A majority of the board constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year; in his absence the members present shall choose a temporary chairman. (Rev., s. 1317; Code, s. 706; C. S. 1296.)

Local Modification. — Randolph: 1939, c. 172; Richmond: 1939, c. 88.

Construed as Directory.—The section is directory and is intended to forbid the commissioners from receiving compensation for attendance on other days. It does not, however, disable the commissioners from acting at other times on due notice to all concerned. People v. Green, 75 N. C. 329, 333.

Hence commissioners elected by the county commissioners at an adjourned meeting subject to the call of the chairman are at least de facto officers whose title cannot be collaterally attacked. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896, 897.

Cited in Rockingham County v. Luten Bridge Co., 35 F. (2d) 301.

§ 153-9. Powers of board.—The boards of commissioners of the several counties have power—

Cross References.—As to power of the county commissioners to establish courts inferior to the superior court, see §§ 7-265, 7-266, 7-308, 7-332, 7-351, 7-385 and 7-405; to establish a domestic relations court, see § 7-101; to reduce salaries of officers and employees of the county, see § 160-28; to administer oaths, see § 11-9; to increase Confederate Veterans' pensions by levying a special tax therefor, see § 112-30; to elect to have county employees participate in retirement system, see § 128-33; to take depositions, see § 8-76; to protect public monuments, see § 100-9; to come under State Volunteer Fire Department, see § 69-21; to co-operate with the Department of Conservation and Development in forest fire protection, see § 113-59; to co-operate in establishment of an employment bureau, see § 96-26; to provide farmers with erosion equipment, see § 106-521; to appoint electrical inspectors, see § 160-122. As to duty of county commissioners to prepare jury list, see § 9-1; to provide standard weights and measures, see § 81-26; to appoint county superintendent of public welfare, see § 108-13; to authorize state flag to be displayed at county courthouse, see § 144-4.

Exercise of Powers by Board is Exercise by County. — The board's exercise of statutory powers is, in contemplation of law, the exercise of such powers by the county. Board v. Hanchett Bond Co., 194 N. C. 137, 138, 138 S. E. 614.

Board Has Perpetual Existence. — The board of commissioners of a county has a perpetual existence, continued by members who succeed each other, and the body remains the same, notwithstanding a change in the individuals who compose it. Pegram v. Commissioners, 65 N. C. 114, 115.

Have Only Such Powers as Statute Prescribes.—The board of commissioners in the several counties possess only those powers which have been prescribed by statute and those necessarily implied by law, and no others. This is the general rule, it has also been expressly declared by statute to be the rule which ascertains the true scope and limit of their power and authority. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 336, 43 S. E. 899.

Legislature May Change Functions at Will.—A county is entrusted with many high and important functions, which are to be exercised by its officers for the public benefit. The Legislature may, at will, enlarge or modify these functions. Winslow v. Commissioners, 64 N. C. 218, (from the dissenting opinion of Dick, J.)

What Constitutes Quorum and Majority.—A majority of the commissioners constitute the legal body, and a majority of the members of the legally organized body can exercise the powers delegated to the county, as a general rule. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 681, 13 S. E. 271.

All Duties and Powers Equally Important.—There is no grade among the duties and powers of county commis-

sioners, and no preference is given to one over another. Long v. Commissioners, 76 N. C. 273, 278.

Personal Liability.—Where the Legislature has created certain duties to be performed by the county commissioners, and has expressly imposed a personal liability upon their failure to perform some of them, but not as to others, such liability only attaches where it is expressly so declared. Fore v. Feimster, 171 N. C. 551, 88 S. E. 977.

Same—Ministerial Duties.—County commissioners are held to an individual liability in the negligent performance of, or negligent omission to perform, a purely ministerial duty, to a person specially injured thereby, when the means to do so are available and when it does not involve the exercise of a discretionary or judicial power conferred upon them by statute. Hipp v. Farrell, 169 N. C. 551, 86 S. E. 570.

Same—Judicial and Discretionary Acts. — Public officers are not personally liable to persons specially injured by their acts done in the exercise of judicial or discretionary powers conferred on them by statute, unless it is alleged and shown that in doing the acts complained of they did so corruptly and with malice. Hipp v. Farrell, 169 N. C. 551, 86 S. E. 570.

When Commissioners Acting Intra Vires.—A court has no power to interfere with the domestic administration of affairs of a county, so long as the board of commissioners acts intra vires. Long v. Commissioners, 76 N. C. 273.

Consideration Retained when Acting Ultra Vires.—Retaining the consideration of an ultra vires contract can impose no contractual liability upon a municipal corporation of this character. Berlin Iron Bridge Co. v. Board, 111 N. C. 317, 16 S. E. 314, citing Weir v. Page, 109 N. C. 220, 13 S. E. 773.

Mandamus to Compel Bond Issue.—Mandamus will lie against county commissioners who refuse to issue bonds, as required by an act of the Legislature. Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291.

When Membership of Board Changes between Order and Service of Mandamus.—When a writ of mandamus is obtained against a board of commissioners, and there is a change in the individual members between the time when the writ is ordered and when it is served, those who compose the board at the time of service must obey it. Pegram v. Commissioners, 65 N. C. 114, 115.

Board May Correct Clerical Error in Record.—Where the record of the board of county commissioners; through a clerical error, states that a tax levy for general county purposes is 20 cents on the $100 valuation of property, this error may subsequently be corrected by the board, at its own instance, to correctly show that in fact the levy was actually made for 15 cents for general county purposes, 5 cents thereof being for the improvement of the courthouse and county home, and thus within the constitutional requirement. Norfolk Southern R. Co. v. Forbes, 188 N. C. 151, 124 S. E. 132.

Power to Protect Bridges. — The county commissioners, under the general powers granted by this section may bring an action for an injunction to restrain the use of a nonfloatable stream for floatage of logs, causing damage to a county bridge over such stream. Commissioners v. Lumber Co., 115 N. C. 590, 20 S. E. 707, 708.

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211 N. C. 249, 253, 189 S. E. 882, citing Martin v. Clark, 135 N. C. 178, 47 S. E. 397.

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28.

Taxation and Finance

1. To Exempt from Capitation Tax.—To exempt from capitation tax in special cases, on account of poverty and infirmity. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

The Constitution does not require that a capitation tax shall be levied for ordinary state and county purposes. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69.

2. To Levy County Taxes.—To levy, in like manner with the state taxes, the necessary taxes for county purposes within the limits prescribed in the Constitution. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross References.—As to constitutional limitation on county tax levies, see N. C. Constitution, Art. V, § 6. As to the time for adoption of appropriation resolution and levy of taxes, see §§ 153-120, 153-124 and 105-339. As to duty to reduce ad valorem taxes, see § 153-55.

County Authority to Levy Taxes Subject to Limitation.—While the General Assembly may regulate the amount and methods for raising county revenues, the present system of county government contemplates that the function shall be performed by the county authorities, subject to the limitations prescribed by the Constitution. Parker v. Board, 104 N. C. 166, 10 S. E. 137.

When Commissioners May Levy. — In Herring v. Dixon, 122 N. C. 420, 424, 29 S. E. 368, the authorities are reviewed and their holdings summed up by Clark, J., as follows:

(1) For necessary expenses, the county commissioners may levy up to the constitutional limitation without a vote of the people or legislative permission.

(2) For necessary expenses, the county commissioners may exceed the constitutional limitation by special legislative authority without a vote of the people. Constitution, Article V, sec. 6.

(3) For other purposes than necessary expenses a tax cannot be levied either within or in excess of the constitutional limitation except by a vote of the people under special legislative authority. Constitution, Article VII, sec. 7, approved in State v. Board, 122 N. C. 812, 815, 30 S. E. 352.

A special tax to pay indebtedness of the county incurred for its necessary expenses may be levied by the county commissioners, without special legislation, so long as such tax together with the regular taxes, does not exceed the constitutional limit; it being only in the latter case that art. 5, sec. 6, of the Constitution requires special authority. Smathers v. Commissioners, 125 N. C. 480, 34 S. E. 554.

Levy of Necessary Taxes within Commissioners Discretion.—Where it was alleged that a board of commissioners had not levied a sufficient tax to defray the ordinary expenses of the county, on account of the levy of a tax to pay for repairing the court-house, it was held to be no ground for interference by the courts. Long v. Commissioners, 76 N. C. 273.

Constitutional Limitation.—The equation and limitation of taxation established by the Constitution applies only to taxes levied for ordinary purposes of the State and counties, and, as to levies of taxes for such purposes, it must be observed. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69. It has no application to special taxes. Wagstaff v. Central Highway Commission, 177 N. C. 354, 99 S. E. 1.

Same—Prior Debts. — The constitutional limitation and equation of taxation do not apply to debts made previous to the adoption of the Constitution; to debts contracted thereafter, they both apply. Clifton v. Wynne, 80 N. C. 146; Trull v. Board, 72 N. C. 388; Mauney v. Board, 71 N. C. 486; Uzzle v. Commissioners, 70 N. C. 564; Street v. Board, 70 N. C. 644.

Same—County Taxes. — The requirement in the Constitution, Art. V, sec. 7, that every act levying taxes shall state the objects to which they shall be appropriated, has no application to taxes levied by the county authorities for county purposes. Parker v. Board, 104 N. C. 166, 10 S. E. 137.

When Tax Intra Vires and When Ultra Vires.—Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is intra vires, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes, but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires and no part of the levy can be collected. Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150.

When Commissioners May Not Exceed Restriction. — When bonds are issued by a county, by popular vote, under legislative authority, which does not further provide for a levy to exceed the constitutional limitation for the principal, interest or for a sinking fund, the commissioners are without authority to levy a tax to exceed the restriction. Commissioner v. McDonald, etc., Co., 148 N. C. 125, 61 S. E. 643.

In Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150, approved in Herring v. Dixon, 122 N. C. 420, 423, 29 S. E. 368, it was held that a statute authorizing a special county tax for the purpose of maintaining public ferries, building roads, and meeting other current expenses was not for a "special purpose," and that a tax levied thereunder in excess of the constitutional limitation was void. Southern R. Co. v. Cherokee County, 177 N. C. 86, 92, 97 S. E. 758.

Six Months School Term and the Constitutional Limitation. — When it becomes necessary the county commissioners are required to levy a tax sufficient to maintain the county schools for a term of six months each year, and the Constitutional limitation does not apply to defeat such a

levy. Collie v. Commissioners, 145 N. C. 170, 176, 59 S. E. 44, expressly overruling Barksdale v. Commissioners, 93 N. C. 472, 473, and Board v. Board, 111 N. C. 578, 16 S. E. 621; Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758.

Tax Rate Variable. — There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in the same county. Jones v. Commissioners, 143 N. C. 60, 55 S. E. 427.

Property Subject to Taxation. — All of the property, including solvent credits, in the state, shall be assessed and taxed at its value in money. Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 201, 59 S. E. 653.

Same—Back Tax. — In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 201, 59 S. E. 653, Connor, J., speaking for the court said: "We have no doubt of the power of the Legislature to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. Nor do we perceive any reason why it may not be taxed for five or more preceding years if it has escaped taxation so long. These questions have been settled by several decisions of this court. Kyle v. Mayor, 75 N. C. 445; North Carolina R. Co. v. Commissioners, 82 N. C. 260; Wilmington v. Cronly, 122 N. C. 388, 30 S. E. 9."

Same—When Realty of Schools and Railroads Exempt from Special Tax.—Where the act provided for the construction of a fence to include the whole of several districts and that the commissioners should levy a special tax on all the real estate in said district, which was taxable by the state and county, it was held, not to embrace the real estate of schools and railroads, which was not taxable for general purposes. Bradshaw v. Board, 92 N. C. 278.

Taxes Leviable Yearly. — General taxes for county purposes are leviable but once in the year. Bradshaw v. Board, 92 N. C. 278, 282.

Improperly Levied and Legitimately Used. — A tax levied professedly and improperly for one purpose can be collected and applied to any other legitimate purpose. Long v. Commissioners, 76 N. C. 273.

Tax Lists in Hands of Sheriff. — In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 202, 59 S. E. 653, it was said: "While no express power is conferred upon the commissioners after making the assessment to place the list so made in the hands of the sheriff, we think that by a fair construction, in the light of the power conferred in other portions of the statute respecting the regular tax list, such power is given."

The tax list is a judgment against every person for the amount of the tax, and the copy delivered to the sheriff is an execution. State v. Georgia Co., 112 N. C. 34, 36, 17 S. E. 10; Higgins v. Hinson, 61 N. C. 126, cited and approved in Commissioners v. Piercy, 72 N. C. 181; London v. Wilmington, 78 N. C. 109; Gore v. Mastin, 66 N. C. 371; Raleigh, etc., R. Co. v. Lewis, 99 N. C. 62, 5 S. E. 82.

Act Held Not to Be "Special."—In Bennett v. Board, 173 N. C. 625, 629, 92 S. E. 603, it is held that a statute conferring on county commissioners the power to borrow money for the necessary expenses of the county and provide for its payment "neither is, nor does it purport to be, a 'special act and for a special purpose' within the meaning of the constitutional provision." Southern R. Co. v. Cherokee County, 177 N. C. 86, 92, 97 S. E. 758.

Assessment for Stock Fence.—An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896, 898.

3. To Provide for Payment of Existing Debts by Taxation or Otherwise.—To provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Mandamus Lies to Compel Levy of Tax. — A plaintiff, upon a proper prayer for judgment, may have a mandamus to compel the board of commissioners to levy a tax and pay the debt of a county. Winslow v. Commissioners, 64 N. C. 218.

Same—Satisfaction of Judgment. — A plaintiff who has obtained a judgment against a county is not entitled to an execution against it. His remedy is by a writ of mandamus against the board of commissioners of the county to compel them to levy a tax for the satisfaction of the judgment. Gooch v. Gregory, 65 N. C. 142.

Same—Ordinarily, Only Remedy. — Ordinarily, the only remedy of a judgment creditor of a county is a writ of mandamus to compel its commissioners to levy a tax to pay the debt. Hughes v. Commissioners, 107 N. C. 598, 605, 12 S. E. 465; Gooch v. Gregory, 65 N. C. 142; Pegram v. Commissioners, 64 N. C. 557; Lutterloh v. Board, 65 N. C. 403; Rogers v. Jenkins, 98 N. C. 129, 3 S. E. 821; 2 Dillon on Mun. Corp. (3 ed.), secs. 855 and 856.

Same—When Granted. — The writ of mandamus will be granted only where one demanding it shows that he "has a specific legal right and has no other specific remedy adequate to enforce it." Hughes v. Commissioners, 107 N. C. 598, 605, 12 S. E. 465; State v. Justices, 24 N. C. 430; Winslow v. Commissioners, 64 N. C. 218, 223; Ex parte Biggs, 64 N. C. 202.

When Mandamus Unnecessary. — An action may be maintained against the county commissioners establishing a debt against the county without asking for a writ of mandamus, where it appears that the county has property subject to trusts, or such as can be reached only by proceedings supplemental to execution. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465.

When Public and Private Interests Conflict. — Upon the principle that where public interests conflict with private interests, if the entire fund which can be raised by taxation is required to meet the necessary expenses of an economical administration of the county government, and none can be diverted to pay its indebtedness without serious detriment to the public, none ought to be thus appropriated. Cromartie v. Commissioners, 85 N. C. 211, 216.

Bonds Issued under Unconstitutional Act. — A taxpayer may enjoin county commissioners from making a tax levy to pay interest on railroad bonds issued under an unconstitutional statute, without restoring to the bona fide holders of the bonds the consideration paid therefor. Graves v. Board, 135 N. C. 49, 47 S. E. 134.

Notice to Holder. — A county bond stating on its face the act under which it is issued is notice to the holder, and estops him from controverting the statement. Commissioners v. Call, 123 N. C. 308, 31 S. E. 481.

4. To Purchase County Indebtedness.—To purchase if they desire, at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county. (Rev., s. 1320; Code, s. 718; 1868-9, c. 269, s. 2; C. S. 1297.)

5. To Levy Taxes for Interest and Sinking Funds for Outstanding Bonds Not Provided for. —(a) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of bonds issued and sold for the purpose of meeting necessary expenses of the county, where no other provision for such levy has been specially provided for. Such levy shall not exceed any constitutional limitation.

(b) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of township road improvement bonds, issued either by vote of the people or by act of the general assembly, where the amount of levy provided by the act under which the vote is held or tax levied is inadequate to pay the interest on bonds heretofore issued or authorized by acts now in force, but the levy shall not exceed any constitutional limitation. (1917, c. 121, ss. 1, 2; C. S. 1297.)

Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. Board v. Tollman, 145 Fed. 753, 773.

6. Special Tax Authorized for Certain Purposes; Limit of Rate.—The boards of commissioners of the various counties in the state, for the purpose of the unkeep of county buildings, county homes for the aged and infirm and other similar institutions, and to supplement the general county fund, are hereby authorized to levy annually a tax upon all taxable property not to exceed five cents on the one hundred dollars of

valuation, in addition to any tax allowed by any special statute for the above enumerated purposes and in addition to the rate allowed by the Constitution. (1923, c. 7; C. S. 1297.)

Local Modification.—Madison: 1931, c. 436.

In General.—This section authorizes the boards of commissioners of the various counties to levy a tax for the purpose of maintaining county homes for the aged and infirm. This is a special purpose within the contemplation of the constitutional provision, and the words "county aid and poor relief" should be construed to be within the scope of the special purpose which is indicated in the statute. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 496, 157 S. E. 610.

7. Same—In Certain Counties.—Subject to the approval of the director of local government, the boards of county commissioners of Alamance, Alleghany, Anson, Avery, Buncombe, Burke, Cherokee, Clay, Dare, Duplin, Durham, Edgecombe, Graham, Granville, Halifax, Henderson, Iredell, Jackson, McDowell, Macon, Mitchell, Montgomery, Orange, Pender, Perquimans, Person, Polk, Randolph, Rutherford, Sampson, Scotland, Stokes, Swain, Tyrrell, Watauga and Wilson counties are hereby authorized to levy such special property taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the constitution: (1) For the expense of the quadrennial valuation or assessment of taxable property, (2) for the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1933, c. 54; 1935, c. 330; 1937, c. 41; 1939, cc. 190, 336; 1943, c. 646.)

Editor's Note.—The only change effected by the amendment of 1935 occurs in this subsection in which "Henderson" is added to the list of counties.

The 1937 amendment added Buncombe and Randolph to the list of counties, and the 1939 amendments added Orange and Anson.

The 1943 amendment made subsection 7 applicable to Sampson county.

Levies Held Unconstitutional.—Ordinarily, the purposes named in this subsection are general rather than special, and a levy of taxes under this subsection is invalid under Art. V, § 6 of the Constitution in the absence of circumstances rendering the purpose special rather than general. Southern R. Co. v. Cherokee County, 218 N. C. 169, 10 S. E. (2d) 607; Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603.

County Buildings

8. To Erect and Repair County Buildings.—To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross References.—As to procedure for letting of public contracts, see §§ 143-129 to 143-135. As to duty to require contractor to execute bond, see § 44-14. As to separate specifications for building contract, see § 160-280.

Erection and Maintenance of Courthouse.—It is the duty of the county commissioners to provide a sufficient courthouse and keep it in repair. It is their duty both to erect and keep in repair. They are cognate duties, and failure as to them is "neglect of duty." State v. Leeper, 146 N. C. 655, 658, 61 S. E. 585.

Same—Mandamus Does Not Lie to Provide.—A mandamus will not lie against county commissioners to compel them to provide a sufficient courthouse. State v. Leeper, 146 N. C. 655, 61 S. E. 585.

Same—Remedy by Indictment.—For such neglect of duty the remedy is by indictment. State v. Leeper, 146 N. C. 655, 661, 61 S. E. 585.

Same—Need Not Allege Corrupt Intent.—It is not necessary to allege corrupt intent in a bill of indictment. State v. Leeper, 146 N. C. 655, 61 S. E. 585.

Discretion of Commissioners.—The board of commissioners have the discretionary power to issue and sell or discount the notes of the county to provide the means to pay for a courthouse, and such discretion will not be interfered with by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354.

Cannot Mortgage Courthouse Site.—The county commissioners have no authority to convey the land on which they propose to erect the courthouse by a mortgage deed to secure the bonds issued to build it, and thereby render the site and buildings liable to sale for the satisfaction of the debt. Vaughn v. Commissioners, 118 N. C. 636, 640, 24 S. E. 425.

Commissioners Not Individually Liable for Failure to Take Bond.—The county commissioners are not individually liable for the failure of their ministerial duty to take the bond required from a contractor for the erection of a county home, such not having been expressly declared; and the remedy is by indictment. Fore v Feimster, 171 N. C. 551, 552, 88 S. E. 977.

Prior Special Act Does Not Bar Action Hereunder.—The fact that ch. 343, Acts of 1889, authorizing the county commissioners of Forsyth County to issue bonds for a new courthouse, required the assent of a majority of the qualified voters to such issue, is no bar to the power of the commissioners conferred by a later act of the Legislature (ch. 135, Acts of 1895) to erect necessary public buildings and to raise by taxation the money therefor. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354.

Necessary Expenses.—The cost of the erection of a courthouse is a necessary expense of a county, and the exercise of the discretionary power of the board of commissioners in providing to meet it is not reviewable by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354.

Repairing a courthouse is also a necessary county expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607.

A jail is a necessary county expense, and, in the absence of statutory restrictions, the county commissioners may pledge the credit of the county in order to obtain one. Haskett v. Tyrrell County, 152 N. C. 714, 68 S. E. 202.

While the county commissioners are clothed with the necessary power to erect and repair county buildings, they have no power to levy a special tax out of which to pay the interest and create a sinking fund, unless they have the special authority of the General Assembly, but construing this section with § 153-1 and § 153-77, it would seem such authority is implied. Harrell v. Board of Com'rs, 206 N. C. 225, 228, 173 S. E. 614.

9. To Designate Site for County Buildings.—To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by a unanimous vote of all the members of the board at any regular monthly meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the county, if there is one, and posted in one or more public places in every township in the county for three months, next immediately preceding the monthly meeting at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the general assembly. (Rev., s. 1318; Code, 707; 1868, c. 20, s. 8; 1925, c. 229; C. S. 1297.)

Editor's Note.—This subsection was amended by the Laws of 1925, c. 229. The amendment struck out the words "The regular December" in line five of the subsection and in lieu thereof inserted the words "any regular monthly." In line eleven of the said subsection the word "annual" was stricken out and in lieu thereof was inserted the word "monthly."

When Partial Payments May Be Recovered Back. — Where the county commissioners and the owner of lands have agreed for the purchase of a new site for its courthouse, conditioned upon the future compliance with the statute relating thereto, which had failed of compliance, and the county had made certain payments upon the purchase price, the county may recover the partial payments it had so made, with the legal interest thereon, subject to deductions as against the interest for its reasonable rental

value, while in possession and control of the county authorities. Hearne v. Stanly County, 188 N. C. 45, 123 S. E. 641.

Attempt to Validate Former Action.—Pending the continuance of an injunction against the county commissioners purchasing a new site for the county courthouse, the action of the commissioners in attempting to validate their former action is unlawful, and can have no effect; nor can proceedings under a later statute to submit the question of the change to the voters have a different effect, when this proposition has been rejected by them. Hearne v. Stanly County, 188 N. C. 45, 46, 123 S. E. 641.

County Officers

10. To Require Officers to Report.—To require from any county officer, or other person employed and paid by the county, a report under oath at any time on any matters connected with his duties. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

11. To Approve Bonds of County Officers and Induct into Office.—To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to wit: clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safe keeping.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officer may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant within the ten days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall appoint to fill the vacancy and notify the clerk of the superior court. In case of a vacancy in the office of the clerk of the superior court said vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1874-5, c. 237, s. 3; 1895, c. 135, s. 3; C. S. 1297.)

Cross References.—As to commissioners' duty as to sheriff's bond, see §§ 162-9 through 162-11. As to approval, acknowledgment and custody of bonds, and commissioners' liability, see §§ 109-11 et seq. As to duty of commissioners when officer fails to renew bond, see § 109-6. As to criminal liability for approving insufficient bond, see § 153-14. As to suit on official bond when officer fails to account to treasurer, see § 155-18.

This section is mandatory on the county commissioners. Moffitt v. Davis, 205 N. C. 565, 569, 172 S. E. 317.

But there is no penalty or crime prescribed by this section, for failure of county commissioners to perform the ministerial duty therein imposed upon them of qualifying and inducting into office certain county officers and approving the bonds of such officers, but § 109-13, makes them liable as sureties on bonds which they approve with knowledge, actual or implied, that they are insufficient in penal sum or security. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317.

De Facto Board May Act.—If from any cause the newly elected commissioners of a county fail to qualify at the time prescribed by law, the old board, as de facto officers, have the power to perform the functions prescribed by this section. State v. Jones, 80 N. C. 127; Buckman v. Commissioners, 80 N. C. 121.

Commissioners to Induct into Office County Officers. — The commissioners are authorized and required to qualify and induct into office the several officers of the county, and to take and approve their official bonds, which they shall cause to be registered. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 336, 43 S. E. 899, 900.

Same—When Certified by County Canvassers.—It is the duty of the county commissioners to qualify and induct into office those whose election the county canvassers have ascertained and announced. Swain v. McRea, 80 N. C. 111, 114.

Right to Examine Officers—Elect.—When a person presents himself before a board of commissioners, with a certificate of election, and asks to be inducted into office, the said commissioners have a right to inquire into his constitutional capacity to exercise the functions of the office to which he may have been chosen. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93, 100.

The general jurisdiction to admit to county offices those who may have been chosen upon the electoral vote as counted and ascertained by the board of county canvassers is given to the board of county commissioners, and this is exercised in an examination into the regularity of the returns of the result of the election, (which, when regular, are conclusive of the election,) the sufficiency of the official bond tendered, and the administration of the required oath. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93, 100.

In the case of a sheriff who has previously held office the board must go further, and see that he is not delinquent in the payment of the taxes of a previous term. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93, 100.

Same—May Exclude Unfit.—If the commissioners refuse to induct one who is plainly ineligible, the courts will not compel them to do so, and thus put one into an office which he cannot constitutionally hold. State v. Somers, 96 N. C. 467, 2 S. E. 161.

An elected person not competent to hold office under the Constitution has no right to be admitted to office, nor cause of action for being excluded. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93, 100.

Commissioners Not Liable for Error of Judgment. — And if, in the exercise of this function, the commissioners commit an error of judgment in refusing to induct the elected candidate into office they are not responsible, these functions being quasi judicial. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93, 100.

Sheriff's Bonds.—To entitle a sheriff to be inducted into office, it is essentially necessary that three several bonds must be executed by him and approved by the county commissioners according to the requirements of the statute. Dixon v. Commissioners, 80 N. C. 118.

While it is irregular to induct a sheriff into office without his giving all three of the required bonds, yet the defect is cured when they are subsequently tendered and accepted. Worley v. Smith, 81 N. C. 304.

Cannot Release Surety.—A board of county commissioners cannot release a surety from an official bond. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 336, 43 S. E. 899. See also, State v. Clarke, 73 N. C. 255, 258; Dockery v. French, 69 N. C. 308.

May Declare Office Vacant and Fill it.—The board has the power—all the business before them being disposed of—to adjourn, and, if any officer shall fail to perfect his bond according to law before such adjournment, to declare such office vacant, and to fill it, when the power to fill such vacancy is vested by law in the board. State v. Patterson, 97 N. C. 360, 2 S. E. 262; Kilburn v. Latham, 81 N. C. 312.

Term of office of sheriff begins on the first Monday in

December after the election. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894.

12. To Fill Vacancies.—To fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor. (Rev., s. 1321; Code, s. 720; 1868, c. 4; C. S. 1297.)

Cross References.—See also, as to sheriff, § 162-5; as to constable, § 151-6; as to coroner and power of clerk of court to appoint, see § 152-1; as to register of deeds, see § 161-5; as to treasurer, see § 155-2. As to power of commissioners of certain counties to abolish office of treasurer and appoint banks, see § 155-3.

Commissioners Vote and Elect Hereunder.—The commissioners of a county board vote and elect when they exercise the power to fill a vacant office. State v. Bullock, 80 N. C. 132, 136.

Failure to Perform Duty.—Only one penalty is given against each commissioner composing the board, if he fails to perform his duty under this section. Bray v. Barnard, 109 N. C. 44, 48, 13 S. E. 729.

Application.—Upon the failure of public officers, when the statutes so require, to renew annually their official bonds, and of sheriffs to, in addition, produce receipts for the public moneys collected by them, it shall be the duty of the board of county commissioners to declare the office vacant. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729.

Same—Sheriff's Office.—It is the right and the duty of the commissioners to declare the office of sheriff vacant, and appoint some one for the unexpired term, whenever the incumbent thereof is found to be, on a re-election, in arrears in his settlement of the public taxes; or when he takes no notice whatever of a summons by the commissioners to appear before them on a day certain and justify or renew his official bond. People v. Green, 75 N. C. 329.

A vacancy in the office of sheriff cannot be declared until the alleged delinquent shall have had due notice and a day in court, if within reach of its process. State v. Pipkin, 77 N. C. 408.

Same—Office of Treasurer.—When a vacancy exists in the office of treasurer, it can only be filled by the county commissioners. State v. Hampton, 101 N. C. 629, 633, 8 S. E. 219.

County Property

13. To Make Orders Respecting County Property.—To make such orders respecting the corporate property of the county as may be deemed expedient. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Extent of Commissioner's Duty Hereunder.—This section imposes upon the commissioners the duty of employing such agents, and raising and appropriating such moneys, as may be sufficient to keep the public buildings in repair, and maintain them in such a condition as to prevent any noxious and offensive exhalations to proceed from any of them put to the private use of the people. Threadgill v. Commissioners, 99 N. C. 352, 355, 6 S. E. 189, 191.

In Threadgill v. Commissioners, 99 N. C. 352, 355, 6 S. E. 189, it was said: "A privy is not only a convenience, but a necessity; and the only fault attributable to any one is to suffer an accumulation of night soil, until, for want of cleaning, the emanating effluvia becomes a nuisance to the public. It is nowhere charged that the board has failed to use the means at their disposal to prevent such consequences, and this is the measure and extent of official responsibility."

14. To Sell or Lease Real Property.—To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Commissioners Do Not Have Power to Mortgage.—Power to sell is not a power to mortgage, and hence express authority conferred upon county commissioners, to sell real estate of the county, at a fair price, does not imply power to incumber the same by a mortgage. Vaughn v. Commissioners, 99 N. C. 352, 355, 6 S. E. 189, 191.

Right of Taxpayer to Bring Action to Restrain.—Though a proposed mortgage of county land by the county commissioners to secure bonds issued to build a Courthouse would be void, and equity would enjoin foreclosure thereunder, a taxpayer may bring an action to restrain the execution of the mortgage without waiting until foreclosure is threatened. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425.

County Purchases

15. To Purchase for Public Buildings, and at Execution Sale.—To purchase real property necessary for any public county building, and for the support of the poor, and to determine the site thereof, where it has not already been located; and to purchase land at any execution sale, when it is deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1879, c. 144, s. 1; C. S. 1297.)

County Bound by Conditions Subsequent.—Where a county, owning a site upon which to build its courthouse, is authorized by statute to buy, sell, and exchange real estate surrounding it upon such terms and conditions as it may deem just and proper, and for the best interest of the county, and in pursuance of this authority, has acquired conveyance of lands from adjoining owners upon condition that they shall be used as a public square and kept open for that purpose, etc., it is held, that whether the conditions be called conditions subsequent or otherwise, they were within the purview of the authority conferred upon the county; and, coming within the intent of the parties as expressed in the conveyance, and forming a material part of the consideration for the lands, they are valid and binding upon the county. Guilford County v. Porter, 167 N. C. 366, 83 S. E. 564.

16. To Purchase or Lease a County Farm, and Work Convicts Thereon.—To lease or purchase a county farm, and where proper provisions are made for securing and caring for convicts, such of them as are subject to road duty may be worked on said farm, and, in the discretion of the board, such farms may be made experimental farms. The court, in its discretion, may sentence convicted prisoners either to said farm or to the roads. Where a farm is purchased or leased in those counties having a road system, the board may work the convicts on such farms. (1915, c. 140; C. S. 1297.)

Highways and Bridges

17. Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway and Public Works Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway and Public Works Commission as is granted in § 136-88 of the Chapter on Roads and Highways or by other Statutes; to provide draws on all bridges not on roads under supervision of the State Highway and Public Works Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway and Public Works Commission and to take bond from the builders thereof. It is the intent of this subsection that the powers and authorities herein granted shall be exercised in accordance with the provisions of the Chapter on Roads and Highways.

Editor's Note.—The cases treated here were decided under former statutes which authorized counties to lay out, repair, etc., public roads, bridges and ferries and should be considered in that light.

Roads Are a Necessary Expense. — The well ordering

and maintenance of the public roads of a county are "necessary expenses" within the meaning of our Constitution and statutes. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048.

A county is authorized to contract an indebtedness for the maintenance of its public roads, and such indebtedness being for a necessity, under Art. VII, sec. 7, of our Constitution, it is not required that a special act be passed authorizing it under the provisions of our Constitution, Art. II, sec. 14. Pritchard v. Commissioners, 159 N. C. 636, 75 S. E. 849.

Board of Commissioners May Be Deprived of Power over Roads. — The powers given to county commissioners over public highways, Const., Art. VII, sec. 2, may be taken away from them and conferred by statute upon other political agencies of the State, and such agencies may be deprived of the discretionary powers conferred by this section. Day v. Commissioners, 191 N. C. 780, 133 S. E. 164.

When Superior Court Not to Grant Injunction. — It is not competent for a superior court to grant an injunction against an order by the county commissioners within the sphere of their general duties, laying out a public road. McArthur v. McEachin, 64 N. C. 454.

Discretionary Powers of Board over Roads. — The laying out and maintenance of the public roads or highways of a county are matters left largely within the discretion of the county commissioners, and, in the absence of express legislation to the contrary, they are not to be controlled by a vote of the localities affected, either informal or otherwise; and where it is shown that they have officially dealt with a question largely submitted to their judgment, their action may not be controlled or interfered with by the courts, unless it is established that there has been a gross or manifest abuse of their discretion, or it is made clearly to appear that they have not acted for the public interest, but in promotion of personal or private ends. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346.

The order in which work upon the public highways is to be performed is within the sound discretion of the county commissioners, and a finding by the court that they have exercised this discretion honestly and in a manner which they conceived to be for the best interests of the people of the county, excludes any interference by the courts. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58.

Where the county commissioners have acted within the powers conferred on them by ch. 122, Public Laws of 1913, establishing a scheme for the laying out, establishing and maintenance, etc., of roads for the different townships therein, and have accordingly issued bonds and expended most of the money on the township roads, they may not be enjoined at the suit of the taxpayer from laying out and constructing an additional road, with the use of the money remaining on hand from the sale of the bonds, upon allegation, as to this particular road, that it was not for the public convenience, or that the majority of the voters were not in favor of it. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346.

Failure to Give Notice of Proposed Route to Landowners. —The county commissioners will not be enjoined from building a public road in a township of a county from the proceeds of the sale of bonds, at the suit of taxpayers, because notice had not been given to landowners along the route proposed. Edwards v. Commissioners, 170 N. C. 448, 449, 87 S. E. 346.

Cannot Bind County by Contract to Perpetually Maintain Road. — A board of commissioners has no power to enter into a contract with a citizen to perpetually maintain and keep in repair a public road or bridge giving to such citizen a cause of action against the county whenever, in the exercise of its discretion in the interest of the public, the same or another board shall deem it proper to discontinue such road or bridge. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58.

Control of Bridges and Ferries. — While county commissioners control public bridges and ferries, it is by virtue of their duties, imposed by law, in regard to public roads. Greenleaf v. Board, 123 N. C. 31, 31 S. E. 264.

Public bridges and ferries are incidental to public roads and are not to be established or assumed, or maintained, as county charges, unless as parts thereof, in actual existence or in contemplation. Greenleaf v. Commissioners, 123 N. C. 31, 31 S. E. 264.

Same—Rests Solely with Commissioners. — The county commissioners alone have the power to determine upon the necessity for the construction or repair of bridges and to contract for the same, and such power can not be delegated. McPhail v. Board, 119 N. C. 330, 25 S. E. 958.

When Injunction Will Be Refused. — A citizen is not entitled to an injunction restraining a board of commissioners from proceeding to erect a bridge across a river at a certain point, though there is no public highway leading to such point, where the court finds that the board has in contemplation the opening of a public road to such point, and that arrangements have been made for that purpose. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58.

When Bridge Not Part of Highway. — It is ultra vires for county commissioners to accept a bridge to be maintained at the county's cost, where it appears it is not a part of a public road, in existence or in contemplation of being made —and they may be enjoined from doing so. Greenleaf v. Board, 123 N. C. 31, 31 S. E. 264.

Where a citizen, at his own expense, constructed a bridge and opened up the public roads over his lands leading to the bridge on both sides of the river, and the board of commissioners accepted said bridge as a public bridge and have kept it in repair ever since, the fact that the commissioners paid him only a part of the cost of its construction did not change its character as a part of the public highway, subject to the control of the commissioners, as all other bridges in the county. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58.

Liability of Commissioners in Placing Drawbridge.—When county commissioner commits an honest error in placing, or refusing to place, a drawbridge, he is not liable. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63.

18. To Appoint Commissioners to Open Rivers and Creeks.—To appoint a commissioner to open and clear the rivers and creeks, in the manner prescribed by law within the county, or where such river or creek forms a county line or a part thereof. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

19. To Grant Right to Bridge Navigable Streams. —To grant, subject to the approval and permission of the war department, to any person, firm or corporation owning or occupying lands on both sides of any navigable stream or creek lying wholly within the limits of the county, the right to construct and maintain a bridge across the said navigable water between the lands owned or occupied by them upon such terms and conditions and for such time as the said board shall deem advisable and proper. Before any order allowing the construction of the same shall be made, it shall be made to appear to the board that four weeks notice of the application for such right has been given by posting a notice at the courthouse door and four other public places in the county, and also (if there be a newspaper published in the county) by publishing once a week for four consecutive weeks in some newspaper in the county. Any party aggrieved may appeal from the order of the commissioners to the superior court of the county in term time. (Pub. Loc. 1911, c. 227; C. S. 1297.)

Inspection and Licenses

20. To License Peddlers.—To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross Reference.—As to license to sell beverages at retail, see §§ 18-76 and 18-77.

Order Revocable.—An order granting license may be revoked at the same session of the board. State v. Voight, 90 N. C. 741.

Can Issue Only upon Application to Board.—A license to retail liquor can issue only upon the application of the party to the board of county commissioners for an order directing the sheriff to grant the same. State v. Voight, 90 N. C. 741.

Sheriff's Permission Does Not Protect.—Permission given by the sheriff to retail without such order previously made is in violation of the law and does not protect the seller from prosecution. State v. Voight, 90 N. C. 741.

Limited Legal Discretion of Commissioners.—They have a limited legal discretion, and in passing upon an appli-

cation for license, they have a right to take into consideration the questions, whether the demand of the public requires an increase of such accommodations, and whether the place at which it is proposed to establish a bar-room is a suitable one. Muller & Co. v. Commissioners, 89 N. C. 171, 172; Board v. Smith, 110 N. C. 417, 14 S. E. 972.

This issuance of a license to sell liquor by a board of county commissioners is a matter of discretion, and a mandamus will not issue to compel them to do so, it not being alleged and shown that their refusal to grant a license was arbitrary. Jones v. Commissioners, 106 N. C. 436, 11 S. E. 514; Miller & Co. v. Commissioners, 89 N. C. 171.

The commissioners of a county do not possess the arbitrary power of suppressing all places for retailing spirituous liquors; nor are they bound to license an applicant though he be qualified by proof of good moral character. Muller & Co. v. Commissioners, 89 N. C. 171.

21. To License Auctioneers.—To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross Reference.—See also, § 85-5.

22. To Establish Public Landings, Places of Inspection and Inspectors.—To establish such public landings and places of inspection as the board may think proper; and to appoint such inspectors in any town or city as may be authorized by law. Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross Reference.—As to manner of laying out public landings, see § 77-11.

Does Not Bestow Power of Eminent Domain.—This section does not bestow upon the commissioners the power to condemn land under eminent domain; but they are confined to lands already dedicated to a public use sufficient to embrace or include the purpose proposed by them, or they must acquire a sight by agreement or purchase. Commissioners v. Bonner, 153 N. C. 66, 68 S. E. 970.

Poor and Hospitals

23. To Provide for the Maintenance of the Poor.—To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor; to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county all the charges and expenses incurred for the maintenance or removal of such poor person. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Cross Reference.—As to county poor generally, see §§ 153-152 et seq.

No Recovery by One Officiously Providing for Pauper.—Although a person may be a proper subject of county charge, any one who officiously provides for such person cannot recover of the county the amount of his outlay. Copple v. Commissioners, 138 N. C. 127, 132, 50 S. E. 574.

Each County to Be Charged for Its Poor.—It is the manifest purpose of the law to charge each county with the support of its own poor. Commissioners v. Commissioners, 101 N. C. 520, 524, 8 S. E. 176; State v. Elam, 61 N. C. 460.

May Require Charges to Be Placed in Poorhouse.—Where the county commissioners have provided a poorhouse, they have the right to require that all persons who are cared for at their expense shall be placed in the house which they have provided for the purpose. Copple v. Commissioners, 138 N. C. 127, 132, 50 S. E. 574.

Residence or Settlement Governs.—The liability of a county for the support of a pauper does not depend upon the law of domicile or citizenship but upon that of residence or settlement, as prescribed in sec. 3544 of the Code. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176.

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195.

24. To Establish Public Hospitals and Tuberculosis Dispensaries.—To establish public hospitals, establish and maintain homes for indigent orphan children, for the county in cases of necessity, and to establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria, and to make rules, regulations and by-laws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the state; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1923, c. 81; C. S. 1297.)

Cross Reference.—As to establishment and maintenance of tuberculosis sanatoria, see §§ 131-29 to 131-33.

Editor's Note.—This subsection was amended by the Laws of 1923, c. 81, by writing after the word "hospital," and before the word "for", in the second line the following: "establish and maintain homes for indigent orphan children."

Summary of Powers Granted Hereunder.—In reference to the powers conferred by law upon boards of county commissioners, by the subsection, they can establish public hospitals for their several counties in cases of necessity, and make rules, regulations and by-laws for preventing the spread of contagious and infectious diseases and for taking care of those afflicted thereby—the same not being inconsistent with the laws of the state. Prichard v. Board, 126 N. C. 908, 911, 36 S. E. 353.

Cannot Burn Infected Residence.—By no reasonable construction of the sub-section can it be held that the board of county commissioners can burn a residence-house to prevent the spread of contagious and infectious diseases. A proper disinfection would be the extent of their powers in respect to property thus tainted or infected. Prichard v. Commissioners, 126 N. C. 908, 911, 36 S. E. 353.

Liability of Commissioners.—County commissioners are not liable for failure to establish hospitals under this section. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136.

Obligation to Quarantine.—The obligation on municipal corporations to quarantine and care for persons afflicted with certain contagious and infectious diseases is created entirely by statute. Board v. Henderson, 163 N. C. 114, 79 S. E. 442.

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195.

Prisons and Prisoners

25. To Provide for a House of Correction.—To make provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such assistants as are deemed necessary, and to fix their compensation. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

26. To Provide for Employment of Prisoners.—To provide for the employment on public works in the county of all persons condemned to imprisonment with hard labor, under § 148-32 and not sent to the penitentiary. All prisoners sentenced to jail for any term less than thirty days may, as a part of such sentence, by the court in which such prisoners are tried and convicted, be sentenced to work at hard labor on the public streets of any city or town, the county farm, or any other public works of the county wherein such prisoners are tried and convicted. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1931, c. 302; C. S. 1297.)

Cross Reference.—As to authority of counties and towns to hire out certain prisoners, see § 153-191.

Editor's Note.—The Act of 1931, according to its title, purports to amend this and subsection 16 of this section.

Townships

27. To Divide County into Townships.—To di-

vide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the secretary of state. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Editor's Note.—The Constitution of 1868 provided for the division of the several counties of the state into convenient districts, which were designated as townships. Upon the townships thus created was bestowed corporate powers for necessary purposes of local government. A clerk and two justices, elected biennially, constituted the board of trustees for each township. This board was given control over taxes and finances of the township, subject to the supervision of the county commissioners. Const. 1868, Art. VII, secs. 3, 4, 5.

The Act of 1868-'69 (Bat. Rev. C. 112) provided that a suit by or against a township in its corporate capacity should be in the name of its board of trustees. This act was passed to give effect to the provisions of the Constitution; subsequently by c. 106 of the Acts of 1873-'74, the provisions of the Act of 1868-'69 were expressly repealed. In 1876-'77 the General Assembly, under the power given it in the amended Constitution of 1875, enacted what is generally known as the "County Government Act," whereby all the provisions of the Constitution of 1868 in regard to township boards of trustees were abrogated, and the provisions of the act substituted in the place thereof. The substituted provisions were to the effect that the townships already established and those thereafter to be created should be distinguished by well-defined boundaries; "but that no township should have or exercise any corporate powers whatever, unless allowed by act of the General Assembly to be exercised under the supervision of the board of county commissioners."

Acting upon the authority thus given it, the General Assembly, by the said "County Government Act," repealed the clause of the Constitution which gives corporate powers to the board of trustees for the township; also that one which provided for the election of officers of the township who ex officio should constitute the board of trustees; also that one which gave such trustees the control of the taxes and finances of their township, and in lieu thereof declared that "no township should have or exercise any corporate powers whatever," unless allowed to do so by act of the Assembly.

It is true that the same act provides that the territorial limits of the townships as established should be preserved; but this was for the convenience of the citizens thereof, and because the law requires that in all general elections for the state there should be at least one polling place in each township. Wallace v. Board, 84 N. C. 164, 165. Since the Act of 1876-'77, ch. 141, was passed providing that the board of county commissioners should have and exercise the jurisdiction and powers vested in and exercised by the boards of trustees of the several counties, the question arises, "What are the jurisdiction and powers thus transferred?" As the Act of 1876-'77 abrogates sec. 5 Art. VII, of the Constitution, which authorized the creation of the boards of trustees and defined their powers and duties, when the same Act vested in the commissioners the same powers and jurisdiction that had been exercised by the board of trustees of the several townships, it must be that the Legislature had reference only to the constitutional jurisdiction and powers which had been vested in the township board of trustees by sec. 5, Art. VII, of the Constitution of 1868, and did not include those duties and obligations imposed by legislative enactments. Jones etc., Co. v. Commissioners, 85 N. C. 278, 282.

With the destruction of the township as a corporate being in favor of the county, the board of township trustees could no longer be a party to a suit. The question of vested rights arose. However, in several cases it was held that a party dealing with a municipal corporation has no such vested right growing out of his contract with the same as is protected by the Federal Constitution. It is a public institution, and the state may destroy its corporate powers, leaving the party damaged to seek relief by an appeal to the Legislature. Wallace v. Board, 84 N. C. 164; Mitchell v. Board, 71 N. C. 400; Jones etc., Co. v. Commissioners, 85 N. C. 278.

28. To Erect, Divide and Alter Townships.—To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected may, after the notice presently to be mentioned, apply by petition to the board of commissioners to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the general assembly, to be exercised under the supervision of the board of commissioners. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1876-7, c. 141, ss. 3, 5; C. S. 1297.)

Legislative Power to Subdivide and Bestow Corporate Functions.—It is within the power and is the province of the Legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions. McCormac v. Commissioners, 90 N. C. 441, 444.

Townships are within the power and control of the General Assembly, just as are counties, cities, towns and other municipal corporations. It may confer upon them, or any single one of them, corporate powers, with the view to accomplish any lawful purpose. Such powers may be conferred for a single purpose as well as many. Semble, the people of localities may be incorporated into road districts, school districts and the like. Brown v. Commissioners, 100 N. C. 92, 5 S. E. 178.

Townships have a distinctive existence for specified purposes created by statute, and the Legislature may confer upon and invest them with corporate powers for a particular pertinent purpose, as to subscribe for the capital stock of a railroad company, to issue its bonds to raise money to pay for the same, to levy taxes upon the property of the taxpayers therein to pay the accruing interest upon such bonds, and to pay the same at their maturity. Jones v. Commissioners, 107 N. C. 248, 265, 12 S. E. 69.

Need Not Be Created by Direct Legislative Action.—It is not essential that such sub-divisions of territory shall always be created directly by legislative enactment. In many cases, certain existing agencies, or agencies to be provided, are required by statute to establish them, and when established, they become, by the force of law, invested with certain powers and required to discharge prescribed duties. McCormac v. Commissioners, 90 N. C. 441, 445.

County Officers May Be Charged with Township Duties.—The townships are constituent parts of the county organization, and the county officers may well be charged with duties and authority in respect to debts they may be allowed by statute to contract. Jones v. Commissioners, 107 N. C. 248, 265, 12 S. E. 69.

County Bonds Not to Be Issued upon Note of One Township.—While the building of public roads has been held a necessary expense, the application of the principle may not be extended to instances where a statute requires the county to issue its bonds for road purposes to obtain aid for a township or local taxing district therein, upon the approval of the voters of the particular district alone, and without benefit to the others. Commissioners v. Lacy, 174 N. C. 141, 142, 93 S. E. 482.

Commissioners' Power to Issue Township Bonds. — The county commissioners are not authorized to issue bonds on the credit of a township for the construction of a railroad. Graves v. Board, 135 N. C. 49, 47 S. E. 134.

Township Trustee's Liability for Torts. — A township board of trustees incorporated by the Legislature to maintain and construct the public roads of the township are clothed with duties governmental in their nature and for the public benefit; and while strictly acting in pursuance thereof they are not liable for a pure tort of their employees or agents in inflicting a personal injury upon others. Price v. Board, 172 N. C. 84, 89 S. E. 1066.

29. To Apportion Funds between Altered Townships.—When a township has been altered, erected, or divided, to apportion, in its discretion, the public funds of such township between the new township divisions or subdivisions, and the warrant of the board upon the treasurer for the apportionment shall constitute a valid voucher for

the payment thereof. (Ex. Sess. 1913, c. 44; C. S. 1297.)

Miscellaneous

30. To Authorize Chairman to Issue Subpoenas.—To authorize the chairman to issue subpoenas to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question shall be guilty of contempt and punishable therefor by the board. A witness is bound in such cases to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination. The chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman has and may exercise like authority. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

31. To Audit Accounts.—To audit accounts against the county, and direct the raising of the moneys necessary to defray them. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Claim Must Be Audited.—A claim against a county must be audited and approved at a regular meeting of the board of commissioners. First Nat. Bank v. Warlick, 125 N. C. 593, 594, 34 S. E. 687.

Must Be Itemized and Verified.—No account shall be audited by a board of county commissioners unless it is itemized and verified. Turner v. McKee, 137 N. C. 251, 49 S. E. 330.

Court Cannot Interfere with Discretionary Power of Commissioners.—The courts cannot interfere with the exercise of the discretion of the board of county commissioners in ordering an investigation by public accountants of the books of the various departments of the county government. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043.

Not Subject to Review.—The board of county commissioners is not such a judicial tribunal, that its decision in passing upon claims against the county can be reviewed on appeal. The proper remedy to test the validity of a rejected claim is by civil action. Jones v. Commissioners, 88 N. C. 56.

32. To Appoint Proxies.—To appoint proxies to represent in any annual or other meetings the shares or other interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the general assembly, authorizing county subscriptions in such cases. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

33. To Procure Weights and Measures.—To procure for each county sealed weights and measures, according to the standard prescribed by Congress; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law. (Rev., s. 1318; Code, s. 707; R. C., c. 117, s. 4; 1868, c. 20, s. 26; C. S. 1297.)

34. To Adopt a County Seal.—To adopt a seal for the county, a description and impression of which shall be filed in the office of superior court clerk and of the secretary of state. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

35. To Promote Farmers' Cooperative Demonstration Work.—To cooperate with the state and national departments of agriculture to promote the farmers cooperative demonstration work, and to appropriate such sum as they may agree upon for the purpose. (1911, c. 1; C. S. 1297.)

Cross Reference.—As to authority of county commissioners to co-operate in cotton grading program, see § 106-427.

36. To Appropriate for the National Guard.—To appropriate such sums of money to the various organizations of the national guard, and at such times, as the board may deem proper. (1915, c. 259; C. S. 1297.)

Cross References.—See also, § 127-101. As to power of county to support family of members of the militia, see § 127-86.

37. To Make Appropriations for Libraries.—Together with the county board of education of any county in which there is a public city or town library, in their discretion, to cooperate with the trustees of said library in extending the service of such library to the rural communities of the county, and to appropriate out of the funds under their control an amount sufficient to pay the expense of such library extension service. (1917, c. 149; C. S. 1297.)

Cross Reference.—As to establishment of library and levy of taxes therefor, see § 160-65.

38. Homes for Indigent and Delinquent Children.—To provide for the establishment and maintenance, with the approval of the State Board of Charities and Public Welfare, of such home or homes for indigent and delinquent children in said county, as to them may seem proper or necessary, or to co-operate with the board of county commissioners or other governing authority in any other county or counties in the establishment and maintenance, at some mutually agreeable point, of a district home for such purposes, said district to be established by agreement and said home to be established and maintained upon such terms as may be agreed upon by the boards of county commissioners of the several counties concerned. (1927, c. 248.)

Local Modification.—Anson: 1939, c. 343.

Editor's Note.—The first provision we find for a home for indigent children is in the amendment, Laws of 1923, c. 81, to subsection 24 of this section. However, that merely referred to indigent and delinquent orphan children. This subsection, providing a more detailed and broad provision for the establishment and maintenance of a home for indigent and delinquent children, was added by the Acts of 1927, c. 248.

Public Laws 1939, c. 343, applicable only to Anson county, amended this section by adding at the end thereof a new section to be designated "44" as follows: "To purchase or acquire any real estate within the limits of the county that may be desired by the county commissioners, and to sell, lease, or otherwise dispose of same, to any person, firm or corporation, upon such terms and conditions as may seem just and proper to the board of county commissioners."

§ 153-10. Local: authority to interdict certain shows.—The boards of commissioners of the several counties shall have power to direct the sheriff or tax collector of the county to refuse to issue any license to any carnival company and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and ferris-wheels, and other like amusement enterprises conducted for profit under the same management and filling week-stand engage-

ments or in giving week-stand exhibitions, whether under canvas or not, whenever in the opinion of the board of county commissioners the public welfare will be endangered by the licensing of such companies. This section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Catawba, Duplin, Forsyth, Greene, Haywood, Iredell, Lee, Madison, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wilson, Yadkin. (1919, c. 164; C. S. 1298.)

§ 153-11. To settle disputed county lines.—When there is any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, is conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the secretary of state. If the board of commissioners of any county refuses upon request of the other county or counties to appoint one or more commissioners pursuant to this section to settle and fix the line or lines in dispute, then, and in such event, the county or counties making such request may file a verified petition before the resident judge of the district in which the said county or counties lie, or the judge holding the courts thereof for the time being, and in the event that said counties shall lie in more than one judicial district, to the resident judge or the judge holding the courts of either district, setting forth briefly the line or lines which are in dispute; the refusal of the other county or counties to settle and fix the line in dispute, pursuant to this section; whereupon, such judge before whom such petition is filed shall issue a notice to the other county or counties, returnable before him within not less than ten nor more than twenty days, and if it appear to such judge upon hearing said notice, and he shall find as a fact that there is bona fide dispute as to the true location of the boundary line or lines referred to in the petition and that the county or counties have refused to settle and fix the line in dispute as provided in this section, such judge shall thereupon appoint three (3) persons, one person from each of the counties and some disinterested person from some adjoining county, who shall go upon the ground, hear such evidence and testimony as shall be offered and make report to the said judge as to the true location of the boundary line or lines in dispute. The judge shall thereupon ratify the report and a copy thereof shall be recorded in the office of the register of deeds of each of the counties and shall be indexed and cross indexed and shall also be recorded in the office of the Secretary of State and the location so fixed shall be conclusive. If it shall appear to the judge that the services of a surveyor are necessary he shall appoint such surveyor and fix his compensation. The cost thereof shall be defrayed by the two counties in proportion to the number of taxable polls in each. (Rev., s. 1322; Code, s. 721; R. C., c. 27; 1836, c. 3; 1925, c. 251; C. S. 1299.)

Editor's Note.—This section was amended by the Laws of 1925, ch. 251, by providing that in case the county commissioners refuse to appoint one or more commissioners to fix the lines in dispute the judge may appoint. If, after the issuance and return of notice, there is a bona fide dispute, the judge is to appoint three commissioners, one from each of the disputing counties, and one from a neutral county. After the said commissioners make their report, and it is confirmed by the judge, it is recorded in the office of the register of deeds, and a copy sent to the office of the secretary of state.

§ 153-11.1. Contributions by counties and cities to governmental agencies in war effort.—The several boards of county commissioners in the state of North Carolina and the governing bodies of the municipalities of the state are authorized, in their discretion, to appropriate from the general fund of their respective counties and municipalities such funds as they may determine to be a necessary and proper contribution to local organizations of official state and federal governmental agencies engaged in the war effort, including defense councils and office of price administration: Provided, that in no event shall any contribution be made in the way of compensation to members of the boards of such agencies, or any panels thereof. The provisions of this section shall not apply to Avery, Clay, Cumberland, Currituck, Davie, Forsyth, Graham, Hyde, Macon, Swain, Buncombe, Surry and Transylvania counties. (1943, c. 711.)

§ 153-12. How commissioners sworn and paid.—Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors. (Rev., s. 1323; Code, s. 722; C. S. 1300.)

§ 153-13. Compensation of county commissioners.—Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings of the board not exceeding two dollars per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile. (Rev., s. 2785; Code, s. 709; 1907, c. 500; C. S. 3918.)

Mileage Allowed.—Members of the board of county commissioners are only entitled to mileage for the distance by the usual route traveled to attend such meeting of the board as the statute has prescribed, and returning from such meeting; they cannot charge mileage for each day, although they may actually return to their homes at the close of each day of a meeting. State v. Norris, 111 N. C. 652, 16 S. E. 2.

When Mileage Allowance Erroneous but Innocent.—Where a board of county commissioners audited in favor of its members for mileage, to which they were not entitled, and it was found as a fact that they did so under advice and without any corrupt or fraudulent motive, it was held that the members of the board were not indictable either under the Statute, section 14-234, or at common law. State v. Norris, 111 N. C. 652, 16 S. E. 2.

Compensation Not Allowed Commissioner for Inspecting Bridge.—A member of the board of county commissioners who, under the direction of the board, inspected and reported upon a bridge cannot recover in his action for the services rendered or mileage; he is forbidden to do so as a county commissioner under this section, and is indictable if claiming compensation for extra services under either an express or implied contract with the board, under section 14-234. Davidson v. Guilford County, 152 N. C. 436, 67 S. E. 918.

§ 153-14. Approving insufficient bond misdemeanor.—If any county commissioner shall approve any official bond which he knows or be-

lieves to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the state. (Rev., s. 3573; Code, s. 1880; 1869-70, c. 169, s. 70; C. S. 1301.)

Cross References.—As to duty of approving bonds, see § 153-9, subsection 11. As to civil liability of commissioner for approving bond he knows to be insufficient, see § 109-13. As to liability for failure to comply in good faith with provisions for bonding sheriffs, see § 162-11.

§ 153-15. Neglect of duty misdemeanor.—If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same. (Rev. s. 3590; Code, s. 711; C. S. 1302.)

Cross References.—As to failure to make reports and discharge other duties, see § 14-231. As to willfully failing to discharge duties, see § 14-230.

In General.—See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614, wherein this section is construed with §§ 153-1, 153-9 and 153-49 to show implied legislative authority to levy taxes to keep county buildings in repair.

Essence of the Offense. — The essence of the offense created by the section is the "neglect to perform any duty required by law," and an indictment drawn under it cannot be sustained by proof of the act of willfully taking a greater sum as mileage than was due. State v. Norris, 111 N. C. 652, 656, 16 S. E. 2.

When the Remedy Is by Mandamus.—When the county commissioners have failed in the performance of their duties, as to permit and require an interference of the court by civil process, the remedy is by mandamus. Board v. Commissioners, 150 N. C. 116, 52 S. E. 724.

Liability of Commissioners.—A county commissioner is liable to the penalty imposed when he acts corruptly or grossly, intentionally and willfully neglects or refuses to perform his duty; but where he commits an error in the honest exercise of his judgment he is not liable to the penalty. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63.

A complaint before a justice alleging the nonpayment of the penalty accrued under this section for neglect of duty as a member of the board of commissioners for his failure to require an itemized account, fully verified by the oath of the claimant, before he audited and approved such account, as required by section 153-64, states a cause of action. Turner v. McKee, 137 N. C. 251, 49 S. E. 330.

Same—Failure to Declare Sheriff's Office Vacant. — A member of a board of county commissioners is liable for the penalty prescribed by this section, for failure of the board to declare the office of sheriff vacant and fill the same, when such sheriff has not complied with the requirements of the statutes, in respect to the renewal of his official bonds and accounting for public moneys received by him. Bray v. Creekmore, 109 N. C. 49, 13 S. E. 723.

Same—Six Months' School Term.—A failure on the part of the commissioners to levy taxes to finance the public schools for the minimum term of six months is an indictable offense under this section. Board v. Commissioners, 150 N. C. 116, 121, 63 S. E. 724.

When Defendant to Seek Bill of Particulars.—If a defendant desires further particulars, under an indictment for neglect of duty as a public officer, he should ask for a bill of particulars. State v. Leeper, 146 N. C. 655, 61 S. E. 585.

Cited in Moffitt v. Davis, 205 N. C. 565, 570, 172 S. E. 317.

Art. 3. Forms of County Government.

§ 153-16. Forms of government.—Two forms of county government are recognized, to be designated as the County Commissioners Form and the Manager Form. (1927, c. 91, s. 1.)

I. County Commissioners Form.

§ 153-17. County Commissioners Form defined.—The County Commissioners Form of county government shall be that form in which the government is administered by a board of county commissioners, without a county manager. (1927, c. 91, s. 2.)

§ 153-18. Modifications of regular forms. — There may be modifications of the County Commissioners Form, adopted as hereinafter provided, as follows:

(1) The number of commissioners may be increased from three to five or decreased from five to three.

(2) All commissioners may be elected for two years.

(3) At the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years. (1927, c. 91, s. 3.)

§ 153-19. How change may be made.—Upon a petition filed with the board of county commissioners, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of either of the modifications above set forth, the board of commissioners shall order an election, but may order such election without petition, which election shall be held under the general law governing elections for members of the General Assembly in the county, presenting the question of making the change asked for in the petition. If a majority of the votes cast at such election shall be in favor of the change designated, it shall go into effect at the expiration of the term of office of the then existing board of commissioners. At the general election for county commissioners next preceding the date when the said change goes into effect, the members of the board shall be elected in accordance with the plan adopted. If the members of the board are to be elected for different terms, the term for which each member is to serve shall be indicated in the election; and the members so elected shall hold office for the terms designated, and at the expiration of the term of each member, his successor shall be elected for a term of six years. (1927, c. 91, s. 4.)

II. Manager Form.

§ 153-20. Manager appointed or designated.—The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all the departments of the county government which the board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a whole-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to per-

form such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties. (1927, c. 91, s. 5.)

§ 153-21. Duties of the manager.—It shall be the duty of the county manager (1) to be the administrative head of the county government for the board of commissioners; (2) to see that all the orders, resolutions, and regulations of the board of commissioners are faithfully executed; (3) to attend all the meetings of the board, and recommend such measures for adoption as he may deem expedient; (4) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs; (5) to appoint, with the approval of the county commissioners, such subordinate officers, agents, and employees for the general administration of county affairs as the board may consider necessary, except such officers as are required to be elected by popular vote, or whose appointment is otherwise provided by law; (6) to perform such other duties as may be required of him by the board of commissioners. (1927, c. 91, s. 6.)

§ 153-22. Removal of officers and agents.—The county manager may remove such officers, agents, and employees as he may appoint, and upon any appointment or removal he shall report the same to the next meeting of the board of commissioners. (1927, c. 91, s. 7.)

§ 153-23. Compensation.—The county manager shall hold his office at the will of the board of commissioners, and shall be entitled to such reasonable compensation for his services as the board of commissioners may determine. The board shall also fix the compensation of such subordinate officers, agents and employees as may be appointed by the county manager. (1927, c. 91, s. 8.)

§ 153-24. Manager plan adopted by popular vote.—If the board of county commissioners does not exercise its discretion to appoint or designate a county manager, as above provided, a petition may be filed with the board, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of the manager form of county government. Upon the filing of such petition, the board of commissioners shall order an election to be held under the general laws governing elections for members of the General Assembly in the county, presenting the question of the adoption of the manager form of county government. If a majority of the votes cast at such election shall be in favor of such manager form, the board of commissioners shall proceed to appoint a county manager as provided in this article. (1927, c. 91, s. 9.)

§ 153-25. How often elections may be held.—Not more than one election may be held within any period of twenty-three months upon the question of modifying the county commissioners plan, nor more than one election in any period of twenty-three months upon the question of adopting the manager plan, whether or not any such election resulted in favor of the question submitted or against the same. (1927, c. 91, s. 10.)

III. Certain Powers and Duties of the Board.

§ 153-26. Powers and duties of the board.—The powers and duties of the board of commissioners under the manager form, or the county commissioners form, whether modified as herein provided or not modified, shall be the same as now provided by general or local laws for the administration of the county government, and such additional powers and duties as may be given in this article. But whatever form is adopted, or shall be in use in a county, it shall be the duty of the board of county commissioners to provide, so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county. (1927, c. 91, s. 11.)

§ 153-27. Purchasing agent.—It shall be the duty of the board of commissioners to provide for the purchasing of supplies for the different departments of the county government in such manner as may prevent waste and duplication in purchasing, and may obtain the advantage of purchasing in larger quantities. To that end the board may designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent, whose duty it shall be to superintend the purchasing of all material and supplies for the county, and the board may prescribe the duties of such purchasing agent. (1927, c. 91, s. 12.)

Cited in Board of Education v. Walter, 198 N. C. 325, 328, 151 S. E. 718.

§ 153-28. Care of county property.—It shall be the duty of the board of commissioners to provide for the regular inspection of and care for all the property of the county, including buildings, machinery, and other property used for county purposes, and the board may designate some member of the board or some other officer or agent of the county, whose duties it shall be to make a regular inspection of the county property and report the condition of the same at such times as the board may direct. (1927, c. 91, s. 13.)

IV. Director of Local Government.

§ 153-29. Director of local government to visit local units and offer aid in establishing competent administration.—The terms, 'unit,' or 'local unit,' as the same are used in this article, shall be construed to mean 'unit' as defined in § 159-2. It shall be the duty of the Director of Local Government to visit the local units of government in the State, and to advise and assist the governing bodies and other officers of said units in providing a competent, economical and efficient administration; to suggest approved methods for levying and collecting taxes and other revenues; to suggest such changes in the organization of

local units of government as will best promote the public interests, and to render assistance in carrying the same into effect. (1931, c. 100, s. 1.)

Cross Reference.—As to Local Government Act, see chapter 159.

§ 153-30. Director to devise uniform accounting and recording systems; regular statements from units to director.—The Director of Local Government shall have the power to devise and prepare for use in the local units uniform accounting and recording systems, together with blanks, books, and necessary methods; uniform classifications of revenue and expenditures, and uniform budget blanks and forms; to revise or prescribe, in his discretion, the records of any department or office of the local unit in order to conform to orderly accounting procedure; to transfer all or any part of the financial records of any department or office of the unit, including school records, to the office of the county accountant, municipal accountant, or other similar officer, and to require said county accountant, municipal accountant, or other similar officer to furnish, at any time, monthly or annual statements to the office of the Director of Local Government in Raleigh or to any department, office, or board of the unit, showing financial conditions or budget position at any date, and financial operations covering any period on forms prescribed by said Director of Local Government. The Director shall have the power to require the use of such systems, books, forms, classifications and budgets as provided herein by officers or employees of local units, and to enforce the use of the same. Where the accounting system of any unit shall in part or in whole substantially meet the requirements of uniformity as prescribed by the Director of Local Government, the Director may, in his discretion, approve or modify such system as he may deem necessary. As soon as practicable after March 12, 1931, it shall be the duty of the Director of Local Government to proceed, as rapidly as possible, with the installation of uniform records and systems of accounting in each and every local unit of the State. (1931, c. 100, ss. 1, 3.)

§ 153-31. Director to inspect and supervise the keeping of records; unlawful not to furnish director with requested information.—The Director of Local Government shall have the power to inspect or supervise the keeping of the records of any department or office of any local unit for the purpose of determining that such records are being properly kept and that public money is being properly accounted for, and it shall be unlawful for any officer or employee to fail or refuse to turn over such records or give access to same and give such other information which may be requested of him and relating to the records of his office to the Director or his representative upon request of said Director or representative. (1931, c. 100, s. 1.)

§ 153-32. Violation of two preceding sections misdemeanor. — Any officer or employee of any local unit who shall fail or refuse to observe the provisions of §§ 153-30 and 153-31 shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 100, s. 1.)

V. Miscellaneous.

§ 153-33. All counties affected by this article. —The powers and privileges conferred by this article, and the duties imposed thereby, are conferred and imposed upon every county within the State, whether governed wholly by general laws or governed wholly or in part by local acts. (1927, c. 91, s. 21.)

Art 4. State Association of County Commissioners.

§ 153-34. Membership of association. — The State Association of County Commissioners consists of the boards of county commissioners of the several counties, and any member of the board of any county may be a member of the association, but it is not mandatory for any county to become a member. (1909, c. 870, ss. 1, 2; C. S. 1303.)

§ 153-35. Purposes of association.—The purpose of the association is to promote and cultivate more intimate association and more friendly relations among the county commissioners of the state; to secure as far as possible a uniform valuation of property for taxation; to promote the cause of good roads; to propose laws for the best interests of county governments; to secure uniformity in the handling of county affairs; to propose laws for the protection of county finances, and preservation of resources and assets; and to promote the general welfare of the state. (1909, c. 870, s. 1; C. S. 1304.)

§ 153-36. Powers of association.—The association has power to adopt by-laws, rules and regulations for the government of its members, for the collection of fees and dues, for the number and election of its officers and the duties thereof, for the safe keeping of its property, and the general management of its affairs, and has power to alter, modify or amend such by-laws, rules and regulations, from time to time, as it deems best. (1909, c. 870, s. 3; C. S. 1305.)

§ 153-37. Officers of association.—The officers shall be a president, a vice president at large and ten other vice presidents, or one from each congressional district, a secretary and treasurer, and an executive committee. The duties of the officers shall be prescribed by the by-laws, rules and regulations. (1909, c. 870, s. 4; C. S. 1306.)

§ 153-38. Dues and expenses of members.—There shall be assessed against each county an annual membership fee of five dollars, which shall be paid by the county treasurer upon the order of the board of county commissioners, but the executive committee of the association may increase the annual membership fee to a sum not to exceed ten dollars. The various boards of commissioners are authorized to pay out of the county treasury the expenses of one of its members attending the meetings of the association. (1909, c. 870, ss. 5, 7; C. S. 1307.)

§ 153-39. Meetings of association.—The annual meeting of the association shall be held on Wednesday after the second Monday in August of each year, and the place of meeting shall be designated by the executive committee. Upon ten days notice, the president or a majority of the

executive committee may call a called meeting, and the time and place shall be designated, together with a short statement of the object of the meeting. (1909, c. 870, s. 6; C. S. 1308.)

Art. 5. Clerk to Board of Commissioners.

§ 153-40. Register clerk ex officio to board; compensation.—The register of deeds is ex officio clerk of, and his compensation shall be fixed by, the board of commissioners. (Art. VII, s. 2, N. C. Const.; Rev., s. 1324; Code, s. 710; 1895, c. 135, s. 4; C. S. 1309.)

Cited in O'Neal v. Wake County, 196 N. C. 184, 187, 145 S. E. 28.

§ 153-41. Duties of clerk.—It is the clerk's duty—

1. To record in a book to be provided for the purpose all the proceedings of the board.
2. To enter every resolution or decision concerning the payment of money.
3. To record the vote of each commissioner on any question submitted to the board, if required by any member present.
4. To preserve and file in alphabetical or other due order all accounts presented or acted on by the board, and to designate upon every account audited the amount allowed and the charges for which it was allowed.
5. To keep the books and papers of the board free for the examination of all persons.
6. To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor. (Rev., s. 1325; Code, s. 712; 1905, c. 530; C. S. 1310.)

Cross References.—See also, § 161-23. As to duty to report public funds to the county commissioners, see § 2-46. As to duty of clerk to record votes of commissioners on approval of bonds and liability for failure to do so, see § 109-12.

Correction of Record.—The record of a board of county commissioners may be corrected nunc pro tunc to speak the truth by the board itself. Norfolk, etc., R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534.

Where the county commissioners have exercised their statutory authority to loan county funds to the State Highway Commission, anticipating the allotment of State funds for the building of highways within the county, and have lawfully contracted for that purpose, it may not, after the passage of a later act taking away this power, materially change the contract, but the county commissioners nunc pro tunc may correct the entries on their minutes theretofore duly passed and entered of record so as to make the entry speak the truth as to what had been regularly done, and to this end parol evidence is admissible, the time of the correction so made relating back to the time the entry should have been correctly made. Oliver v. Board of Commissioners, 194 N. C. 380, 139 S. E. 767.

§ 153-42. Clerk to publish annual statement.—The clerk shall annually, on or within five days next before the first Monday of December, make out and certify, and cause to be posted at the courthouse, and published in a newspaper printed in the county, if there is one, for at least four weeks, a statement for the preceding year, showing—

1. The amount, items and nature of all compensation audited by the board to the members thereof severally.
2. The number of days the board was in session, and the distance traveled by the members respectively in attending the same.
3. Whether any unverified accounts were audited, and if any, how much and for what. (Rev., s. 1326; Code, s. 713; C. S. 1311.)

Cross Reference.—As to failure to make reports and discharge other duties, see § 14-231.

Art. 6. Finance Committee.

§ 153-43. Election and duties of finance committee.—The board of commissioners may elect by ballot three discreet, intelligent tax-paying citizens, to be known as the "finance committee," whose duty it is to inquire into, investigate and report by public advertisement, at the courthouse and one public place in each township of the county, or in a newspaper, at their option, if one is published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds, or any malfeasance in office by any county officers. (Rev., s. 1389; Code, s. 758; R. C., c. 28, s. 17; 1838, c. 31, s. 1; 1871-2, c. 71, s. 1; 1897, c. 513; C. S. 1312.)

Constitutional Power to Create.—The Legislature has constitutional power to provide a board of audit and finance for a particular county and to direct that payment of an expert accountant authorized thereunder be made by the county treasurer as a charge against the county's public funds, upon an order made by said board in a certain prescribed manner. Such a power is derived under Article VII, sec. 2, of the State Constitution, providing that the county commissioners shall have control of the county's finances "as may be prescribed by law," taken in connection with section 14 thereof, giving full power to the General Assembly to modify, etc., the provisions of this article and to substitute others, etc. Sou. Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283.

Mistake as to Amount Due.—Money paid under protest should be refunded if it should be shown that there has been a mistake in the report of the finance committee and that the sum was not in fact due. Moore v. Commissioners, 87 N. C. 209, 213.

When Mandamus Will Lie to Enforce Order.—Upon refusal of a county treasurer to pay from the public funds of a county an order made on him by a board of audit and finance for the payment of moneys authorized and prescribed by a legislative enactment, a mandamus will lie. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283.

§ 153-44. Compensation of finance committee.—The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding three dollars per day; but they shall not be paid for more than ten days in any one year. (Rev., s. 2781; Code, s. 763; 1871-2, c. 71, s. 5; 1873-4, c. 107; C. S. 3915.)

§ 153-45. Oath of members.—The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation: I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God. (Rev., s. 1390; Code, s. 762; 1871-2, c. 71, s. 4; C. S. 1313.)

§ 153-46. Powers of finance committee.—The finance committee has power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, is guilty of a misdemeanor, and on conviction in the su-

perior court, shall be fined and imprisoned at the discretion of the court. (Rev., s. 1391; Code, s. 759; R. C., c. 28, s. 17; 1831, c. 31; 1871-2, c. 71, s. 2; 1883, c. 252; C. S. 1314.)

§ 153-47. Penalty on officer failing to settle.—If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who holds any county money, fails duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall forfeit the sum of five hundred dollars, to be sued for in the name of the state and prosecuted for the use and at the expense of the county, unless the court releases the officers from the forfeiture. (Rev., s. 1392; Code, s. 760; R. C., c. 28, s. 19; 1831, c. 31, s. 3; C. S. 1315.)

Cross Reference.—As to duty of county commissioners to sue upon the official bond when officer fails to settle, see § 155-18.

§ 153-48. Annual report of finance committee.—It is the duty of the finance committee to make and publish their reports as hereinbefore directed on or before the first Monday of December in each year. (Rev., s. 1393; Code, s. 761; 1871-2, c. 71, s. 3; C. S. 1316.)

Cross Reference.—As to failure to publish report, see § 14-231.

Art. 7. Courthouse and Jail Buildings.

§ 153-49. Built and repaired by commissioners.—There shall be kept and maintained in good and sufficient repair in every county a courthouse and common jail, at the expense of the county wherein the same are situated. The boards of commissioners of the several counties respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several courthouses and jails, in such manner as they think proper; and from time to time shall order and establish such rules and regulations for the preservation of the courthouse, and for the government and management of the prisons, as may be conducive to the interests of the public and the security and comfort of the persons confined. (Rev., s. 1335; Code, s. 782; R. C., c. 30, s. 1; 1741, c. 33, ss. 1, 2; 1795, c. 433, s. 1; 1816, c. 911, s. 1; C. S. 1317.)

Editor's Note.—By the Act of 1741, ch. 33, the tax herein provided for was to be laid for two years, and to be collected by the sheriff in the same manner with all other public and parish taxes, and to be accounted for by him to the justices of the county court on oath. Viewing the first section of this Act by itself, it would seem that this tax was only temporary, and to be laid at once for two years. But the second section of the Act removes this idea, for by that the justices were empowered to lay a tax of the same character, viz., a poll tax from time to time, as often as it might be necessary to repair or erect public buildings.

This authority was repeated and confirmed by the Act of 1795, ch. 433, by which the taxes were to be laid and collected annually. This brings us to the Act of 1808, c. 755, by which the sheriff was again authorized to collect the tax for public buildings, and was for the first time made accountable to the treasurer of public buildings. The Act of 1816, c. 911, converted this authority into a positive duty, and directed that the justices should, from time to time, lay a sufficient tax, erect and keep in repair the public jail, courthouse and stocks, in their respective counties. In State v. Justice, 11 N. C. 194, 196, Henderson, J., in speaking of these statutes says, "The justices of our county courts are not obliged, by their own exertions, to build and repair jails; they are only to use the means to that end which the law has placed in their power; they are to lay the tax, make the order, appoint a treasurer of public buildings, and appoint commissions to contract for the building of the jail."

The provisions of these Acts are found in a substantial form as section 1, chapter 30 of the Revised Statutes, which is likewise carried forward as section 1, chapter 30 of the Revised Code of 1854. During the upheaval of the Civil War, and the Reconstruction period, which brought about so many changes in North Carolina laws, we find this duty shifted from the old county courts to the county commissioners. The change appears for the first time as section one, chapter thirty-one, of Battle's Revisal of 1872-'73.

Constitutionality.—The power of limited taxation for the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. Lockhart v. Harrington, 8 N. C. 408.

Article XI, sec. 6, of the Constitution (1868) requires that the structure and superintendence of penal institutions of the State be such as to secure the health and comfort of the prisoners. Lewis v. Raleigh, 77 N. C. 229, 230.

Construed Strictly.—The law, imposing the responsibility on municipal corporations for the proper structure and superintendence of their prisons, must be construed strictly. Moffitt v. Asheville, 103 N. C. 237, 257, 9 S. E. 695.

A Necessary Expense.—The building and repairing of a courthouse by the county is a part of its necessary expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607.

When Legislature Imposes a Limit.—When a special act of the Legislature has imposed a limit upon the expense of a county to be incurred in improving its courthouse, the commissioners cannot avoid the will of the Legislature as therein declared by setting up a general power of contracting debts for necessary expenses, limited only by the constitutional limitation of taxation, and thus under an entire contract made beforehand expend a larger amount for the purpose than that prescribed by the special act. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607.

Commissioners' Power to Levy Special Tax.—While the county commissioners have the authority to repair the county's jail and courthouse and to erect new ones in its discretion, it is without authority to levy a special tax to provide for the payment of interest on the bonds issued for that purpose, or to create a sinking fund therefor, for this must be provided for by proper legislation, or paid out of the general revenues and income of the county. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521.

Levy of Taxes to Pay Interest on Bonds.—See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614, wherein this section is treated with §§ 153-1, 153-9, 153-15 and 153-77 to show that taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs as designated in this section.

Action of Commissioners Not Reviewable in Absence of Mala Fides.—It is within the sound discretion of the county commissioners to have the courthouse or jail of the county repaired or to erect new ones on the same sites as a necessary county expense, which will not be reviewed in the courts in the absence of mala fides; and should a bill of indictment be drawn by the solicitor, at the request of the judge holding the courts of the county, and a true bill be found by the grand jury thereon, it is open to the commissioners to set up any available defense they may have. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521.

Judge's Request to Solicitor to Draw Indictment Not Duress.—A request from the judge holding court in a county to the solicitor to draw an indictment against the county commissioners for failing in their duty to provide a proper courthouse and jail cannot alone be regarded as a coercion of the commissioners in regard to their discretionary powers, or as duress to invalidate bonds afterwards to be issued by them in pursuance of their resolutions to build a new courthouse and jail upon the sites of the old ones; and the bonds to be so issued will not be restrained either on that ground or the want of jurisdiction of the judge making the request. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521.

Requirements for Prisoner's Comfort.—The least that is required is that persons confined in any public prison shall have a clean place, comfortable bedding, wholesome food and drink, and necessary attendance. Lewis v. Raleigh, 77 N. C. 229.

Where a sheriff has in an emergency requested a physician to render services to a prisoner in his custody who had been badly wounded resisting arrest, and there is evidence tending to show that under the circumstances he could

not have obtained in time an order from the board of county commissioners that would assume responsibility on behalf of the county to pay them, the objection of the commissioners that under such circumstances the county would not pay for them, and the liability would only attach as to those prisoners delivered at the county jail, is untenable. Spicer v. Williamson, 191 N. C. 487, 132 S. E. 291.

Same—Failure to Provide.—An action cannot be maintained against a county for damages sustained by one while imprisoned in the county jail by reason of the failure of the commissioners to provide adequate means for his health and protection. Manuel v. Commissioners, 98 N. C. 9, 3 S. E. 829.

Where A was arrested at night by a policeman for violation of an ordinance of the city of Raleigh and confined in the city guardhouse in which he died before morning, and in an action for damages instituted by his administrator against the city, the jury found that his death was "accelerated by the noxious air of the guard-house," the plaintiff is entitled to recover. Lewis v. Raleigh, 77 N. C. 229.

Same—Responsibility of Town.—A town is responsible in damages for the gross neglect of its officials in the matter of providing suitable protection for the health of persons confined in the receptacle for prisoners. Shields v. Durham, 118 N. C. 450, 24 S. E. 794.

Same—Liability of Agent of City.—The act of a city's chief of police in causing the incarceration of one violating the laws of the State, and not of the city, in the unsanitary lockup of the city, when unauthorized on the part of the city, does not make the latter responsible in damages for a consequent injury to the health of the prisoner; the right of action existing only against the chief of police. Hobbs v. Washington, 168 N. C. 293, 84 S. E. 391.

Extent of Commissioner's Liability.—In the excellent work of Judge Dillon on Municipal Corporations, (section 963,) the author says: "A county is not liable for a nuisance to a citizen in the erection of a jail in the immediate vicinity of his residence, nor for suffering it to become so filthy and disorderly as to be a nuisance to him and his family." The doctrine is that while these corporate agencies must provide the means and employ the men to perform such duties, they are not personally and by their own labor to perform such menial services; and the default to make them liable must be in neglecting to exercise their authority in the use of labor and money for that purpose, and so must it be charged to make a cause of action against them. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189, 191.

The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N. C. 812, 182 S. E. 493.

§ 153-50. Formation of district jail by contiguous counties.—Any two or more counties contiguous to one another or which lie in a continuous group may enter into an agreement for the construction and maintenance of a district jail. Such agreement shall specify the amount of the construction and maintenance cost to be borne by each county and shall fix the terms upon which such jail may thereafter be used by the counties becoming parties to the agreement.

Such counties may also by agreement establish a jail already built, as a district jail, and provide for the improvement, enlargement, maintenance cost and use thereof.

When and if such district jail has been established, all the counties in such district may then sell or dispose of their separate jails upon such terms as the board of county commissioners may decide. (1933, c. 201.)

Editor's Note.—See 11 N. C. Law Rev. 214.

§ 153-51. Jail to have five apartments.—The common jails of the several counties shall be provided with at least five separate and suitable apartments, one for the confinement of white male criminals; one for white female criminals; one for the colored male criminals; one for colored female criminals; and one for other prisoners. (Rev., s. 1336; Code, s. 783; R. C., c. 30, s. 2; 1795, c. 433, s. 4; 1816, c. 911; C. S. 1318.)

Cross References.—As to separate apartments for the Cherokee Indians of Robeson County, see § 71-2. As to segregation of county prisoners with tuberculosis, see §§ 130-226 to 130-230. As to confining prisoners to improper apartments, see § 14-261.

§ 153-52. To be heated.—It is the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable. A failure to discharge the duty herein specified shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 1337; Code, s. 784; 1879, c. 25; C. S. 1319.)

§ 153-53. Bedding to be furnished.—The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good, warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bedclothing. (Rev., s. 1338; Code, s. 3465; R. C., c. 87, s. 10; 1822, c. 1136; C. S. 1320.)

Failure to Supply Bedclothing.—Where the bedclothing furnished for the inmates of the police prison has been destroyed, but the governing officers of the town are not shown to have had actual notice of the destruction, or to have been negligent in omitting to provide for such oversight of the prison as would naturally be expected to give them timely information of its condition, there is not such a failure in discharging the duties of superintendence as to subject the corporation to liability. Moffitt v. Asheville, 103 N. C. 237, 259, 9 S. E. 695.

§ 153-54. Prison bounds.—For the preservation of the health of persons committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they think fit, not exceeding six acres, adjoining the prison, for the rules thereof; and every prisoner not committed for treason or felony, giving bond with good security to the sheriff of the county to keep within the rules, shall have liberty to walk therein, out of the prison, for the preservation of his health; and on keeping continually within the said rules, shall be deemed to be in law a true prisoner. In order that every person may know the true bounds of said rules, they shall be recorded in the county records, and the marks thereof shall be renewed as occasion may require. (Rev., s. 1339; Code, s. 3466; R. C., c. 87, s. 11; 1741, c. 33, s. 3; C. S. 1321.)

Editor's Note.—The first provision for prison bounds in this State was enacted by the Act of 1741, chap. 33, sec. 3, which is c. 90, sec. 11, of the Rev. St. It seems to be based on a known usage and regulation respecting prisons in England. There, by "rules" of the several courts, debtors and prisoners for misdemeanors have the liberty of walking in the prison yards, or within such other limits as the courts prescribe for their respective prisoners, at such hours and on such days as "the rules" may designate. The "grounds" came in time to be called the "rules of the prison."

In our Act of 1741 the court was authorized to mark off the said prison bounds, or the "rules of the prison." (For a construction of that Act, see Ex parte Bradley, 26 N. C. 543, 544.) This has been changed by making it the duty of the county commissioners to lay off the said bounds.

Purpose.—Both the words and the policy of the section

show the purpose to be simply to preserve the health of those who are so unfortunate as to be in prison. Northam v. Terry, 30 N. C. 175, 176.

Application.—This section does not apply in favor of persons who have been convicted of criminal offenses and sentenced to imprisonment by the judgment of the court. It applies to prisoners who in civil cases are committed to jail on mesne process or on final judgment, and in criminal cases when the prisoner is committed to jail for lack of bail, in order to secure his presence before the appropriate court to answer the criminal charge preferred against him. State v. Pearson, 100 N. C. 414, 417, 6 S. E. 387.

Sheriff Not Guilty of Escape.—By taking a bond from a prisoner under this section, the sheriff is guilty of no escape in letting him out of the walls of the prison, for he does only what the law requires of him. Northam v. Terry, 30 N. C. 175, 176.

When Bond Void. — A bond for keeping the prison bounds, taken from a person arrested before he has been committed to close custody, is void. Northam v. Terry, 30 N. C. 175.

When Prisoner Need Not Tender Bond.—Where a prisoner, desirous of being admitted to the prison bounds, applies to the sheriff, and offers to prepare a bond with ample security, and the sheriff refuses to admit him to the rules, or to take any bond, such conduct on the part of the sheriff is a waiver of any further act to be done by the prisoner, and renders it unnecessary for the prisoner to prepare and tender a bond written and executed in order to maintain his action. Mann v. Vick, 8 N. C. 427.

Art. 8. County Revenue.

§ 153-55. Unlawful for counties not to reduce ad valorem taxes; exceptions; other levies void.—As it was intended by the State Highway Commission Act and the Six Months School Term Act and other acts tending to this result to effect a reduction of ad valorem taxes in the several counties of the State, it is hereby declared to be unlawful for any board of county commissioners, for the fiscal year one thousand nine hundred and thirty-one—one thousand nine hundred and thirty-two and other fiscal years succeeding to make any tax levy, which in the gross does not reflect within three per cent (3%) a reduction in the ad valorem taxes accomplished by these acts. The tax rate for one thousand nine hundred and thirty—one thousand nine hundred and thirty-one shall be the standard from which the reduction shall be made. To this prohibition there shall be the following exceptions:

A. If there should be a new assessment of the value of property for taxation and that assessment should show a reduction in the value of such taxable property, then said board of county commissioners, or any one of them, if the reduction is local, shall levy, in addition to the rate fixed hereinbefore, a rate increased sufficiently to take care of this decrease in the valuation of property in the particular county involved.

B. To prevent a current deficit and, if an emergency should arise, requiring the levy of an additional rate of taxation in a particular county, greater than that herein provided and there should be existing authority for such levy, then the board of commissioners of any county or counties in which such emergency should arise shall be permitted to increase the rate of taxation sufficiently to meet such emergency, when it is declared and the facts upon which the declaration is made are entered at large upon the minutes of the board and the whole matter is referred to the Local Government Commission of the State of North Carolina, which shall have authority to pass upon the application and if, in the opinion of that Commission, a levy of the additional rate is reasonably necessary, then upon certifying this fact to any board of county commissioners, that board shall have authority to increase the levy to the extent necessary to meet the contingency. Standard form of application shall be prescribed by the Local Government Commission.

C. Levies for debt service on outstanding valid indebtedness heretofore incurred, or hereafter permitted by the Local Government Commission.

Except as herein permitted, any levy made by any board of county commissioners, in excess of the limit herein fixed, shall be absolutely void, for whatever purposes such excess shall be levied. (1931, c. 134.)

Editor's Note.—The meaning of this enactment is not entirely clear, except as an expressed determination to have reduced ad valorem taxes. It seems to mean that, taking the tax rate for the current year as a standard and deducting the road tax and the general school tax, the rate must show an ad valorem reduction of the remainder within three per cent. 9 N. C. Law Rev. 362.

The act required the Secretary of State to cause one thousand copies to be printed and distributed as follows: One copy to the chairman of the board of commissioners, one copy to the auditor or county accountant, and one copy to the Chairman of the Board of Education, of each and every county.

Public Laws 1931, c. 255, empowered the Board of Commissioners of Guilford County, in their discretion, to levy the full amount of the tax for the maintenance of the county tuberculosis hospital or so much of the amount duly authorized as may be necessary to maintain the hospital adequately, and to provide for as many persons afflicted with tuberculosis as is possible, notwithstanding the provisions of this section.

§ 153-56. Taxes collected by sheriff or tax collector.—The county taxes shall be collected by the sheriff of the county or the tax collector if one is provided by law. (Rev., s. 1376; Code, s. 723; R. C., c. 28, s. 2; 1798, c. 509, s. 2; 1811, c. 823; C. S. 1322.)

County Taxes Defined.—The words "county taxes" include all amounts levied by taxation and which are to be used in the counties where they are collected, and where they are paid to the county treasurer. Board v. Commissioners, 137 N. C. 63, 49 S. E. 47.

Must Be Collected by Sheriff. — County taxes must be collected by the sheriff of the county. Board v. Commissioners, 137 N. C. 63, 65, 49 S. E. 47.

Constitutional Office.—The Legislature may, within reasonable limits, diminish the emoluments of an office by the transfer of a portion of its duties to another office, or by reducing the salary or the fees, for the incumbent takes the office subject to the power of the Legislature to make such changes as the public good may require. There are offices created by the Constitution which are placed beyond the control of the General Assembly, so that body can neither abolish the office nor reduce its compensation. Mial v. Ellington, 134 N. C. 131, 46 S. E. 961; State v. Gales, 77 N. C. 283; Mills v. Deaton, 170 N. C. 386, 388, 87 S. E. 123; Commissioners v. Steadman, 141 N. C. 448, 54 S. E. 269.

Same—Not to Be Deprived of Right.—The sheriff cannot be deprived of the right to collect taxes by an act of the Legislature, since the office is a constitutional one, and to allow it to be stripped of its more important functions at the will of the Legislature would be equivalent to destruction. King v. Hunter, 65 N. C. 603, 611.

Upon Insanity of Sheriff.—Upon the official ascertainment of the insanity of a sheriff his sureties have the right to collect the current tax list then in his hands. Somers v. Commissioners, 123 N. C. 582, 584, 31 S. E. 873.

School Taxes Included.—All the school taxes are included in the accounting to be made between the county treasurer and the sheriff. Tillery v. Candler, 118 N. C. 888, 889, 24 S. E. 709.

Commission out of School Tax.—A sheriff is entitled to commissions for the collection of the school tax. Board v. Commissioners, 137 N. C. 63, 49 S. E. 47.

Overpayment.—The State Auditor is authorized to make deduction of over-payment in the settlement for taxes collected when there is error in the "clerk's abstract of taxables," and the sheriff is "charged with more than the true

amount," etc., and though the same deductions and corrections are permitted the county in making settlements under this section, these statutes are inapplicable when the credits claimed are not from either of these causes; and to allow them otherwise would be to permit an offset or counterclaim. Commissioners v. Hall, 177 N. C. 490, 99 S. E. 372.

Liable as Insurer.—The authorities are decidedly in favor of the doctrine that a tax collector is an insurer of the safety of all moneys officially received by him against loss by any means whatever, including such losses as arise from the act of God or the public enemy. In the courts of the United States this absolute liability is put mainly on public policy and the evil consequences which would follow from any less rigid rule. United States v. Doshiell, 4 Wall, 182, 18 L. Ed. 319; United States v. Prescott, 3 How., 578, 587, 11 L. Ed. 734; United States v. Keehler, 9 Wall., 83, 19 L. Ed. 574. The reasons apply with equal force to State officials who receive public money, and the same doctrine has accordingly been held in Musey v. Shattuck, 1 Denio 233. Thompson v. Trustees, 30 Ill., 99; Hancock v. Hazzard, 12 Cush. (Mass.) 112; Atkinson v. Whitehead, 66 N. C. 286; Atlantic, etc., R. Co. v. Cowles, 69 N. C. 59; State v. Clarke, 73 N. C. 255, 257.

Obligation Not a Debt in Ordinary Sense.—The obligation of a sheriff to settle for county taxes collected in accordance with "the list of taxables" furnished him, is not a debt in the ordinary sense but a charge imposed by the Legislature, or under its authority, permitting no offset or counterclaim by the sheriff claiming over-payment in his settlement for previous years, in an action to recover the amount due by him in accordance with the list furnished for him the current year. Commissioners v. Hall, 177 N. C. 490, 99 S. E. 372.

Tax Lists in Sheriff's Hands upon Expiration of Term.—While collecting the county taxes is made a part of the duties of a sheriff, it is a separate function, and exists after his term as such, for the purpose of collecting, from the tax lists in his hands, the taxes for the current year, in the absence of legislation to the contrary. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176.

Failure to Answer to Treasurer of Public Buildings. — Where the condition of a sheriff's bond was in these words, "that he shall well and truly account for and pay into the hands of the county trustee, for the time being, all such sum or sums of money as may be or shall come into his hands, or which he ought to collect for the use of the county; and in all things comply with the acts of the General Assembly in such case made and provided;" it was held, that when the sheriff had received a part of the tax laid for the repairs of public buildings, the condition of his bond was violated upon non-payment of it to the treasurer of public buildings, to whom, by the Act of 1808, the sheriff was directed to pay it. Cameron v. Campbell, 10 N. C. 285.

Change of Pay from Salary to Fee Basis. — An act of the Legislature changing the pay of the sheriff from a salary to a fee basis, where it does not direct the incumbent sheriff to deliver the tax list to his successor, will not be construed so as to deprive the incumbent sheriff of the emoluments of his term by requiring that he deliver the tax lists to his successor. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176.

The Legislature, during a sheriff's term of office, may place the sheriff on a salary and provide that the fees for collecting taxes shall go to the county. Mills v. Deaton, 170 N. C. 386, 87 S. E. 123.

Appeal from Commissioners Not Allowed. — An appeal does not lie from the refusal of the county commissioners to allow credits claimed by a sheriff in his settlement with the county. McMillan v. Commissioners, 90 N. C. 28.

Commissioners Cannot Release.—The county commissioners have no power to release the sheriff from his liability to account for and pay over the county taxes. State v. Clarke, 73 N. C. 255, 257.

§ 153-57. Statement of fines kept by clerk.—It is the duty of the clerks of the several courts, and of the several justices of the peace, to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (Rev., s. 1377; Code, s. 725; 1873-4, c. 116, s. 4; 1879, c. 96, s. 1; C. S. 1323.)

Cross Reference.—As to failure to keep proper records, see §§ 14-230 and 14-231.

§ 153-58. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (Rev., s. 1378; Const., Art IX, s. 5; Code, ss. 724, 726; R. C., c. 28, s. 3; 1879, c. 96, ss. 2, 5; C. S. 1324.)

Cross Reference.—As to application of proceeds of dog tax to school funds, see § 67-13.

Constitutional Provision.—The Constitution, Art. IX, sec. 5, appropriates all fines for violation of the criminal laws of the State for establishing and maintaining free public schools in the several counties—whether the fines are for violation of town ordinances made misdemeanors by statute or other criminal statutes. Board v. Henderson, 126 N. C. 689, 36 S. E. 158.

Only Clear Proceeds.—Only the clear proceeds of such penalties as accrue to the State go to the school fund. State v. Maultsby, 139 N. C. 583, 51 S. E. 956.

"Clear Proceeds" Defined.—By "clear proceeds" is meant the total sum less only the sheriff's fees for collection, when the fine and costs are not collected in full. This has been fully discussed and settled. State v. Maultsby, 139 N. C. 583, 585, 51 S. E. 956; Board v. Henderson, 126 N. C. 689, 36 S. E. 158; School Directors v. Asheville, 137 N. C. 503, 508, 50 S. E. 279.

A Fine Defined.—A fine is the sentence pronounced by the court for a violation of the criminal law of the State. Board v. Henderson, 126 N. C. 689, 36 S. E. 158.

Fines, from their nature, being punishment for violation of the criminal law, are imposed in favor of the State and belonging to the State, the Legislature can not appropriate their clear proceeds to any other purpose than the school fund. State v. Maultsby, 139 N. C. 583, 51 S. E. 956; Katzenstein v. Raleigh, etc., R. Co., 84 N. C. 688; State v. Marietta, etc., R. Co., 108 N. C. 24, 30-32, 12 S. E. 1041; Sutton v. Phillips, 116 N. C. 502, 21 S. E. 968, and cases there cited and reaffirmed in Goodwin v. Fertilizer Co., 119 N. C. 120, 122, 25 S. E. 795; Carter v. Wilmington, etc., R. Co., 126 N. C. 437, 445, 36 S. E. 14; Board v. Henderson, 126 N. C. 689, 695, 36 S. E. 158; School Directors v. Asheville, 137 N. C. 503, 508, 50 S. E. 279.

Penalty Defined.—A penalty is the amount prescribed for a violation of the statute law of the State or the ordinance of a town, and is recoverable in a civil action of debt. Board v. Henderson, 126 N. C. 689, 36 S. E. 158.

Fines, Etc., of Municipality.—The section does not extend to fines, penalties or forfeitures, incurred, or arising in the enforcement of ordinances and rules adopted by a municipal corporation for local government. They do not "accrue to the state," nor are they collected in the counties for a violation of penal or military law, or by county officers upon whom this duty is devolved. Wake Com'rs v. Raleigh, 88 N. C. 120, 122.

When Collected by Mayor of Town.—Where such fines are collected through the mayor of a town, by virtue of his authority as justice of the peace, they are to be accounted for to the board of education. It is otherwise as to penalties imposed for the violation of town ordinances, which are to be sued for. Board v. Henderson, 126 N. C. 689, 36 S. E. 158.

An action by a county board of school directors for fines and penalties collected by a city is barred within three years. School Directors v. Asheville, 128 N. C. 249, 38 S. E. 874.

Forfeited Bond of Prisoner.—Where the Governor has granted requisition for a fugitive from justice from another state, to be turned over to the agent of that state here, and the prisoner sued out the writ of habeas corpus before a judge of the superior court, and pending this proceeding he forfeits his appearance bond, payable to the State of North Carolina, the penalty on the bond falls within the provisions of this section and goes to the benefit of the public schools fund of the county, and not to the agent of the state whose requisition had been honored. In re Wiggins, 171 N. C. 372, 88 S. E. 508.

§ 153-59. Expenditures of county funds directed by commissioners.—The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county. (Rev., s. 1379; Code, s. 753; R. C., c. 28, s. 16; 1777, c. 129, s. 4; C. S. 1325.)

Necessary Expenses Determined by Commissioners.—In Wilson v. Holding, 170 N. C. 352, 356, 86 S. E. 1043, Walker J. speaking for the court says: "We have repeatedly held, beginning with Broadnax v. Groom, 64 N. C. 244, 250, and ending with Comrs. v. Comrs., 165 N. C. 632, 81 S. E. 1001, and more recently Hargrave v. Comrs., 168 N. C. 626, 84 S. E. 1044, that what is a 'necessary expense' for a county is to be determined by the sound judgment and discretion of its board of commissioners."

It is within the province of the courts to determine what expenditures fall within the definition of the necessary expenses of a county, the authority for controlling the commissioners in incurring a debt, when the expense is necessary, is not within the purview of the judicial authority. Burgin v. Smith, 151 N. C. 561, 566, 66 S. E. 607, citing Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279; Cromartie v. Commissioners, 87 N. C. 134; Broadnax v. Groom, 64 N. C. 244.

Power to Create Necessary Debts.—The Legislature may confer upon a county the power to create debts for necessary expenses, without the approval of "a majority of the qualified voters" in the county. Evans v. Commissioners, 89 N. C. 154.

When Commissioners' Actions Not Subject to Review.—The commissioners' exercise of their discretion will not be reviewed except when mala fides is shown. Jackson v. Commissioners, 171 N. C. 379, 382, 88 S. E. 521.

Support of Convicts.—The support of the county convicts must be paid out of the general county fund. Chambers v. Walker, 120 N. C. 401, 27 S. E. 77.

Legislature to Determine upon Care of Indigent.—It is the exclusive right of the Legislature to determine how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 388, 18 S. E. 661.

County May Hire Auditors.—The commissioners of a county have the right to contract with skilled expert accountants for the auditing of the books and accounts of the various departments of the county at a price agreed upon, and empowers them to order that the same be paid by the county treasurer out of the county funds. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043.

§ 153-60. County officers receiving funds to report annually.—Sheriffs, treasurers, clerks of any court, registers of deeds and all other officers of the several counties, into whose hands any public funds may come by virtue or under color of their office, shall make an annual account and report of the amount and management of the same, on the first Monday of December, or oftener if required, in each year, to the board of commissioners. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was received, and the amount, date and person to whom paid. It shall be addressed to the chairman of the board of commissioners for the county, and shall be subscribed and verified by the oath of the party making the same, before any person authorized to administer oaths. (Rev., s. 1380; Code, s. 728; 1874-5, c. 151, s. 1; 1876-7, c. 276, s. 1; C. S. 1326.)

Cross References.—As to embezzlement of funds by public officers, see § 14-92. As to failure to report and turn over money, see § 14-231.

§ 153-61. Board to enforce duty to report.—If any person required to make any of the reports herein provided for fails to do so, or if, after a report has been made, the board of commissioners disapprove the same, such board may take such legal steps to compel a proper report to be made, either by suit on the bond of such officer failing to comply or otherwise, as said board may deem best. (Rev., s. 1381; Code, s. 730; 1874-5, c. 151, s. 3; 1876-7, c. 276, s. 3; C. S. 1327.)

§ 153-62. Reports to be recorded in register's office.—If the board of commissioners approves of any of the said reports, it shall cause the same to be registered in the office of the register of deeds in a book to be furnished to the register of deeds by the county, which book shall be marked and styled Record of Official Reports, with a proper index of all reports recorded therein, and each official report shall, if approved, be indorsed by the chairman of the board with the word "approved," with the date of approval, and when recorded by the register of deeds he shall indorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office. (Rev., s. 1382; Code, s. 729; 1874-5, c. 151, s. 2; 1876-7, c. 276, s. 2; C. S. 1328.)

§ 153-63. Penalty for failure to report.—If any clerk, sheriff, justice of the peace, or other officer, fails or neglects to account for and pay over as required by law any taxes on suits, or any fines, forfeitures and amercements, as required by this chapter, or fails to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered in the name of the board of commissioners for the use of the public schools of the county. (Rev., s. 1383; Code, s. 764; R. C., c. 28, s. 7; 1808, c. 756; 1809, c. 769; 1813, c. 864; 1830, c. 1, ss. 11-13; C. S. 1329.)

"Account" Defined.—An account is defined to be "a statement in writing of debts and credits, or of receipts and payment; a list of items of debts and credits, with their respective dates." Black's Dictionary, p. 17. In this section the word is used in this sense, and when not only an account, but payment or settlement, is intended, additional words are used to express that idea. State v. Dunn, 134 N. C. 663, 668, 46 S. E. 949.

Penalty Statute Construed Strictly.—A penalty statute must be strictly construed in accordance with the meaning of the words employed, and must not be extended by implication or construction when the act complained of does not fall clearly within the spirit and letter thereof. Alexander v. R. R., 144 N. C. 93, 56 S. E. 697.

Liability of Clerk for Taxes on Suits.—A superior court clerk, who collects taxes upon suits to an amount unauthorized by law, is nevertheless bound to account for the same to the proper county officer. Hewlett v. Nutt, 79 N. C. 263.

Same—Limitation.—An action against a clerk for a penalty, if not brought within one year, is barred by the statute of limitations. Hewlett v. Nutt, 79 N. C. 263.

Same—County Treasurer as Plaintiff.—The county treasurer is the proper plaintiff in an action on the bond of a superior court clerk to recover money collected by him as taxes on suits. Hewlett v. Nutt, 79 N. C. 263.

§ 153-64. Demand before suit against municipality; complaint.—No person shall sue any city, county, town or other municipal corporation for any debt or demand arising out of contract when the damages are liquidated unless the claimant has made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint is verified and contains the following allegations: (1) That the claimant presented his claim to the lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or (2) that he had presented to the

treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it. (Rev., s. 1384; Code, s. 757; C. S. 1330.)

Purpose of Section.—The purpose of this section was to give the municipality an opportunity to pass upon and pay a claim involving a money demand before it could be subjected to the burden and expense of litigation. It manifestly has no application to suits in equity the object of which is to protect and preserve the rights of complainant as against threatened action by the city or its officers. George v. Asheville, 80 F. (2d) 50, 53, 103 A. L. R. 568.

Demand Must Be Alleged. — This section expressly requires the demand to be alleged in the complaint. Williams v. Smith, 134 N. C. 249, 252, 46 S. E. 502. And is mandatory. R. R. v. Reidsville, 109 N. C. 494, 500, 13 S. E. 865; citing Love v. Commissioners, 64 N. C. 706.

Allegation that claimant had made demand for payment of municipal interest coupons upon the city manager of a city operating under Plan D, is insufficient allegation of demand upon the "proper municipal authorities" as required by this section. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293.

An action to recover the face value of interest coupons on municipal bonds, payment having been refused except at a lower rate of interest, is an action ex contractu, and this section, requiring as a condition precedent that demand for payment be made upon the proper municipal authorities, is applicable. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293.

Same—Failure Taken Advantage of by Demurrer.—It has been uniformly held that failure to allege the demand may be taken advantage of by demurrer. Williams v. Smith, 134 N. C. 249, 252, 46 S. E. 502, citing Love v. Commissioners, 64 N. C. 706; Jones v. Commissioners, 73 N. C. 182.

Verification of Pleading.—When an action against a city on a money demand is instituted in a justice's court the pleading must be written and verified, since this section so requires, and defendant city's motion to nonsuit should be allowed when the action is instituted by summons without written pleadings. Kalte v. Lexington, 213 N. C. 779, 197 S. E. 691.

"Audit" only Applies to Actions Ex Contractu. — In Sheilds v. Durham, 118 N. C. 450, 452, 24 S. E. 794, Furches, J., speaking for the court, said: "We find that all the law dictionaries which we have been able to consult define the word 'audit' to apply only to claims ex contractu. Abbott, Bovier, Rapalje and Lawrence. And these authorities have aided us in coming to the conclusion that this section does not apply to an action for damages like this. Indeed, we do not see how such a claim as this could be audited. It might be compromised by the parties; but this is much more than auditing the same. It is the work of both parties—the agreement of minds, contract and not an ex parte process of auditing," cited, approved and followed in Sheldon v. Asheville, 119 N. C. 606, 610, 25 S. E. 781.

When Judgment Obtained Notice Unnecessary.—When a judgment has been obtained against a county or other municipal corporation, it is not necessary that notice as required in certain cases by this section should be given before bringing an action for mandamus to compel the payment of the judgment. Nicholson v. Commissioners, 121 N. C. 27, 27 S. E. 996.

Includes Claims Ex Contractu for Amount Certain.—Claims against county, including claims ex contractu for amount certain, must be filed as required by this and the following section. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889.

Not Applicable to Actions Ex Contractu unless Damages Are Liquidated. Sugg v. Greenville, 169 N. C. 606, 617, 86 S. E. 695, citing Frishby v. Marshall, 119 N. C. 570, 26 S. E. 251; Neal v. Marion, 126 N. C. 412, 35 S. E. 812.

Recovery of Taxes Illegally Collected. — Where a taxpayer has paid his taxes authorized by an unconstitutional statute under protest, and has complied with the provisions of Revisal, sec. 2855, which regulates and controls actions to recover illegal taxes paid under protest, it is unnecessary to the maintenance of his action to recover them that he follow the provisions of this section, requiring that he present his claim and make his demand, etc. R. R. v. Cherokee County, 177 N. C. 86, 87, 97 S. E. 758.

Cited in Ivester v. Winston-Salem, 215 N. C. 1, 1 S. E. (2d) 88.

§ 153-65. Accounts to be itemized, verified, and audited.—No account shall be audited by the board for any services or disbursements unless it is first made out in items and has attached to and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verification. (Rev., s. 1385; Code, s. 754; 1905, c. 55; 1868, c. 20, s. 10; 1931, c. 445; C. S. 1331.)

Duty of Commissioners.—The law commits to the board of commissioners the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. Martin v. Clark, 135 N. C. 178, 179, 47 S. E. 397; Bennett v. Comrs., 125 N. C. 468, 34 S. E. 632; Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465.

Orders Not Negotiable.—"Orders or warrants issued by a municipal corporation are not negotiable and carry with them none of the privileges of negotiable paper except to pass by delivery upon indorsement." Daniel Neg. Inst., sec. 427; 1 Dillon Mun. Corp., sec. 487; Wright v. Kinney, 123 N. C. 618, 621, 31 S. E. 874.

In Wall v. Monroe, 103 U. S. 74, 26 L. Ed. 430, Field, J., says: "The warrants, being in form negotiable, are transferable by delivery so far as to authorize the holder to demand payment of them and to maintain in his own name an action upon them." Wright v. Kinney, 123 N. C. 618, 621, 31 S. E. 874.

Unauthorized Indorsement. — The unauthorized indorsement of "approved" signed by the chairman of the county commissioners of a county order invalid upon its face, will not render him personally liable, in the absence of fraud and misrepresentation. Wright v. Kinney, 123 N. C. 618, 619, 31 S. E. 874.

What Claims Need Not Be Audited.—While unadjusted claims are required to be audited and ordered to be paid, absolute and unconditional obligations already ascertained and audited are in themselves and upon their face an order and authority in the financial officer, possessing the means not otherwise appropriated, to pay on presentation. Leach v. Commissioners, 84 N. C. 829, 830.

Presumption as to Warrants.—The presumption is that orders issued by county commissioners are for necessary expenses and valid. McCless v. Meekins, 117 N. C. 34, 35, 37, 23 S. E. 99.

Same—Prima Facie.—All the courts agree that municipal warrants are mere prima facie and not conclusive evidence of the validity of the allowed claims against the county by which they were issued. The county is not estopped from questioning the legality of the claims. Wall v. Monroe, 103 U. S. 745; Ouachita v. Wolcott, 103 U. S. 559, and Merritt v. Monticello, 138 U. S. 673, and cases therein cited. Quoted, approved and followed in Wright v. Kinney, 123 N. C. 618, 621, 31 S. E. 874.

The allowance of a claim by a county board of commissioners is not final and conclusive, but is only prima facie evidence of the correctness of the claim. In the case of Commissioners v. Keller, 6 Kan., 510, it is held that the allowance of a claim by the county board is not final and conclusive. It may be re-examined by the board itself, and on appeal may be examined or disallowed in whole or in part by the court. Abernathy v. Phifer, 84 N. C. 712, 714.

Remedies of Holder.—The holder of a valid county warrant, who is refused payment, has two remedies against the county treasurer—either to sue him on his bond, or to apply for a mandamus—over neither of which has a justice of peace jurisdiction. Wright v. Kinney, 123 N. C. 618, 621, 31 S. E. 874.

When County Treasurer Should Refuse to Pay.—If the county treasurer deems the warrant drawn in contravention of a constitutional provision or limitation, he should refuse to pay it. Martin v. Clark, 135 N. C. 178, 180, 47 S. E. 397.

When a Mandamus Will Lie.—A mandamus will lie to compel a county treasurer to pay a warrant out of a specific fund, the warrant having been drawn by the county commissioners. Martin v. Clark, 135 N. C. 178, 47 S. E. 397.

If, after the hearing, they refused to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt, and for such other relief as the party may be entitled to. Martin v. Clark, 135 N. C. 178, 180, 47 S. E. 397; Hughes v. Comrs., 107 N. C. 598, 12 S. E. 465.

§ 153-66. Accounts to be numbered as presented.—All accounts presented in any year, beginning at each regular meeting in December, shall be numbered from one upwards, in the order in which they are presented, and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, shall be carefully entered on the minutes of the board; and no such account shall be withdrawn from the custody of the board or its clerk, except to be used as evidence in a judicial proceeding, and after being so used it shall be promptly returned. (Rev., s. 1386; Code, s. 755; 1868, c. 20, s. 12; C. S. 1332.)

§ 153-67. Claims to be numbered as allowed; copy to board annually.—The clerk of the board of commissioners, if so ordered by the board, shall number all claims, orders and certificates that may be allowed by the board in a book kept for that purpose, and he shall annually, the day before the board proceeds to lay a county tax for the ensuing year, furnish the chairman of the board with a copy of the same. (Rev., s. 1387; Code, s. 751; R. C., c. 28, s. 12; 1793, c. 387; C. S. 1333.)

§ 153-68. Annual statement of claims and revenues to be published.—The board shall cause to be posted at the courthouse within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county. (Rev., s. 1388; Code, s. 752; 1901, c. 196; 1905, c. 227; C. S. 1334.)

Local Modification.—Union: 1929, c. 154.

Requirement Applies to Incoming Board.—The statement required to be published "within five days after each regular December meeting," is for the incoming board, and the statute imposing the penalty, under the strict construction required, is not applicable to members of the outgoing board. Shelton v. Moody, 146 N. C. 426, 59 S. E. 994.

Cited in Jones v. Alamance County, 212 N. C. 603, 194 S. E. 109.

Art. 9. County Finance Act.

§ 153-69. Short title. — This article shall be known and may be cited as "The County Finance Act." (1927, c. 81, s. 1.)

Cross References.—As to Local Government Act, see chapter 159. As to validation of bonds, see §§ 159-50 et seq.

Validity of Passage.—This act was enacted by the General Assembly in compliance with all pertinent constitutional requirements. Frazier v. Board of Commissioners, 194 N. C. 49, 58, 138 S. E. 433.

Purpose of Act.—The purpose of the general assembly in enacting this act is manifest. It was to enable the several counties of the State not only to provide for their future needs by issuing bonds for purposes specified therein, but also to fund their valid indebtedness heretofore incurred in good faith, by issuing bonds and thus relieve the taxpayers of burdensome annual taxation. Hartsfield v. Craven County, 194 N. C. 358, 362, 139 S. E. 698.

It is the declared purpose of this act to put the various counties of the state in a position to live within their incomes. Commissioners' v. Assell, 194 N. C. 412, 140 S. E. 34.

Liberally Construed.—This act should be liberally construed to effectuate its intent. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698.

§ 153-70. Meaning of terms.—In this article, unless the context otherwise requires, the words—

"Governing body" means the board of county commissioners, or the board or body in which the general legislative powers of the entire county are vested.

"Clerk" means the officer acting as clerk of the governing body.

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina.

"Published" means printed in a newspaper published in the county, if there be such a newspaper, but otherwise means posted at the court-house door and in at least three other public places in the county.

"Chief financial officer" means the county accountant, auditor, or other officer designated or appointed by the governing body to supervise the fiscal affairs of the county, unless such officer shall be designated by law. (1927, c. 81, s. 2.)

§ 153-71. Application and construction of article.—This article shall apply to all counties in the State, except as otherwise provided herein. Every provision of this article shall be construed as being qualified by constitutional provisions whenever such construction shall be necessary in order to sustain the constitutionalty of any portion of this article. (1927, c. 81, s. 3.)

§ 153-72. Revenue anticipation loans for ordinary expenses.—Counties may borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed 50 per cent of the amount of uncollected taxes for the fiscal year in which the loan is made, as determined by the chief financial officer and certified in writing by him to the governing body. (1927, c. 81, s. 4.)

Cross Reference.—As to limitations upon the increase of public debt, see N. C. Constitution, Art. V, § 4.

§ 153-73. Revenue anticipation loans for debt service.—For the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, any county may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the loan is made, or the revenues of the next succeeding fiscal year, and such loan shall be payable not later than the end of such next succeeding fiscal year.

In addition to the foregoing powers, a county may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within four months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same

are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the county sufficient to pay the principal and interest thereof. (1927, c. 81, s. 5; 1931, c. 60, s. 63; 1931, c. 294; 1933, c. 259, s. 2; 1939, c. 231, s. 2.)

Editor's Note.—The Act of 1931 added the second and third sentences to this section.

The dates in this section were changed, by Public Laws 1933, c. 259, from March 18th, 1931 to July 1st, 1933.

The 1939 amendment added the second paragraph.

§ 153-74. Notes evidencing revenue anticipation loans.—Negotiable notes shall be issued for all moneys borrowed under the two preceding sections, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby; but all such notes and loans shall mature within the time limited by said two sections for the payment of the original loan No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. All notes herein provided for shall be authorized by a resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such notes, which shall be executed under the seal of the county by the chairman and clerk of the board, or by any two officers designated by the board for that purpose, and any interest coupons thereto attached shall be signed with the manual or facsimile signature of said clerk or of any other officer designated by the board for that purpose. The resolution authorizing issuance of notes for money borrowed under § 153-73 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1927, c. 81, s. 6; 1931, c. 60, s. 59; 1939, c. 231, s. 2(b).)

Cross Reference.—As to certain powers delegated in issuance of notes for temporary loans, see § 159-43.

Editor's Note.—The Act of 1931 amended this section by striking therefrom the words: "If such notes mature not more than six months after their date, they may be disposed of either by public or private negotiations, after five days' notice has been given in some newspaper having a general circulation in the county. If such notes mature more than six months after their date, they shall not be disposed of except in accordance with the provisions of this act governing the disposal of bond anticipation notes maturing more than six months from date."

The 1939 amendment added the last sentence.

§ 153-75. Certification of revenue anticipation notes.—No revenue anticipation notes shall be valid unless there shall be written or printed on the face or the reverse thereof a statement signed by the chief financial officer of the county in the words: "This note and all other revenue anticipation notes of the county amount to less than 50 per cent of the amount of uncollected taxes for the current year": Provided, however, that if such notes are issued under the authority given by § 153-73, said statement may be either in said words or in the words, "This note is issued under § 153-73 of the county finance act for the payment of principal or interest of bonds or notes." (1927, c. 81, s. 7.)

§ 153-76. Certain notes of counties validated; proceeds lost in insolvent banks.—All notes heretofore issued by counties pursuant to the provisions of the County Finance Act applicable to notes issued for money borrowed under § 153-73 are hereby validated, notwithstanding that said notes were issued for the purpose of paying the principal or interest of notes evidencing indebtedness incurred under § 153-72: Provided, that this section shall not be construed to validate securities issued to refund or renew notes, the proceeds from which originally were deposited in banks that have failed, causing the loss of such deposits or making them unavailable to the unit of government. (1931, c. 332.)

§ 153-77. Purposes for which bonds may be issued and taxes levied.—The special approval of the general assembly is hereby given to the issuance by counties of bonds and notes for the special purposes named in this section, and to the levy of property taxes for the payment of such bonds and notes and interest thereon. Accordingly, authority is hereby given to all counties in the state, under the terms and conditions herein described, to issue bonds and notes, and to levy property taxes for the payment of the same, with interest thereon, for the following purposes, including therein purchase of the necessary land and, in the case of buildings, the necessary equipment:

(a) Erection and purchase of schoolhouses.

(b) Erection and purchase of court-house and jails, including a public auditorium within and as a part of a court-house.

(c) Erection and purchase of county homes for the indigent and infirm.

(d) Erection and purchase of hospitals.

(e) Erection and purchase of public auditoriums.

(f) Elimination of grade crossings over railroads and interurban railways, including approaches and damages, when not less than one-half of the cost shall be payable to the county at one time, or from time to time under contract made with a railroad or interurban railway company, the bonds herein authorized to be for the entire cost or any portion thereof.

(g) Acquisition and improvement of lands for public parks and playgrounds.

(h) Funding or refunding of valid indebtedness if such indebtedness be payable at the time of the passage of the order authorizing the bonds or be payable within one year thereafter, or, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds, and all debt not evidenced by bonds which was created for necessary expenses of any county and which remains outstanding on March 7, 1927, is hereby validated. The term 'indebtedness' as used in this clause (h) includes all valid or enforceable indebtedness of a county, whether incurred for current expenses or for any other purpose, except indebtedness incurred in the name of a county on behalf of a school district or township and not payable by means of taxes au-

thorized to be levied on all taxable property in the county. It also includes indebtedness incurred in the name of a county board of education for the maintenance of schools for the six months' term required by the State Constitution. It includes indebtedness evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said indebtedness accrued to the date of the bonds issued. It also includes indebtedness assumed by a county as well as indebtedness created by a county. Bond anticipation notes evidencing indebtedness may, at the option of the governing body, be retired either by means of funding bonds issued under this subsection or by means of bonds in anticipation of the sale of which the notes were issued. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred forty shall be funded or refunded.

(i) A portion to be determined by the governing body of the cost of construction of bridges at county boundaries, when an adjoining county or municipality, within or without the state, shall have agreed to pay the remaining cost of construction.

(j) A portion to be determined by the governing body of the cost of public buildings constructed or acquired in order that a part of such buildings may be used for a purpose hereinabove expressed when a municipality within the county shall agree to pay the remaining cost.

(k) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c).)

Local Modification.—Guilford: 1933, c. 566.

Editor's Note.—The act of 1929 added subsection (m) to this section. The Act of 1931 changed the date in subsection (h).

Public Laws 1933, c. 259, omitted a proviso, from subsection (h), which related to refunding serial bonds and added the second sentence to the definition of the term "indebtedness" contained in that subsection.

The amendment of 1935 omitted from subsection (h) of this section the words "incurred before July 1, 1933" as they appeared in the section twice after the word "indebtedness." The amendment also added to that subsection the last four sentences. The 1935 act, which also amended sections 153-78, 160-378 and 160-379, provided that "sections one and two of chapter two hundred fifty-nine of the Public Laws of one thousand nine hundred thirty-three be and the same are hereby amended to conform to the foregoing amendments." Such section of the 1933 act, so far as the language quoted applies, amended sections 153-73, 153-110 and 160-374.

The 1939 amendment changed the date at the end of subsection (h).

This Section Is Constitutional.—Evans v. Mecklenburg County, 205 N. C. 560, 564, 172 S. E. 323.

The word "repair" although omitted in the rewriting of this section is "necessarily implied by law" when construed in conjunction with § 153-1 and §§ 153-9, 153-49. See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614.

Necessity for Submission to Voters.—A bond order passed by the board of commissioners of a county in this state, under the authority and subject to the provisions of this and related sections, is subject to the approval of the voters of the county, when a petition signed by the requisite number of voters of said county has been filed with the said board of commissioners. Hemric v. Board of Com'rs, 206 N. C. 845, 847, 175 S. E. 168.

Authority is given the county under this section and § 115-92 to issue without a vote bonds for sanitary improvements for its schoolhouses necessary to maintain the constitutional school term in the county, when the maturity dates of the bonds are within the limits fixed by § 153-80. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608.

The board of commissioners of any county in the state, upon compliance with the provisions of this and the following sections, has authority to issue bonds or notes of the county for the purpose of erecting and equipping schoolhouses and purchasing land necessary for school purposes, and to levy taxes for the payment of said bonds or notes, with interest on the same, without submitting the question as to whether said bonds or notes shall be issued or said taxes levied, in the first instance, to the voters of the county, where such schoolhouses are required for the establishment or maintenance of the state system of public schools in accordance with the provisions of the constitution. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825.

Indebtedness Incurred for School Purposes.—Where a county under power conferred by special statute has borrowed money from time to time for the maintenance and equipment of its public schools, its bonds to refund the indebtedness so incurred are valid if issued in conformity with the provisions of this section. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698.

The counties of the state are authorized by this and the following sections to issue bonds and notes for the erection of schoolhouses and for the purchase of land necessary for school purposes, and to levy taxes for the payment of the same, principal and interest, not as municipal corporations, organized primarily for purposes of local government, but as administrative agencies of the state, employed by the general assembly to discharge the duty imposed upon it by the constitution to provide a state system of public schools. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825.

Indebtedness for teachers' salaries held to come within the purview of subsection (h) of this act. Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744.

Refunding Bonds May Be Issued without Submitting Question to Qualified Voters.—Reasonable and necessary expenses incurred in good faith to effect a refunding of county indebtedness authorized by this section held to be a necessary expense of the county, and bonds may be issued therefor without submitting the question to the qualified voters of the county. Morrow v. Board of Com'rs, 210 N. C. 564, 187 S. E. 752.

Section Does Not Include Teacherage as Necessary Equipment of School.—To hold as a matter of law that a teacherage is a part of the necessary equipment of a rural consolidated school would be to go farther than the General Assembly has gone, and, perhaps, entail some judicial engraftment. This section is not fraught with any dubiety of meaning. A teacherage, which is to be run for profit and solely for the benefit of the teachers, is not included within its terms. Denny v. Mecklenburg County, 211 N. C. 558, 559, 191 S. E. 26.

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195.

§ 153-78. Order of governing body required.—Bonds of a county shall be authorized by an order of the governing body, the term "order" being here used to indicate the order, resolution, or measure which declares that bonds shall be issued, in order to differentiate the same from such subsequent resolution as may be passed in respect of details which such order is not required to contain. Such order shall state:

(a) In brief and general terms, the purpose for which the bonds are to be issued, but not more than one purpose of issue shall be stated, the purposes set forth in any one subsection of § 153-77 to be deemed as one purpose, but, in the case of funding or refunding bonds, a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(b) The maximum aggregate principal amount of the bonds;

(c) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(d) That a statement of the county debt has been filed with the clerk, and is open to public inspection;

(e) A clause stating the conditions upon which the order will become effective, and the same shall become effective in accordance with such clause, which clause shall be as follows:

1. If the bonds are funding or refunding bonds, that the order shall take effect upon its passage, and shall not be submitted to the voters; or

2. If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article; or

3. In any other case, that the order shall take effect thirty days after the first publication thereof after final passage, unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

4. No restriction, limitation, or provision contained in any other law, except a law of statewide application relating to the issuance of bonds, notes or other obligations of a county, shall apply to bonds or notes issued under this article for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purposes, unless required by the constitution of this state. The other laws here referred to include all laws enacted prior to the expiration of the regular session of the general assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a county from issuing bonds or notes under any special or public-local law applicable to such county, it being intended that this article shall be cumulative and additional authority for the issuance of bonds and notes. (1927, c. 81, s. 9; 1931, c. 60, s. 55; 1933, c. 259, s. 2; 1935, c. 302, s. 2.)

Local Modification.—Guilford: 1933, c. 566.

Cross References.—As to necessity of approval of the bond issue by the Local Government Commission, see § 159-7. As to facts influencing the Local Government Commission in determining the advisability of bond issues, see § 159-8. As to provisions which may be included in the order, see § 159-46.

Editor's Note.—The last part of subsection (a) relating to description of indebtedness to be funded or refunded and the proviso to subsection (c) were added by Public Laws 1933, c. 259.

The amendment of 1935 made changes only in subsection 4 of this section. In that subsection the words "incurred before July 1, 1933" were omitted and the last two sentences of the section as it now reads were added.

Courts Cannot Supply Deficiency in Order.—In order to constitute a valid issue of county bonds under this article, to purchase schoolhouses to comply with the mandate of our Constitution for a six months term of public schools, as a necessary county expense, without submitting the question to the vote of the people of the county, it is required that the resolution passed by the board of county commissioners so declare the fact to be, and the courts are without authority to supply the deficiency in the order. Hall v. Commissioners, 195 N. C. 367, 142 S. E. 315.

Restraint of Issuance of Bonds.—Where the taxpayers of a county file suit under this section to restrain the issuance of bonds until authorized by the qualified voters of the county, and there is a controversy as to whether the requisite 15% of qualified voters has been obtained to the petition, as set out in § 153-91, a temporary restraining order will be continued until the sufficiency of the petition can be determined. Scruggs v. Rollins, 207 N. C. 335, 177 S. E. 180.

§ 153-79. Order need not specify details of purpose.—In stating the purpose of a bond issue, an order need not specify the location of any improvement or property, or the material of construction. (1927, c. 81, s. 10.)

§ 153-80. Maturities of bonds.—All bonds shall mature as hereinafter provided, and no funding or refunding bonds shall mature after the expiration of the period herein fixed for such bonds, respectively; and no other bonds shall mature after the expiration of the period estimated by the governing body as the life of the improvement for which the bonds are issued, each such period to be computed from a day not later than one year after the passage of the order. Such periods shall not exceed the following for the respective classes of bonds:

(a), (b) Funding or refunding bonds, fifty years.

(c) Elimination of grade crossings, thirty years.

(d) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.

(e) Public buildings, if they are—

1. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, flooring, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring supported by wooden sleepers on top of the fireproof floor, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years;

2. Of non-fireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years;

3. Of other construction, twenty years.

(f) Land for airports or landing fields, including grading and drainage, forty years.

(g) Buildings, equipment and other improvements for airports or landing fields, other than grading and drainage, ten years. (1927, c. 81, s. 11, 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s 2.)

Editor's Note.—The Act of 1929 added subsections (f) and (g) to this section. The Act of 1931 struck out clauses (a) and (b) and inserted in lieu thereof clause (a), (b).

Prior to Public Laws 1933, c. 259, subsection (a), (b) of this section provided for thirty years in case the debt was

less than ten per cent of the assessed valuation of property in the county and fifty years in other cases.

§ 153-81. Accelerating maturity of bonds and notes of counties and municipalities. — Any municipality or county may provide that its bonds or notes shall become due and payable before maturity at the election of the holders or a majority in amount of the holders or a representative of the holders, upon the happening of such events and upon such conditions and subject to such limitations (which may include a provision for rescission of action taken in the exercise of said election) as may be set forth in a resolution or ordinance passed before the issuance of the bonds or notes: Provided, however, that such a provision, in order to become effective, must either be set forth in the bonds or notes or incorporated therein by reference to such resolution or ordinance. The negotiability of such bonds or notes shall not be affected by the adoption of such provision or by the recital thereof in the bonds or notes. (1931, c. 418; 1933, c. 258, s. 3.)

Editor's Note.—Public Laws 1933, c. 258, inserted the words "or a majority in amount of the holders" and added the last sentence relating to negotiability.

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398.

§ 153-82. Consolidated bond issues. — It shall be lawful to consolidate into one issue bonds authorized by two or more orders for different purposes, in which event the bonds of such consolidated issue shall mature within the average of the periods estimated as the life of the several improvements, taking into consideration the amount of bonds to be issued on account of each item for which a period shall be estimated. (1927, c. 81, s. 12.)

§ 153-83. Sworn statement of debt, before authorization of bonds for school purposes.— After the introduction, and at least ten days before the final passage of an order for the issuance of bonds for school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt or by assumption of debt, including debt incurred by the county board of education, and including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for school purpose, nor including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding school debt.

(c) Bonded school debt to be incurred under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) School sinking funds, being money or investments thereof pledged and held for the payment of principal of outstanding school debt.

(f) School credits, being principal sums owing to the county from school districts which are pledged to and when collected will be used in the retirement of outstanding school debt.

(g) Amount of unissued funding and refunding school bonds included in gross debt.

(h) The sum of items "e" and "f" and "g".

(i) Net school debt, being the sum by which item "d" exceeds item "h".

(j) The percentage that the net school debt bears to said assessed valuation. (1927, c. 81, s. 13.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

§ 153-84. Sworn statement of debt before authorization of bonds for other than school purposes.— After the introduction and at least ten days before the final passage of an order for the issuance of bonds for other than school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for other than school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt, or by assumption of the debt, including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for other than school purposes, or including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding debt for other than school purposes.

(c) Bonded debt to be incurred for other than school purposes under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) Sinking funds (except school sinking funds), being money or investments thereof pledged and held for the payment of principal of debt outstanding for other than school purposes.

(f) Moneys payable to the county by a railroad or interurban railway company, under contract, as all or part of the cost of grade crossing elimination, if such moneys are pledged to and when collected will be used in the retirement of outstanding debt for other than school purposes.

(g) Amount of unissued funding and refunding bonds not for school purposes included in gross debt.

(h) The sum of items "e", "f" and "g".

(i) Net debt for other than school purposes, being the sum by which item "d", exceeds item "h".

(j) The percentage that the net debt for other than school purposes bears to said assessed valuation. (1927, c. 81, s. 14.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

Failure to File Statement.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with this section, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional

grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under § 153-90. Garrell v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701.

§ 153-85. Financial statement filed for inspection.—The sworn statement of debt shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this article, unless it appears, in an action or proceeding commenced within the time limited by this article for actions to set aside bond orders, first, that the representations contained therein could not by any reasonable method of computation be true; or, second, that a true statement would show that the order authorizing the bonds could not be passed. (1927, c. 81, s. 15.)

§ 153-86. Publication of bond order.—As soon as possible after the introduction of the order and the filing of the financial statement hereinabove required, the clerk shall publish the order as introduced. Before publishing the same he shall fix an hour and day for a public hearing upon the order unless the governing body shall itself have fixed such hour and day. The hour and day, if fixed by the clerk, shall be ten o'clock A. M. of the first Monday of the following month, if ten days shall elapse between such publication and the day so fixed, but otherwise shall be ten o'clock A. M. of the first Monday of the next succeeding month. In connection with the publication of the order, and immediately below the same, the clerk shall publish a statement signed by him with blanks properly filled in substantially the following form:

"The foregoing order has been introduced and a sworn statement has been filed under the county finance act showing the assessed valuation of the county to be $.....and the net debt for school purposes (substitute net debt for other than school purposes if the proposed bonds are for other than school purposes) including the proposed bonds, to be $..... A tax will be levied for the payment of the proposed bonds and interest, if the same shall be issued. Any citizen or taxpayer may protest against the issuance of such bonds at a meeting of the board of county commissioners to be held at..... o'clock .....M. ....., 19.... or an adjournment thereof.

.....

"Clerk of Board of Commissioners."

(1927, c. 81, s. 16.)

Section Mandatory. — The proper publication of the notices required by this act is mandatory, and cannot be dispensed with. Frazier v. Board of Commissioners, 194 N. C. 49, 59, 138 S. E. 433.

Sufficiency of Publication of Various Orders.—The provisions as to notice given to taxpayers, etc., required by this section, of an opportunity to be heard before the county may issue bonds for various purposes, is sufficiently complied with if the several orders of the county commissioners are published in the same advertisement and a date and place fixed for passing upon the objections made, if any, separately placed in the publication and distinctly referring to each of the separate purposes. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433.

The publication of one statement in connection with all three orders was sufficient as a compliance with this section, a statement for each order not being necessary. Frazier v. Board of Commissioners, 194 N. C. 49, 59, 138 S. E. 433.

§ 153-87. Hearing; passage of order; debt limitations.—On the day so fixed for the public hearing, but not earlier than ten days after the first publication of the order, the governing body shall hear any and all citizens and taxpayers who may desire to protest against the issuance of the bonds, but such hearing may be adjourned from time to time. After such hearing, the governing body may pass the order in the form of its introduction, or in an amended form but the amount of bonds to be issued shall not be increased by such amendment, nor the purpose of issuance substantially changed, without due notice and hearing as above required. Provided, however, that no order for the issuance of school bonds shall be passed unless it appears from said sworn statements that the net school indebtedness does not exceed five per cent of said assessed valuation, unless the bonds to be issued are funding or refunding bonds; and no order shall be passed for the issuance of bonds other than school bonds unless it appears from said sworn statement that the net indebtedness for other than school purposes does not exceed five per cent as said assessed valuation, unless the bonds to be issued are funding or refunding bonds: Provided, however, that if the net school debt of any county shall, on March 7, 1927, be in excess of four-fifths of the limitation above fixed therefor, such order for the issuance of school bonds may be passed, if the net debt shall not be increased thereby more than two per cent of such assessed valuation; and that if the net debt of any county for other than school purposes shall, on March 7, 1927, be in excess of four-fifths of the limitations above fixed therefor, such order may be passed if the net debt for other than school purposes shall not be increased thereby more than two per cent of such assessed valuation: Provided, further, that if any county shall assume all outstanding indebtedness for school purposes of every city, town school district, school taxing district, township or other political subdivision therein, the limit of the net debt of such county for school purposes, including the debt so assumed, shall be eight per cent (8%) and the privilege of creating or assuming an additional gross debt of two per cent (2%) under certain circumstances shall not be allowed such county. (1927, c. 81, s. 17.)

Cross Reference.—As to hearings by the Local Government Commission, see § 159-9.

Editor's Note.—For a discussion of this section, see 8 N. C. L. Rev. 471 et seq.

Cited in Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3.

§ 153-88. Material of construction and other details.—The statements as to kind and material of construction, so far as the same constitute conditions upon which maturities of bonds are to be determined under this article, as well as all details of bonds not required to be set forth in the order, may be set forth in resolution or resolutions to be passed on or after the passage of the order, and before the issuance of the bonds. (1927, c. 81, s. 18.)

§ 153-89. Publication of bond order.—A bond order after final passage thereof shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled

in) with the printed or written signature of the clerk appended thereto, shall be published with the order:

"The foregoing order was finally passed on the ..... day of ....., 19..... and was first published on the ..... day of ..... 19 ..... Any action or proceeding questioning the validity of said order must be commenced within thirty days after its first publication.

.....
Clerk."

(1927, c. 81, s. 19.)

§ 153-90. Limitation of action to set aside order.—Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the order or supposed order referred to in the notice. After the expiration of such period of limitations, no right of action or defense upon the validity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1927, c. 81, s. 20.)

Constitutionality.—This section has not been construed by the Supreme Court, but statutes requiring notice to be given and providing that failure to give a notice within the time specified will operate as a bar, have been frequently construed and upheld. Kirby v. Board of Commissioners, 198 N. C. 440, 443, 152 S. E. 165.

Suit to Restrain Issuance of Bonds.—Where the board of county commissioners have under ordinance duly passed and hearing thereon had are about to issue bonds for the necessary purpose of erecting a jail, etc., contrary to the restrictions of the County Finance Act limiting the amount of bonds for other than school purposes to an amount not to exceed five per cent of the property valuation, a suit to restrain the issuance of the bonds is required by the express terms of this section to be commenced within thirty days after the publication of the required notice and order of the issue, and a suit instituted after the time prescribed cannot be maintained and the validity of the bonds will be upheld. The question of whether the statute is strictly one of limitation or a condition annexed to the cause of action is immaterial. Kirby v. Board of Commissioners, 198 N. C. 440, 152 S. E. 165.

When the proposed bond issue contravenes the constitution, the requirement of this section that actions to restrain issuance of bonds by counties must be instituted within 30 days of the first publication of notice of the adoption of the bond resolution, does not apply. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418.

Suit to Restrain Issuance of Bonds.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with § 153-84, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under this section. Garrell v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701.

§ 153-91. Petition for referendum of bond order.—A petition demanding that a bond order be submitted to the voters may be filed with the clerk within thirty days after the first publication of the order. The petition shall be in writing and signed by voters of the county equal in number to at least fifteen per centum of the total number of votes cast at the last preceding election for the office of Governor. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers. The petition need not be all on one sheet and if on more than one sheet, it shall be verified as to each sheet. The clerk shall investigate the sufficiency of the petition and present it to the governing body, with a certificate stating the result of his investigation. The governing body, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and the determination of the governing body shall be conclusive. (1927, c. 81, s. 21.)

Bond Order Is Valid in Absence of Petition for Referendum.—Where no petition has been filed within the time prescribed by this section, praying that a bond order duly passed by the board of commissioners of a county, be submitted to the voters of the county, in accordance with the provisions of the act, the bond order is valid and effective, without the approval of the voters of the county. Hemric v. Board of Com'rs, 206 N. C. 845, 847, 175 S. E. 168.

But It Is Otherwise if Petition Is Filed.—Where a petition is filed in accordance with the provisions of this section, praying that a bond order duly passed by the board of commissioners of a county in this state, authorizing and directing the issuance of bonds of the county for the purpose of procuring money for the purchase, construction, improvement or equipment of schoolhouses required for the maintenance of a school in each of the districts of the county as required by the Constitution of the State, be submitted to the voters of the county, such bond order is not valid or effective, until the same has been approved by the voters of the county as provided. Hemric v. Board of Com'rs, 206 N. C. 845, 847, 175 S. E. 168.

§ 153-92. What majority required.—If a bond order provides for the issuance of bonds for a purpose other than the payment of necessary expenses of the county, the approval of the qualified voters of the county, as required by the Constitution of North Carolina, shall be necessary in order to make the order operative. If, however, the bonds are to be issued for necessary expenses, the affirmative vote of the majority of the voters voting on the bond order shall be sufficient to make it operative, in all cases where the order is required by this article to be submitted to the voters. (1927, c. 81, s. 22.)

Cross Reference.—See Art. V, § 4 of N. C. Constitution.

Lands and Equipment for Schools.—The issuance of bonds for school purposes does not require the submission of the question to the voters for the issuance of county bonds for the purchase of additional lands or equipment for established public schools, when the commissioners proceed under this act. The Constitution, Art. IX, sec. 2. Art. VII, sec. 7, does not apply. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433.

Cited in Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418.

§ 153-93. When election held.—Whenever the taking effect of an order authorizing the issuance of bonds is dependent upon the approval of the order by the voters of a county, the governing body may submit the order to the voters at an election to be held not more than one year after the passage of the order. The governing body may call a special election for that purpose, or may submit the order to the voters at the regular election for county officers next succeeding the passage of the order, but no such special election shall be held within one month before or after a regular election for county officers. Several orders or other matters may be voted upon at the same election. (1927, c. 81, s. 23.)

§ 153-94. New registration. — The governing body of the county in which such election is held may in their discretion, order a new registration of the voters for such election. The books

for such new registration shall remain open in each precinct from 9 A. M. to 6 P. M. on each day, except Sundays and holidays, for three weeks, beginning on a Saturday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case any registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary. (1927, c. 81, s. 24.)

§ 153-95. Notice of election.—A notice of the election shall be deemed sufficiently published if published once not later than thirty (30) days before the election, and thereafter twice before the election, at intervals of at least one week between publications. Such notice shall state the date of the election, the maximum amount of the proposed bonds, and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The notice shall state the places at which the election will be held, but without enumeration thereof may state that the election will be held at the same places at which the last preceding election was held for members of the General Assembly, with such changes as may have been ordered by the governing body. (1927, c. 81, s. 25.)

§ 153-96. Ballots.—The form of the question as stated on the ballot shall be in substantially the words: "For the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor" and "Against the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (x). (1927, c. 81, s. 26.)

§ 153-97. Returns canvassed. — The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each order submitted but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall determine and declare the result of the election. (1927, c. 81, s. 27.)

§ 153-98. Application of other laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for members of the General Assembly in said county, and governing the registration of electors for such elections. (1927, c. 81, s. 28.)

§ 153-99. Statement of result.—The governing body shall prepare a statement showing the number of votes cast for and against each order submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the governing body and delivered to the clerk, who shall record it in the minutes of the governing body, and file the original in his office and publish it once. (1927, c. 81, s. 29.)

§ 153-100. Limitation as to actions upon elections.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result as provided in § 153-99. (1927, c. 81, s. 30.)

§ 153-101. Preparation for issuing bonds.—At any time after the final passage of a bond order, all steps preliminary to the actual issuance of bonds under the order may be taken, but the bonds shall not be actually issued unless and until the order takes effect. (1927, c. 81, s. 31.)

§ 153-102. Within what time bonds issued.—After a bond order takes effect, bonds may be issued in conformity with its provisions at any time within three years after the order takes effect, unless the order shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding: Provided, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the order takes effect. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d).)

Local Modification. — Buncombe and municipalities therein: 1943, c. 56, s. 1.

Editor's Note.—The 1939 amendment added the proviso to this section.

§ 153-103. Bonded debt payable in installments.—Each bond issue made under this article shall mature in annual installments or series the first of which, if funding bonds, shall be made payable not more than two years, and if not funding bonds, not more than three years, after the date of the first issued bonds of such issue and the last within the period prescribed by § 153-80 for bonds of the class issued. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or refunding bonds. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2.)

Editor's Note.—Prior to the Amendemnt of 1933, P. L., c. 259, the section applied to funding and refunding bonds except in cases where the debt exceeded ten per cent of the value of county property.

§ 153-104. Medium and place of payment.—The bonds may be made payable in such kind of

money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1927, c. 81, s. 34.)

§ 153-105. Formal execution of bonds. — The bonds shall be issued in such forms as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or if the governing body makes no such designation, then by the chairman of the governing body and by the clerk, and the corporate seal of county or of the governing body shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, not withstanding any change in officers or in the seal of the county occurring after the signing and sealing of the bonds. (1927, c. 81, s. 35.)

§ 153-106. Registration and transfer of bonds. —(a) Bonds payable to bearer. Bonds issued under this article shall be payable to the bearer, unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and effect. A county may keep in the office of a county officer to be designated by the governing body, or in the office of a bank or trust company appointed by the governing body as bond registrar a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and transfer noted on bond. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond, as to both principal and interest, he shall also cut off and cancel the coupons, and endorse upon the back of the bond a statement that such coupons have been cancelled.

(d) Agreement for registration. A county may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only, or as to both principal and interest, at the option of the bondholder. (1927, c. 81, s. 36.)

§ 153-107. Application of funds.—The proceeds of the sale of bonds and bond anticipation notes under this article shall be used only for the purposes specified in the order authorizing said bonds, and for the payment of the principal and interest of such notes issued in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. If any notes issued in anticipation of the sale of bonds shall be outstanding and unpaid when the proceeds of the sale of bonds are received, such proceeds, or an amount thereof sufficient to retire such notes, shall be immediately, upon the receipt thereof, placed in a separate fund, which shall be held and used solely for the payment of such notes. If any member of the governing body or any county officer shall vote to apply or shall apply, or shall participate in applying any proceeds of bonds or bond anticipation notes in violation of this section, such member or such officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State's prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby. (1927, c. 81, s. 38.)

Cross Reference.—As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159.49.1.

§ 153-108. Bond anticipation loans. — At any time after a bond order has taken effect, as provided in § 153-78, a county may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time of taking effect of the order authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond order upon which such loans are predicated, shall amend or repeal such order so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing order shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. The said notes, if maturing not more than six months from their date, may be disposed of by public or private negotiations, after five days notice published in some newspaper

having a general circulation in the county, but if maturing more than six months from date, they shall be sold after advertisement as provided in this article for advertisement and sale of bonds. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in § 153-105 for the execution of bonds. They shall be submitted to and approved by the attorney for the county before they are issued, and his written approval endorsed on the notes. (1927, c. 81, s. 39.)

§ 153-109. Bonds and notes shall recite the authority for issuance.—All bonds and notes authorized by this article shall recite that they are issued under and pursuant to this article. (1927, c. 81, s. 40.)

§ 153-110. Taxes levied for payment of bonds.—The full faith and credit of the county shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this article, including bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the county sufficient to pay the principal and interest of all bonds issued under this article as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose. The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a county may levy; the General Assembly does here give its special approval to the levy of taxes in the manner and to the extent provided by this article for the payment of obligations incurred pursuant to this article for the special purposes for which such obligations are in this article authorized. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the county. If any member of the govening body or any county officer shall vote to apply or shall apply or participate in applying any taxes in violation of this section, such member or officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby.

Nothing in this section shall be construed as authorizing an unlimited tax for the payment of bonds not issued for a special purpose within the meaning of section six of article five of the constitution of North Carolina. It is the intention of this article, however, to authorize the issuance of funding and refunding bonds and notes as herein provided in cases where taxation for their payment is limited by the constitution, as well as in other cases. The general assembly hereby declares that an emergency exists by reason of the present extraordinary financial condition of the counties of this state, and hereby gives it special approval to the levying of taxes to the fullest extent permitted by the constitution for the purpose of paying bonds and notes issued hereunder to fund or refund or renew indebtedness outstanding on March 3, 1931, or incurred before July first, nineteen hundred and thirty-three, and hereby declares that the payment of such bonds and notes constitutes a special purpose: Provided, in case of funding or refunding bonds which do not mature in installments as provided in § 153-103, a tax for the payment of the principal of the said bonds need not be levied prior to the fiscal year or years said bonds mature, unless it is so provided for in an order or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such order or resolution. (1927, c. 81, s. 41; 1931, c. 60, s. 60; 1933, c. 259, s. 2.)

Cross Reference.—As to statute authorizing counties, with the approval of the local government commission, to avail themselves of the Federal Bankruptcy Act, see § 23-48.

Editor's Note.—The Act of 1931 added the second paragraph to this section.

Public Laws 1933, c. 259, added the last proviso of this section as it now reads.

§ 153-111. Destruction of surrendered bonds.—All surrendered county bonds may, in the discretion of the board of county commissioners, be destroyed. Before such bonds are destroyed, the county treasurer shall make a correct descriptive list of all bonds of the county surrendered, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, the surrendered bonds shall be destroyed by burning in the presence of the chairman of the board of county commissioners, the county accountant or treasurer or auditor, the county attorney, the secretary of the board of county commissioners and the county superintendent of public instruction, who shall each certify under his hand in such book that he saw such described bonds so burned and destroyed. (1941, c. 293.)

§ 153-112. Enforcement of article. — If any boards or officer of a county shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this article to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers and other persons to carry out such order and remove such board or officer who has thus refused to carry out such order. (1927, c. 81, s. 42.)

§ 153-113. Repeals.—All acts and parts of acts, whether general, special, private or local, authorizing or limiting or prohibiting the issuance of bonds or other obligations of a county or counties, are hereby repealed: Provided, further, that the repeal shall not affect the validity of any bonds

or obligations issued or incurred prior to March 7, 1927, nor shall such repeal affect the powers, duties or obligations for providing for the payment of such bonds or obligations or interest thereon. Provided, further, that this article shall not affect any local or private act enacted at the 1927 session of the General Assembly, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the 1927 session of the General Assembly; and any county may at its option proceed under any such local or private act applicable to it enacted at the 1927 session of the General Assembly, without regard to the restrictions imposed by this article, or may proceed under this article without regard to the restrictions imposed by such local or private act: Provided, further, that any county which prior to March 7, 1927, has entered into a valid contract for permanent improvements for which, prior to March 7, 1927, such county was empowered by law to issue bonds in sufficient amount, is hereby authorized to issue such an amount of bonds as may be necessary to comply with said contract, either in the manner provided by this article or in the manner provided by law at the time such contract for permanent improvements was made: Provided, further, that nothing herein contained shall be applicable to or shall govern the method by which any county board of education may borrow money from the special building fund created by Chapter 201, Public Laws of 1925, or from any special building fund of the State created by any law enacted at the regular session of the General Assembly of 1927, or from the State Literary Fund as provided in §§ 115-220 to 115-224, as amended, but the limitations of this article upon the amount of net school debt shall apply to such borrowing.

Provided, further, that except as provided in § 153-78 nothing herein contained shall have the effect of repealing any act in force on March 7, 1927, or enacted by the session of the General Assembly of one thousand nine hundred twenty-seven, requiring the question of issuing bonds by any county to be submitted to a vote of the people. (1927, c. 81, s. 43; 1929, c. 110; 1931, c. 60, s. 61; 1941, c. 266.)

Editor's Note.—The Act of 1931 struck out the last proviso relating to Rockingham and New Hanover counties formerly appearing in this section. The Act of 1929 had already omitted New Hanover from the proviso. The Act of 1931 further amended this section by inserting the reference to § 153-78 in the last proviso.

The 1941 amendment inserted in the next to the last proviso of this section the provisions relating to the state literary fund.

Inconsistent Public-Local Law.—This section expressly repeals a public-local law applied to a county when inconsistent with its terms. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698.

Art. 10. County Fiscal Control.

§ 153-114. Title; definitions.—This article shall be known and may be cited as "The County Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meanings:

(a) "Sub-division" means a township, school district, school taxing district, or other political corporation or subdivision within a county, including drainage and other districts, the taxes for which (taxes as here and elsewhere used in this article include special assessments) are under the law levied by the board of county commissioners of the county.

(b) "Debt service" means the payment of principal and interest of bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(c) "Constitutional school maintenance" means the maintenance of schools for the six months term required by the State Constitution.

(d) "Department" means any division of county functions or activities.

(e) "Department head" means the principal officer of any office, board, commission, institution, or branch of the county government in charge of a department.

(f) The "Fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the thirtieth day of June.

(g) "Surplus revenues" means revenues in excess of the estimated revenues against which an appropriation is made, and arises when actual revenues exceed estimated revenues at the end of a fiscal year.

(h) "Unencumbered balance" means the balance of an appropriation after charging thereto all obligations for goods and services and all contracts or agreements payable from the appropriation, and all payments made from the appropriation except payments of such obligations, contracts, or agreements already charged against the appropriation.

(i) "Fund" means the separate fund or account provided for a distinct function of government, as such functions are shown in (j) below.

(j) The funds required by this article are funds for each of the following functions of government.

(1) Current operating expense of the county.

(2) Constitutional school maintenance.

(3) County-wide school expenses over and above constitutional school maintenance.

(4) County debt service.

(5) Each special purpose to which the General Assembly has given its special approval, separately stated.

(6) Debt service of each subdivision, separately stated.

(7) Maintenance of each subdivision, separately stated.

(8) Permanent improvements in each subdivision separately stated. (1927, c. 146, ss. 1, 2.)

Cross Reference.—As to application of this article to municipalities, see §§ 160-409 et seq.

Common Contingent Fund.—A municipality is without authority to make an appropriation and levy a tax for a common contingent fund, and while it may appropriate an additional five per cent for emergency purposes for each fund for which it has authority to levy a tax, which becomes a part of the fund requirement to be covered by a subsequent tax levy, it may not make a transfer from one fund to another except from the general municipal expense fund, under this and following sections. Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271.

What are necessary municipal expenses for which a tax may be levied without a vote is a question for the courts and the courts determine what class of expenses are necessary expenses of a municipality, and the governing body of

the municipality determines when such expenses are necessary for that particular locality. Id.

Cited in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843.

§ 153-115. County accountant.—It shall be the duty of the board of county commissioners in each county in the State, on or before the first Monday in April one thousand nine hundred and twenty-seven, and biennially thereafter, to appoint some person of honesty and ability, who is experienced in modern methods of accounting, as county accountant, to hold such office at the will of the board, or until the appointment of his successor; but, in lieu of appointing a county accountant in counties in which there is an auditor, the board shall impose and confer upon the county auditor all the powers and duties herein imposed and conferred upon county accountants, and in any county of the State in which there is no auditor, the board may impose and confer such powers and duties upon any county officer, except the sheriff or the tax collector or the county treasurer, or any person or bank acting as county financial agent or performing the duties ordinarily performed by a county treasurer or county financial agent. If such duties and powers are imposed or conferred upon any officer of the county, the board may revise and adjust the salary or compensation of such officer in order that adequate compensation may be paid to him for the duties of his office. Wherever in this article reference is made to the county accountant, such reference shall be deemed to include either the person appointed as county accountant or the officer upon which the duties thereof are imposed. (1927, c. 146, s. 3.)

Local Modification.—Brunswick: 1931, c. 34; 1941, c. 71; 1943, c. 327; Harnett: 1933, c. 295.

Detailed Accounts to Be Kept.—Under the provisions of this article it is the duty of the county accountant to keep detailed accounts of appropriations and disbursements of county funds and to certify on each warrant or order drawn against the county that provision has been made for its payment and appropriation duly made or a bond or note duly authorized as required by this article. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864, followed in 215 N. C. 279, 1 S. E. (2d) 870.

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718.

§ 153-116. Additional duties of county accountant.—In addition to the duties imposed and powers conferred upon the county accountant by this article, he shall have the following duties and powers:

(a) He shall act as accountant for the county and subdivisions in settling with all county officers.

(b) He shall keep a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made.

(c) He shall require every officer and department receiving or disbursing money of the county or its subdivisions to keep a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made, and shall require the officer or department to keep a copy of such contract.

(d) He shall examine once a month, and at such other times as the board may direct, all books, accounts, receipts, vouchers, and other records of all county officers and employees and departments of the county administration receiving or expending public money, including the road commission, if there is such commission in the county, the county board of education and other subdivisions.

(e) He shall require all officers and employees in the county whose duty it is to collect fines, penalties, and other money to be applied to public purposes, to file with him each month, or oftener if the board so directs, a report showing amounts collected by such officers, including a report of all fees collected for the performance of their duties, whether they are entitled to such fees as the whole or a part of their compensation or are not entitled to the same.

(f) He shall once a year, or as often as he may be directed by the board of county commissioners, file with the board a complete statement of the financial condition of the county and subdivisions, showing the receipts and expenditures of the different departments of the county and its subdivisions, including the department of public schools.

(g) He shall advise with the different officers and departments of the county and with State officers as to the best and most convenient method of keeping accounts, and he shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the county and subdivisions. He shall not allow any bill or claim unless the same be itemized and verified as now required by law.

(h) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the board of county commissioners. (1927, c. 146, s. 4.)

§ 153-117. Heads of departments and officers to file statement before 1st June.—It shall be the duty of all heads of departments and officers in charge of the functions for which county money or money of subdivision is to be expended, to file with the county accountant, before the first day of June of each year (a) a complete statement of the amounts expended and estimated to be expended for each object in his department in the current fiscal year, and (b) beginning in the year one thousand nine hundred and twenty-eight, a statement of the amounts expended for each object in his department in the fiscal year preceding the then current fiscal year, and (c) an estimate of the requirements of his department for each object in the ensuing fiscal year. Such statements and estimates shall list each object of disbursement under the appropriate class of functions as defined in § 153-114. (1927, c. 146, s. 5.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-118. Estimates necessary for ensuing fiscal year itemized.—Upon receipt of such statements and estimates, the county accountant shall prepare (a) his estimate of the amounts necessary to be appropriated for the next ensuing fiscal year for the different objects of the county and subdivisions, listing each object of disbursement under the appropriate class of functions as defined

in § 153-114, which estimate shall include the full amount of any deficit in any fund, and may include an emergency estimate for each fund not greater than five per cent in excess of other estimates for such fund, and (b) an itemized estimate of the revenue to be available during the ensuing fiscal year, separating revenue from taxation from revenue from other sources, classifying the same under proper funds as defined in § 153-114, and (c) an estimate of the amount of unencumbered and surplus revenues of the current fiscal year in each fund. Such estimates and statements of the county accountant shall be termed the "Budget Estimate," and shall be submitted to the board not later than the first Monday of July of each year. (1927, c. 146, s. 6.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-119. Time for filing budget estimate.—Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the appropriation resolution, the board shall: (a) file the budget estimate in the office of the clerk of the board, where it shall remain for public inspection, and (b) furnish a copy of the budget estimate to each newspaper published in the county, and (c) cause to be published in at least one newspaper published in the county a summary of the budget estimate showing at least the total appropriation recommended for each separate fund or function as defined in § 153-114: Provided, however, that if no newspaper be published in the county, such summary shall be posted at the court-house door and at least three other public places in the county at least twenty days before the passage of the appropriation resolution. (1927, c. 146, s. 7.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-120. Time for adoption of appropriation resolution.—It shall be the duty of the board of county commissioners, not later than the fourth Monday in July in each year, to adopt and record on its minutes an appropriation resolution, the form of which shall be prescribed by the county accountant, which resolution shall make appropriations for the several purposes of the county and subdivisions thereof, upon the basis of the estimates and statements submitted by the county accountant, such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimates: Provided, however, that (a) no appropriation recommended by the county accountant for debt service shall be reduced, and (b) the powers given by the general law to the county board of education and county commissioners jointly, in respect to the funds to be expended for school purposes shall be observed by the county accountant and by the board of county commissioners, and (c) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate not funded as provided by law, and (d) no appropriation shall be made in excess of the amount which may be raised under any constitutional or statutory limits of taxation. (1927, c. 146, s. 8.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-121. Copies of resolution filed with county treasurer and county accountant.—A copy of the appropriation resolution shall be filed with the county treasurer or other officer or agent performing the functions ordinarily assigned to the county treasurer, and another copy thereof shall be filed with the county accountant, both copies as so filed to be kept on file for their direction in the disbursement of county funds. (1927, c. 146, s. 9.)

§ 153-122. Supplemental budget showing.—As soon as practicable after the first Monday in July, and before any levy of taxes is made, the county accountant shall submit to the board a supplemental budget showing: (a) the amount of any increase or decrease in each item of (1) deficits and (2) unencumbered balances and (3) surplus revenues as reported by him in the budget estimate, and (b) the amount of miscellaneous revenues collected in the preceding year from sources other than taxation, this amount to be separately classified as to funds and functions, and (c) an estimate of the amount of taxes for the current fiscal year which will not be collected in the same year. Upon the submission of the figures showing increase or decrease in deficits, the appropriation resolution shall be deemed automatically amended by adding such increase to or subtracting such decrease from the amount appropriated for the fund or function to which such deficit pertains, and it shall be the duty of the clerk to record the amount of increase or decrease on the margin of the recorded appropriation resolution. The figures of the supplemental budget showing increases or decreases in unencumbered balances and surplus revenues, and showing the amount of miscellaneous revenues collected in the preceding fiscal year from sources other than taxes, and showing the estimate of taxes uncollectible in the current fiscal year, shall not affect the appropriation resolutions, but shall be taken into consideration in the levy of taxes as hereinafter provided. (1927, c. 146, s. 10; 1933, c. 191.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

Editor's Note.—Public Laws of 1933, c. 191, deleted from the end of the first sentence a clause which required a mathematical computation in determining the estimate mentioned in (c).

§ 153-123. Publication of statement of financial condition of county.—Simultaneously with the submission of the supplemental budget, the county accountant shall prepare and cause to be published in a newspaper published in the county, or if no newspaper be published in the county, then by posting at the court-house door and at least three other public places in the county, a statement of the financial condition of the county, containing such figures and information as the county accountant may consider it advisable to publish, which statement as so published or posted shall contain the figures showing at least the following items:

(a) The assessed valuation for the current year, unless the same shall not have been finally ascertained, in which case the assessed valuation of the preceding year shall be given.

(b) An itemized statement of the debt of the county and its subdivisions.

(c) The amount and rate of the taxation levied for the preceding fiscal year, whether collected or not.

(d) Amount of taxes, including land sales, for each of the three preceding fiscal years which remained uncollected at the end of such years, respectively, and the average thereof, and the amount of such uncollected taxes which were collected by the close of the preceding fiscal year.

(e) Miscellaneous revenue other than taxation for the preceding fiscal year.

(f) Deficits, if any, in all county funds in the aggregate for the preceding fiscal year.

(g) Such deficits for each subdivision of the county.

(h) Surplus revenues of the county, and separately stated, of each of the subdivisions of the county for the preceding year.

(i) Unencumbered balances of the county and, separately stated, of each of the subdivisions of the county for the preceding year.

(j) The rate of taxation for county purposes and the rate for each subdivision which he estimates it will be necessary to levy in the current fiscal year, these rates to be computed as is provided in § 153-124 for computation of rates by the board of county commissioners. (1927, c. 146, s. 11.)

§ 153-124. Levy of taxes.—As soon as may be practicable after the passage of the appropriation resolution and the automatic amendment thereof, which is hereinabove provided, and after the ascertainment of the assessed valuation of property for taxation, but not later than Wednesday after the third Monday in August of each year, the board of county commissioners, by resolution to be recorded in its minutes, shall levy upon all the taxable property of the county, in the case of county appropriations, and upon all the taxable property of each subdivision in the case of appropriations for subdivisions, such rate of tax as may be necessary to produce (a) the sum appropriated, and (b) the amount of the supplemental budget estimate of taxes which will not be collectible in the current fiscal year, after taking into consideration the figures contained in the budget estimate and supplemental budget showing surplus revenues and unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from other sources than taxation; but for the purpose of this computation the board shall not estimate miscellaneous revenues at a figure greater than ten per cent (10%) more than the actual receipts from miscellaneous revenues in the preceding fiscal year, as reported by the county accountant in the supplemental budget. (1927, c. 146, s. 12.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-125. Failure to raise revenue a misdemeanor; emergencies. — Any county commissioner of any county who shall fail to vote to raise sufficient revenue for the operating expenses of the county as provided for in § 153-124, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. Provided: that in case of emergency upon application to the Local Government Commission such Local Government Commission may permit the Board of Commissioners for any county to anticipate the taxes of the next fiscal year by not more than five per cent of the tax levy for the current year; provided, further, that where a contingent fund has been provided for in the county budget the Local Government Commission shall not authorize such anticipation in excess of the difference between five per centum and the amount theretofore levied as a contingent fund. (1929, c. 321, s. 1.)

§ 153-126. Execution of notes in anticipation of taxes.—In the event of the approval of such anticipation of the taxes of the next fiscal year by the Local Government Commission, the County Commissioners of any such county are authorized to execute a note or notes in an amount not in excess of the amount authorized by such Local Government Commission, and such note or notes shall be payable not later than June thirtieth of the next fiscal year and shall be paid by a tax levied for such purpose. (1929, c. 321, s. 2.)

§ 153-127. Appropriations not transferable. — No appropriation made by the appropriation resolution, except an appropriation for general county expenses, shall be transferred from one fund to another fund, and no appropriation for general county expenses shall be transferred to any fund of any subdivision of the county, or vice versa. No appropriation for general county expenses shall be transferred, except upon the passage and recording of a resolution of the board of county commissioners ordering such transfer, and copies of such resolution shall be furnished to the county accountant and to the head of each department to which or from which such transfer shall be made. (1927, c. 146, s. 13.)

§ 153-128. Appropriations bridging interval.— In the interval between the beginning of the fiscal year and the adoption of the annual appropriation resolution, the board may make appropriations for the purpose of paying fixed salaries, the principal and interest of indebtedness, the stated compensation of officers and employees, and for the usual ordinary expenses of the county and its subdivisions, which appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual appropriation resolution for that year. (1927, c. 146, s. 14.)

§ 153-129. County may create special revolving fund to supplant borrowing on anticipations; withdrawals.—In order to avoid the necessity of borrowing money in anticipation of the receipts of taxes and revenues or the proceeds of the sale of bonds, a county may by resolution create a special revolving fund and with the consent of the Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 153-72 and 153-73 in respect to the borrowing of money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No resolutions creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund without the approval of said Commis-

sion as to necessity or expediency. (1931, c. 60, s. 62.)

§ 153-130. Provisions for payment. — No contract or agreement requiring the payment of money, or requisition for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the county, or a subdivision, unless provision for the payment thereof has been made by (a) an appropriation resolution as provided by this article, or (b) through the means of bonds or notes duly authorized by the General Assembly and by the board of county commissioners, and further authorized, in all cases required by law or by the Constitution, by a vote of qualified voters or taxpayers, or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment. No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the county accountant, as follows: "Provision for the payment of the moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized, as required by the 'County Fiscal Control Act.'" Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the county accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed unencumbered by the amount to be paid on such contract or agreement until the county is discharged therefrom. (1927, c. 146, s. 15.)

Cited in Sherrill v. Graham County, 205 N. C. 178, 179, 170 S. E. 636.

§ 153-131. False certificate. — If any county auditor or county accountant of any county of the State shall make any certificate as required by § 153-130, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be guilty of a misdemeanor and punishable by fine or imprisonment, or both, in the discretion of the court except as herein provided. (1929, c. 321, s. 3.)

§ 153-132. Warrants for payment. — No claim against the county or any subdivision shall be paid except by means of a warrant or order on the county treasurer or county depository, signed by the head of the department for which the expense was incurred, nor unless the bill or claim for which the warrant or order is given shall have been presented to and approved by the county accountant, or in case of his disapproval of such claim or bill, by the board of county commissioners. The board shall not approve any claim or bill which has been disallowed by the county accountant without entering upon the minutes of the board its reason for approving the same in such detail as may show the board's reason for reversing the county accountant's disallowance. No warrant or order, except a warrant or order for payment of maturing bonds, notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the board of county commissioners over the disallowance of the county accountant, as above provided, shall be valid unless the same shall bear the signature of the county accountant below a statement which he shall cause to be written, printed or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'County Fiscal Control Act.'" (1927, c. 146, s. 16; 1935, c. 382.)

Editor's Note.—The amendment of 1935 added, in the last sentence of the section, the exception as to warrants or orders approved by the board after disallowance of the account.

Vouchers to Be Certified by Accountant.—The duties of the county accountant in certifying county vouchers is clearly set forth in the County Fiscal Control Act, which duties are special in character and are in addition to and not in substitution for the duties and functions of other county officers, and even if it be conceded that the signing of the voucher by the chairman of the board was malfeasance, the accountant and his surety may not avoid liability on the ground that some other officer was guilty of negligence or malfeasance. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864, followed in 215 N. C. 279, 1 S. E. (2d) 870.

§ 153-133. Accounts to be kept by county accountant.—Accounts shall be kept by the county accountant for each object of appropriation, which objects shall be classified under the various funds as defined in § 153-114, and every warrant or order upon the county treasury shall state specifically against which of such funds the warrant or order is drawn; such account shall show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1927, c. 146, s. 17.)

§ 153-134. Bond of county accountant. — The county accountant shall furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the board of commissioners in a sum not less than five thousand dollars ($5,000), which bond shall be approved by the board of county commissioners, and shall be conditioned for the faithful performance of his duties under this article. (1927, c. 146, s. 18.)

Approval of bond in smaller amount, see Ellis v. Brown, 217 N. C. 787, 9 S. E. (2d) 467.

§ 153-135. Daily deposits by collecting or receiving officers.—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any county or subdivision thereof shall daily deposit the same with the county treasurer or in some bank, banks, or trust company, designated by the board of commissioners, in the name of the county and of the fund to which it is applied, and shall report the same daily to the county accountant by means of duplicate deposit ticket signed by the depository. If there is no treasurer or designated depository in the county, then the board of commissioners may allow such deposits to be made every three days in some depository outside of the county. If such officer or employee collects or receives

such public moneys for a taxing district of which he is not an officer or employee, he shall, during Saturday of each week, pay to the proper officer of such district the amount so collected or received during the current week, and take receipt therefor.

The board of commissioners is hereby authorized and empowered to select and designate annually, by recorded resolution, some bank or banks or trust company in this State as an official depository or depositories of the funds of the county, which funds shall be secured in accordance with § 159-28.

It shall be the duty of the board of commissioners to provide by recorded resolution for interest to be paid on public deposits at a rate to be determined by the board of commissioners. It shall be unlawful for any public moneys to be deposited by any officer, employee, or department, in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting in such violation shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134.)

Editor's Note.—The amendments of 1929 and 1939 changed the second paragraph of this section.

Requiring Bonds and Interest of Bank Appointed County Financial Agent.—See note under § 155-3.

Applied in United States Fidelity, etc., Co. v. Hood, 206 N. C. 639, 642, 175 S. E. 135; Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33.

§ 153-136. Conduct by county accountant constituting misdemeanor.—If a county accountant shall knowingly certify any contract, agreement, or warrant in violation of the requirements of this article, or approve any fraudulent, erroneous, or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall wilfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable on his bond for all damages caused by such violation or failure. (1927, c. 146, s. 20.)

§ 153-137. Liability for damages for violation by officer or person.—If any county officer or head of a department or other official or person of whom duties are required by this article shall wilfully violate any part of this article, or shall wilfully fail to perform any of such duties, he shall be liable for all damages caused thereby. (1927, c. 146, s. 21.)

§ 153-138. Recovery of damages.—The recovery of all damages allowed by the article may be made in the court having jurisdiction of the suit of the county, any subdivision thereof, or any taxpayer or other person aggrieved. (1927, c. 146, s. 22.)

§ 153-139. Chairman of county commissioners to report to solicitor.—It shall be the duty of the chairman of the board of county commissioners to report to the solicitor of the district within which the county lies all facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the board of county commissioners is authorized, within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct or violation of a public trust within said county, and pay the cost of same out of the general fund of the county. (1927, c. 146, s. 23; 1939, c. 112, s. 1.)

Editor's Note.—The 1939 amendment added the second sentence of this section.

§ 153-140. Purpose of article.—It is the purpose of this article to provide a uniform system for all counties of the State by which the fiscal affairs of counties and subdivisions thereof may be regulated, to the end that accumulated deficits may be made up, and future deficits prevented, either under the provisions of this article or under the provisions of other laws authorizing the funding of debts and deficits, and to the end that every county in the State may balance its budget and carry out its functions without incurring deficits. (1927, c. 146, s. 24.)

§ 153-141. Construction and application of article.—All laws and parts of laws, whether general, local or special, which are in conflict with this article, are hereby repealed. Nothing herein contained, however, shall require any county now operating under a budget system provided by any local or special act in force on March 7, 1927, or which may be passed at the regular session of the General Assembly of 1927, to abandon any such operation or to comply with this article, but any such county may, in the discretion of its board of commissioners, elect to conduct its procedure under any one or more sections of this article as the board may deem best. All such counties shall nevertheless be subject to the requirements of certain provisions of this article, which are (a) the annual publication of financial information substantially as required by § 153-123, (b) the adoption of an appropriation resolution which shall appropriate the full amount of all deficits not funded and the full amount required for debt service as required by § 153-120, (c) the annual levy of taxes sufficient to meet all appropriations and the probable amount of uncollectible taxes computed as required by § 153-124, (d) endorsement by some one county officer, who shall either be the county accountant or an officer designated for that purpose by the board, of all contracts, agreements, requisitions, warrants and orders, substantially as provided by §§ 153-130 and 153-132, (e) compliance with all the provisions of § 153-135, and (f) all the provisions of §§ 153-136 to 153-139, as to penalties, liability for damages and requirements for reporting offenses to the district solicitor shall apply in all such counties so far as such counties are herein required to comply with this article. (1927, c. 146, s. 25.)

§ 153-142. Local units authorized to accept their bonds in payment of certain judgments and claims.—The governing bodies of the various counties, cities, towns, and other units in the state are hereby authorized in their discretion to accept their own bonds, at par, in settlement of any and all claims which they may have against

any person, firm, or corporation, on account of any money of said unit held in any failed bank or on account of any judgment secured against any person, firm, or corporation on account of the funds in said bank.

Upon an order issued by the governing authorities of the county, city, town, or other unit, the treasurer of the county, city, town, or other unit is hereby authorized and empowered to accept the bonds of said unit in settlement of said claim, as set out in the preceding paragraph, and to mark said claim satisfied in full, whether the same has been reduced to judgment or not. (1933, c. 376.)

Art. 10A. Capital Reserve Funds.

§ 153-142.1. Short title.—This article may be cited as "The County Capital Reserve Act of one thousand nine hundred and forty-three." (1943, c. 593, s. 1.)

§ 153-142.2. Meaning of terms.—The terms "fiscal year," "surplus revenues," "unencumbered balance," "debt service," and "fund," as used in this article shall have the same meaning as expressed in § 153-114, the same being a part of the county fiscal control act. The terms "governing body," "clerk," "necessary expenses," and "published" as used in this article shall have the same meaning as expressed in § 153-70, being a part of the county finance act. The term "financial officer," as used in this article means the officer of a county having charge or custody of the moneys of the county, including moneys of the county board of education. (1943, c. 593, s. 2.)

§ 153-142.3. Powers conferred.—In addition to all other funds now authorized by law a county is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1943, c. 593, s. 3.)

§ 153-142.4. Sources of capital reserve fund.—The capital reserve fund may consist of moneys derived from any one or more of the following sources, except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred and forty-five:

(1) Unappropriated surplus revenues and unencumbered balances itemized as to

(a) Collections of ad valorem taxes levied on all taxable property in the county separately stated as to purpose for which such taxes were levied;

(b) Proceeds from the sale of county property or property of the county board of education, separately stated;

(c) Proceeds from insurance collected by reason of loss of county property or property of the county board of education, separately stated;

(d) Receipts from revenues derived from sources other than ad valorem taxes which are not pledged or otherwise applicable by law to the payment of existing debt and separately stated as to the fund to which such revenues may lawfully accrue.

(2) Appropriation or appropriations included in the annual appropriation resolution: Provided, however, the sources of revenues from which each such appropriation shall be payable shall be itemized in said appropriation resolution as to amount and class of sources stated in subclauses (b), (c) and (d) of clause (1) of this section;

(3) Proceeds from the sale of county property not included in the estimated revenues appropriated for the current fiscal year;

(4) Proceeds from the sale of property of the county board of education not included in the estimated revenues appropriated for the current fiscal year;

(5) Proceeds from insurance collected by reason of loss of county property which are not included in the estimated revenues appropriated for the current fiscal year;

(6) Proceeds from insurance collected by reason of loss of property of the county board of education which are not included in the estimated revenues appropriated for the current fiscal year;

(7) Collections of revenues from sources other than ad valorem taxes in excess of such revenues estimated and appropriated for the current fiscal year and separately stated as to the fund to which such revenues may lawfully accrue. (1943, c. 593, s. 4.)

§ 153-142.5. How the capital reserve fund may be established.—When a county elects under this article to establish a capital reserve fund the governing body shall pass an order authorizing and declaring that the same shall be established. Said order shall state such itemized sources provided in § 153-142.4 from which moneys are available for deposit in the capital reserve fund at the time of passage. In said order the governing body shall designate some bank or trust company as depositary in which moneys shall be deposited for the capital reserve fund. Said order shall further contain a request to the local government commission that the provisions thereof be approved by said commission. Upon passage of said order the same shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the local government commission. (1943, c. 593, s. 5.)

§ 153-142.6. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the order passed under the provisions of § 153-142.5 are approved by the local government commission. After action is taken upon the provisions of said order by the local government commission the secretary of said commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the order and, the reasons therefor. Upon receipt of the notice of such approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the designated depositary the moneys stated as available in said order for the capital reserve fund and simultaneously report said deposit to the local government commission.

Upon establishment of the capital reserve fund it shall be the duty of the financial officer to promptly deposit in the designated depositary for the capital reserve fund all moneys which may thereafter become available from sources stated in the order authorizing such fund, or an amendment thereto, and to simultaneously report each such deposit to the local government commission

stating the amounts from each such source so deposited. (1943, c. 593, s. 6.)

§ 153-142.7. Amendments to order authorizing capital reserve fund.—At any time or from time to time after the capital reserve fund is established, the governing body may amend the order authorizing the establishment of such fund for the purpose of including additional sources provided in § 153-142.4 or for the purpose of changing the designated depositary. Each such amendment shall contain a request to the local government commission that the provisions thereof be approved by said commission. Each such amendment shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the local government commission. No such amendment shall be effective until the provisions thereof have been approved by said commission. (1943, c. 593, s. 7.)

§ 153-142.8. Security for protection of deposits.—Any bank or trust company designated as depositary of the capital reserve fund shall furnish such security for deposits made in said fund as is required by law for other funds of the county. (1943, c. 593, s. 8.)

§ 153-142.9. Purposes for which a capital reserve fund may be used.—A capital reserve fund may be withdrawn in whole or in part at any time or from time to time, and applied to or expended for:

(a) Any one or more of the following improvements or properties:

(1) Erection and purchase of schoolhouses, erection of additions to schoolhouses, school building equipment, acquisition of lands for school purposes;

(2) Erection and purchase of courthouse and jails, including public auditorium within and as a part of a courthouse, erection of additions to courthouse and jails, acquisition of lands for same;

(3) Erection and purchase of county homes for the aged and infirm; erection of additions to county homes, acquisition of lands for county homes;

(4) Erection and purchase of hospitals, erection of additions to hospitals, acquisition of lands for hospitals;

(5) Erection and purchase of public auditoria and acquisition of lands therefor;

(6) Acquisition and improvement of lands for public parks and playgrounds;

(7) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft;

(8) Supplementing proceeds of the sale of bonds or bond anticipation notes of the county issued for any one or more of the purposes stated in subclauses (2), (3), (4), (5), (6) and (7) of this clause (a), or supplementing federal or state grants for any one or more of such purposes;

(9) Supplementing proceeds of sale of bonds or bond anticipation notes of the county issued for the purpose stated in subclause (1) of this clause (a), or supplementing loans from the state literary fund, or supplementing federal or state grants for such purpose.

(b) Temporary borrowing for meeting appropriations made for the current fiscal year in anticipation of the collections of taxes and other revenues of such current fiscal year: Provided, however, the aggregate amount of such withdrawal or withdrawals for meeting appropriations shall not at any time exceed twenty-five per centum of the total appropriations of the fiscal year in which such withdrawal or withdrawals are made and no such withdrawal or withdrawals shall be made in an ensuing fiscal year unless and until the capital reserve fund has been fully repaid for the amount or amounts so previously withdrawn. Each such withdrawal shall be repaid not later than thirty days after the close of the fiscal year in which made;

(c) Purchasing at market prices and retiring outstanding bonds of the county maturing more than five years from the date of such withdrawal;

(d) Investment in bonds or notes of the United States of America, State of North Carolina, or bonds of the county;

(e) Payment of maturing serial bonds or notes and interest on bonds or notes of the county in accordance with a determined plan of amortization. (1943, c. 593, s. 9.)

§ 153-142.10. Restrictions upon use of the capital reserve fund.—No part of the capital reserve fund consisting of collections of ad valorem taxes levied for a special purpose within the meaning of the constitution of North Carolina shall be withdrawn and expended for any purpose except that for which such taxes were levied, but such collections may be used for either of the purposes stated in clauses (b) and (d) of § 153-142.9, except that collections of taxes levied for debt service may be expended for either of the purposes stated in clauses (c) and (e) of said § 153-142.9. Moneys deposited in the capital reserve fund consisting of the proceeds of the sale of property of the county board of education or collections of insurance by reason of loss of property of the county board of education may be withdrawn and expended only for the purpose stated in subclause (1) of clause (a) of § 153-142.9 upon petition of the county board of education, and the same shall be deemed to be expended by the county as an administrative agency of the state for maintenance of the six months school term required by the constitution of North Carolina. (1943, c. 593, s. 10.)

§ 153-142.11. Authorization of withdrawal from the capital reserve fund.— A withdrawal for any one of the purposes contained in clauses (b), (c), (d) and (e) of § 153-142.9 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source. Each such resolution shall contain a request to the local government commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the local government commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 153-142.9 shall further specify the total ap-

propriations contained in the annual appropriation resolution of the fiscal year in which such withdrawal is authorized and shall state the total amount of such withdrawals previously made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund.

A withdrawal for any one of the improvements or properties contained in clause (a) of § 153-142.9 shall be authorized by order duly passed by the governing body which order shall state:

(a) In brief and general terms the purpose for which the withdrawal is to be made;

(b) The amount of the withdrawal;

(c) The sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source;

(d) One of the following provisions:

(1) If the purpose of such withdrawal is for necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if such withdrawal is for either necessary expenses or other than necessary expenses and the source of all the moneys available therefor is from other than ad valorem taxes, the order shall take effect thirty days after its first publication unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

(2) If the purpose of such withdrawal is for other than the payment of necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if the governing body, although not required to obtain the assent of the voters to such withdrawal, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article.

Each order authorizing a withdrawal from the capital reserve fund shall be spread upon the minutes of the governing body and the clerk shall submit a certified copy thereof to the local government commission. (1943, c. 593, s. 11.)

§ 153-142.12. Approval of order or resolution for withdrawal by the local government commission.—No order passed by the governing body authorizing a withdrawal from the capital reserve fund shall be published as provided in this article nor shall the question of approval of the provisions thereof be submitted to the voters until said provisions have first been approved by the local government commission. A certified copy of such order filed by the clerk with the commission shall be deemed a request to the commission for its approval of the provisions thereof. The commission shall pass upon the provisions of such order in the same manner as it passes upon an application for approval of the issuance of bonds or notes under the local government act, and may require such information and evidence pertaining to the necessity and expediency and adequacy of amount of the proposed withdrawal as it deems necessary before acting upon said order.

No resolution adopted by the governing body authorizing a withdrawal shall become effective until the provisions thereof have been approved by the local government commission. (1943, c. 593, s. 12.)

§ 153-142.13. Publication of order for withdrawal.—Upon approval by the local government commission of an order authorizing a withdrawal from the capital reserve fund, the clerk shall cause said order to be published once in each of two consecutive weeks over the following appendage (the blanks being first properly filled in):

The foregoing order was passed on the ..... day of ..... 19...., and was first published on the ..... day of ..... 19..... Any action or proceeding questioning the validity of said order must be commenced within thirty days after its first publication.

.....
Clerk.

(1943, c. 593, s. 13.)

§ 153-142.14. Limitation of action setting aside an order for withdrawal.—Any action or proceeding in any court to set aside an order authorizing a withdrawal from the capital reserve fund, or to obtain any other relief upon the grounds that such order is invalid, must be commenced within thirty days after the first publication made under § 153-142.13. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any grounds whatever, except in an action or proceeding commenced within such period. (1943, c. 593, s. 14.)

§ 153-142.15. Elections on order authorizing withdrawal.—The provisions of §§ 153-91 through 153-100 relating to petition for referendum and election on a bond order shall apply to an order authorizing a withdrawal from the capital reserve fund: Provided, however, the majority of the qualified voters of the county, as required by the constitution of North Carolina, shall be necessary only if the purpose stated in the order authorizing such withdrawal is for other than a necessary expense and the source of moneys in the capital reserve fund for such withdrawal is in whole or in part ad valorem taxes. In all other cases where the provisions of such order may be required to be approved by the voters, the affirmative vote of the majority of the voters voting on such order shall be sufficient to make it operative and in effect: Provided, further, a notice of election required by this article to be published shall state the amount of the proposed withdrawal and the purpose thereof, as well as the date of the election, and: Provided, further, the ballot to be furnished each qualified voter may contain the words, "For the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose)" and "Against the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose.)" (1943, c. 593, s. 15.)

§ 153-142.16. How a withdrawal may be made.—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or order which has taken effect. Each withdrawal shall be for the

full amount authorized, except a withdrawal for the purpose stated in clause (e) of § 153-142.9 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depositary signed by the financial officer of the county and payable to said financial officer. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the local government commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the county capital reserve act of one thousand nine hundred and forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the local government commission: Provided, however, the state of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 593, s. 16.)

§ 153-142.17. Accounting for the capital reserve fund.—It is the intention of this article that the deposits in and withdrawals from the capital reserve fund shall be as one account with the depositary but it shall be the duty of the financial officer to maintain accounts of each source, entering the credits thereto and withdrawals therefrom, and of the purpose for which each authorized withdrawal is made. (1943, c. 593, s. 17.)

§ 153-142.18. Certain deposits mandatory.—Each withdrawal shall be used only for the purpose specified in the resolution or order authorizing the same and shall constitute an appropriation duly made for said purpose: Provided, however, that if for any reason any part of such withdrawal is not applied to or is not necessary for such purpose, such unexpended or unused part thereof shall be promptly deposited in capital reserve fund and credits of such deposit shall be entered to the various sources prorated on the basis upon which the withdrawal was made.

All receipts of earnings from and realizations of investments shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all withdrawals made for investment.

Receipts for repayment of moneys withdrawn for the purpose of meeting appropriations shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all such withdrawals made. (1943, c. 593, s. 18.)

§ 153-142.19. Action of local government commission.—Any action required by this article to be taken by the local government commission may be taken by the executive committee of said commission. Such action taken by said executive committee shall be subject to review by the commission in the same manner as action taken upon the issuance of bonds. (1943, c. 593, s. 19.)

§ 153-142.20. Provision for sinking funds.—Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital reserve fund a county may make allocation thereof to a sinking fund for the retirement of term bonds of the county, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid. (1943, c. 593, s. 20.)

Art. 11. Requiring County, Municipal, etc., Officials to Make Contracts for Auditing and Standardizing Bookkeeping Systems.

§ 153-143. Director of local government. — At such time as any board of county commissioners, board of education or other county officials, or the governing body or officials of any city, town, special charter district or other subdivision in the state of North Carolina proposes to employ any certified public accountants or auditors other than the official county auditor, county accountant, municipal accountant or other similar officer for making any statement or for the auditing of any books of the county, city, town, special charter district or other subdivision the director of local government shall be notified of such purpose and it shall be the duty of a representative of the director of local government to advise with the officials with respect to the scope of such audit and the nature of same and to furnish such officials all information available for their guidance in the making and entering into contracts or engagements for said audit or examination. (1929, c. 201, s. 1; 1931, c. 99, s. 1.)

Editor's Note.—The Act of 1931 amended this article to make it applicable to cities, towns, special charter districts or other sub-divisions, and substituted "director of local government" for "county government advisory commission" formerly appearing.

§ 153-144. Contracts must be in writing; approval. — All contracts or engagements made shall be reduced to writing and shall include all of the terms and conditions of the contract before the same shall become legal and binding upon the county, city, town, special charter district or other subdivision officials and shall be endorsed and approved as to the terms and provisions thereof by the director of local government and such contracts shall be null and void and no payments shall be made on such contracts until the same shall have been reduced to writing and approved as aforesaid by the director of local government. Said contracts when so executed shall be recorded on the minutes of the board of county commissioners, board of education or such governing body of a city, town, special charter district or other sub-division and the original filed in their records. The terms and provisions of said contracts shall not in any way be varied or changed by either party unless and until such changes shall be reduced to writing and approved by the director of local government in the same manner as the original contract and no verbal agreements made between the officials of the county and the auditors aforesaid shall affect in any way to vary the terms and conditions thereof. (1929, c. 201, s. 2; 1931, c. 99, s. 2.)

§ 153-145. Approval of systems of accounting.—With a view of standardization and simplification of the methods of accounting in the various counties, cities, towns, special charter

districts and other sub-divisions of the state, the director of local government is hereby authorized and empowered to advise with said boards as to the proper methods of accounting for such counties, cities, towns, special charter districts and other sub-divisions and no system or books shall be installed until same shall have been submitted to the director of local government. (1929, c. 201, s. 3; 1931, c. 99, s. 3.)

§ 153-146. Copy of report filed with Director of Local Government.—Any certified public accountant or auditor other than the official county auditor, county accountant, municipal accountant or other similar officer employed by any board of county commissioners, board of education, the governing body of any city, town, special charter district or other sub-division, or the officials thereof shall upon completion of all work performed in accordance with the terms of a contract, prepare a report embodying all statements and comments relating to his findings and shall file a copy of said report with the director of local government, said report to be either printed or typewritten. The director of local government shall have the power to prescribe or approve the form of said report. (1929, c. 201, s. 4; 1931, c. 99, s. 4.)

§ 153-147. Approval of all claims for auditing to be approved by Director of Local Government.—All bills or claims presented to the governing body of any county, city, town or special charter district for the payment of any public or certified public accountant or auditor for the performance of any service as may be agreed upon in accordance with the provisions of this article shall be approved by the Director of Local Government, and it shall be unlawful for any of such governing bodies to pay or permit the payment of such bill or claim out of any public funds without first securing the said approval of said Director of Local Government. (1931, c. 99, s. 5.)

Art. 12. Sinking Funds.

§ 153-148. Counties and municipalities authorized to apply sinking funds to purchase of own bonds.—The county commissioners of the several counties of the State, and all persons or officers having charge of sinking funds and the commissioners and aldermen and governing bodies of all incorporated cities and towns are authorized and directed to apply the sinking funds on hand to the purchase and retirement of the specific bonds, issued by such municipality, for the payment whereof, at maturity, such fund has been provided, notwithstanding any contrary provisions in any act, special or general, under which the said bonds have been issued: Provided, however, that where bonds have been issued and sold to run for a stated term without option of prior payment, nothing herein shall be construed to compel the owners or holders thereof to accept payment or surrender said bonds except at their option. Municipalities shall not be required to purchase such bonds for a greater sum than the face thereof, with accrued interest at the time of purchase. (1931, c. 413, s. 1.)

§ 153-149. Investment of sinking funds.—County commissioners of the several counties and all persons or officers having charge of sinking funds and the governing bodies of all incorporated towns and cities shall keep such sinking funds as may not be applied to the purchase and retirement of bonds as required in the preceding section safely invested in such bonds or securities as are approved for such investment by the Local Government Act of nineteen hundred and thirty-one, (§§ 159-1 et seq.) where such investment will promote the public interest or provide a greater rate of interest therefor. (1931, c. 413, s. 2)

Cross Reference.—As to investment in bonds guaranteed by the United States government, see § 53-44.

§ 153-150. Petition of tax-payers to have sinking funds applied to purchase of bonds or invested.—Any citizen and taxpayer of a county or municipality, on behalf of himself and other citizens and taxpayers interested, who may or may not join therein, may petition the board of county commissioners or any governing board of a city or town, setting forth in said petition that said county, city or town has an amount of sinking fund provided for the payment of a certain issue or issues of bonds, that the bonds, or a portion of them, may be purchased and retired, and fully setting forth any benefit which would accrue to the county, city or town from purchase and retirement of said bonds, and demanding the application of the sinking fund thereto.

A like petition may be made to require the investment of sinking funds as provided in this article. Such petition shall fully set out the facts regarding the fund in question and the benefit to be derived from its investment. Upon receiving such petition the board of county commissioners or governing body of the city or town to which the same may be addressed, shall ascertain the facts with reference to the matters alleged, and act thereon without delay; and the petition shall be sustained and the relief granted if the facts are such that the provisions of this article are applicable; and such sinking fund shall be applied to the purchase and retirement of such bonds as may be obtainable, of the class or issue to the payment whereof at maturity such fund might be applied, or shall be invested without delay, in the event such bonds are not obtainable, and such investment will be advantageous to the taxpayers interested. (1931, c. 413, s. 3.)

§ 153-151. Appeal to Local Government Commission.—An appeal shall lie from the action of the board of county commissioners or governing body of any town or city to the Local Government Commission, who shall hear the matter de novo and determine the same. The Local Government Commission shall make such order as they may deem best in the premises, and fix therein such time as they may deem reasonable for compliance therewith.

Upon failure or delay to act upon any petition for a period of thirty days after it has been received by any board of county commissioners or governing body of any city or town, direct application may be made to the Local Government Commission, which shall, on such failure or refusal to act, have original jurisdiction in the premises and shall proceed to act, after five days' notice to such board of commissioners or governing body of a town or city to whom the petition was addressed.

The orders of the Local Government Commission may be enforced by writ of mandamus in a

proceeding in the Superior Court of Wake County or of the county affected, or in which the town or city concerned, or any part thereof may be located, and such proceeding may be brought by the Local Government Commission or any petitioning taxpayer, in behalf of himself and others like interested. (1931, c. 413, s. 4.)

Art. 13. County Poor.

§ 153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person.

The board of commissioners of each county, when deemed for the best interest of the county, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions located within or without the county to provide for the medical treatment and hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed, provided the annual payments required under such contract shall not be in excess of ten thousand ($10,000.00) dollars. The full faith and credit of each county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the general assembly is hereby given to the execution thereof and to the levy of a special ad valorem tax in addition to other taxes authorized by law for the special purpose of the payment of the amounts to become due thereunder. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses and for a special purpose within the meaning of the constitution of North Carolina and for which the special approval of the general assembly is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the county fiscal control act and acts amendatory thereof: Provided, that the county commissioners of Lincoln County shall not enter into any such contract except after a public hearing at the county court house, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The commissioners of Catawba County shall not act under this paragraph until a majority of the people of the county have voted favorably. This paragraph shall not apply to the counties of Ashe, Avery, Buncombe, Clay, Cumberland, Durham, Gates, Haywood, Henderson, Jackson, Lee, Macon, Moore, Nash, Pasquotank, Robeson, Sampson, Transylvania, Wilkes, Yadkin, Rowan, Gaston, Iredell, Surry, New Hanover, Washington, Bertie, Brunswick, Union, Stanley, Yancey, Warren, Vance, Chowan, Currituck, Forsythe, McDowell, Johnston, Halifax, Edgecombe, Pitt, Richmond, Rockingham, Columbus, Guilford and Mecklenburg. (Rev., s. 1327; Code, s. 3540; 1891, c. 138; 1935, c. 65; C. S. 1335.)

Cross Reference.—As to county tuberculosis hospitals, see §§ 131-29 to 131-33.

Editor's Note.—The last paragraph of this section relating to hospitalization was added by the 1935 amendment.

Extent of Relief Vested in Discretion of Commissioners.—The general duty of providing for the poor is here imposed; the place, method, and extent of relief are vested in the judgment and discretion of the county commissioners. Copple v. Commissioners, 138 N. C. 127, 132, 50 S. E. 574.

Must Be Express Contract to Bind County.—Under this section in order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574.

Legislative Power to Afford Direct or Indirect Relief.—The Legislature clearly has the power to delegate authority to the county officials to provide and care for one class of the indigent or unfortunate inhabitants of the State, and to disburse a part of the fund devoted by the Constitution to the support of the poor, by appropriating it more directly to another class, whose wants, in the opinion of the lawmakers, can be best supplied through public agencies of a different kind. Board v. Commissioners, 113 N. C. 379, 384, 18 S. E. 661.

It is the exclusive right of the Legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661.

Wardens under Act of 1846.—Wardens of the poor, elected by the old county courts, under the provisions of the act of 1846, ch. 64, were not subjected to any penalty for refusing to accept the appointment. Smithwick v. Williams, 30 N. C. 268.

Tax Is Not Subject to Limitation on Tax Rate Imposed by Constitution.—The tax contemplated is for a special, necessary purpose, with special approval of the General Assembly, and is not, therefore, subject to the limitation on the tax rate imposed by Art. V, sec. 6 of the Constitution. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777.

Tax for Medical Care May Be Levied without Approval of the Qualified Voters.—The tax to provide funds necessary for the medical care and hospitalization of the indigent sick of a county is for a necessary expense of the county, and may be levied without the approval of the qualified voters of the county. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777. See Art. VII, sec. 7 of the Constitution.

Contract Not Held Invalid Because of Duration.—Where the General Assembly has authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of thirty years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, has agreed to contract for that period, the contract will not be held invalid because of its duration. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777.

§ 153-153. County home for aged and infirm.—All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners select or agree upon. (Rev., s. 1328; Code, s. 3541; 1891, c. 138; C. S. 1336.)

§ 153-154. Records for county, how to be kept.—The keeper or superintendent in charge of each county home in North Carolina, or the board of county commissioners in each county where there is no county home, shall keep a record book showing the following: Name, age, sex, and race of each inmate; date of entrance or discharge; mental and physical condition; cause of admission; family relation and condition; date of death if in

the home; cost of supplies and per capita expense of home per month; amount of crops and value, and such other information as may be required by the board of county commissioners or the state board of charities and public welfare; and give a full and accurate report to the county commissioners and to the state board of charities and public welfare. Such report to be filed annually on or before the first Monday of December of each year. (1919, c. 72; C. S. 1337.)

§ 153-155. Support of county home.—The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to any one who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity. (Rev., s. 1329; Code, s. 3543; 1876-7, c. 277, s. 3; C. S. 1338.)

Overseer Liable to Indictment.—An overseer of the poor is a public officer and liable to indictment at common law for any neglect of his duties or abuse of his powers. State v. Hawkins, 77 N. C. 494.

Same—Defective Indictment.—Where such officer is indicted for cruel treatment of paupers, and the indictment neither sets out the names of such paupers nor states that their names are unknown, the said indictment is defective, and judgment thereon should be arrested. State v. Hawkins, 77 N. C. 494.

Evidence.—Upon the trial of an indictment against a public officer for neglect or omission of duty, evidence of acts of positive misfeasance is inadmissible. State v. Hawkins, 77 N. C. 494.

§ 153-156. Property of indigent to be sold or rented.—When any indigent person who becomes chargeable to a county for maintenance and support in accordance with the provisions of this article, owns any estate, it is the duty of the board of commissioners of any county liable to pay the expenses of such indigent person to cause the same to be sold for its indemnity or reimbursement in the manner provided under article 3 of the chapter entitled Insane Persons and Incompetents, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person. When such indigent person has no guardian, or said guardian refuses or neglects to act, then the county maintaining and supporting said indigent person in its county home, or otherwise, may bring an action in its own name against the owner and the parties having an interest in the property sought to be sold, to sell, mortgage or rent the personal property or real estate of such indigent person, which action shall be a special proceeding and conducted as other special proceedings before the Clerk of the Superior Court and said Clerk of Court shall have power to make all necessary and proper orders therein. (Rev., s. 1330; Code, s. 3547; 1866, c. 49; 1941, c. 24; C. S. 1339.)

Cross References.—As to manner in which special proceedings are conducted, see §§ 1-393 et seq. As to sale of estates of insane persons and incompetents, see §§ 35-10 et seq.

Editor's Note.—The 1941 amendment added the second sentence.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 485.

§ 153-157. Families of indigent militiamen to be supported.—When any citizen of the state is absent on service as a militiaman or member of the state guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (Rev., s. 1331; Code, s. 3546; R. C., c. 86, s. 14; 1779, c. 152; C. S. 1340.)

§ 153-158. Paupers not to be hired out at auction.—No pauper shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county home for the aged and infirm, as may be deemed best. (Rev., s. 1332; Code, s. 3542; 1876-7, c. 277, s. 2; C. S. 1341.)

§ 153-159. Legal settlements; how acquired. — Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

1. By one Year's Residence.—Every person who has resided continuously in any county for one year shall be deemed legally settled in that county.

2. Married Women to have Settlement of their Husbands.—A married woman shall always follow and have the settlement of her husband, if he have any in the state; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

3. Legitimate Children to Have Settlement of Father.—Legitimate children shall follow and have the settlement of their father, if he has any in the state, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

4. Illegitimate Children to Have Settlement of Mother.—Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the state. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

5. Settlement to Continue until New One Acquired.—Every legal settlement shall continue till it is lost or defeated by acquiring a new one, within or without the state; and upon acquiring such new settlement, all former settlements shall be defeated and lost. (Rev., s. 1333; Code, s. 3544; R. C., c. 86, s. 12; 1777, c. 117, s. 16; 1931, c. 120; 1943, c. 753, s. 2; C. S. 1342.)

Editor's Note.—The 1943 amendment struck out the provision relating to settlement of paupers coming into the state which had been added to this section by the 1931 amendment.

The legal settlement of the pauper determines the liability. Commissioners v. Commissioners, 121 N. C. 295, 296, 28 S. E. 412.

Settlements Not Governed by Law of Domicile.—The law applicable to pauper settlements is regulated by statute, and is in no way governed by the law of the domicile or citizenship. Commissioners v. Commissioners, 101 N. C. 520, 524, 8 S. E. 176.

Settlement as at Common Law.—Since our act did not contemplate the case of foreign paupers, the question of settlement is left as at common law. State v. McQuaig, 63 N. C. 550, 551.

Purpose to Charge Each County with Its Poor.—It is the manifest purpose of the law in regard to pauper settlements to charge each county with the support of its own poor. Commissioners v. Commissioners, 101 N. C. 520, 524, 8 S. E. 176.

Loan for Care of Paupers Ultra Vires.—A contract for

the loan of money made by the late county courts for the support of the paupers in their respective counties was ultra vires, and therefore void. Daniel v. Board, 74 N. C. 494.

Pauper Injured in Another County. — Where a pauper, temporarily absent from the county where he has a "legal settlement," is so disabled as to require immediate medical services and is furnished by the authorities of another county with such attention and board, the latter is entitled to recover the expenses thereof from the county where the pauper has his settlement. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412.

Year's Requirement.—No one shall gain a settlement in a county unless by continuous residence for one year. State v. Elam, 61 N. C. 460, 462.

Settlement Not Ipso Facto Obtained by Birth.—Neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein. State v. Elam, 61 N. C. 460, 462.

When Domicile and Settlement Different. — Although in most cases the county of domicile and the county of settlement are the same, yet they are sometimes different as in such case the county of settlement is chargeable with the maintenance of the bastard child. State v. Elam, 61 N. C. 460, 465.

County's Liability Fixed by Mother's Settlement.—The liability of the county for the maintenance of a bastard child is fixed not by its birth but by the settlement of its mother at the time of its birth. State v. Elam, 61 N. C. 460, 462.

An illegitimate child, who has not gained a new settlement by a year's residence in some other county, is, for the purpose of being apprenticed, subject to the jurisdiction of the court of that county in which its mother was settled at the time of its birth. Ferrell v. Boykin, 61 N. C. 9.

When Mother without Settlement in State.—A bastard, born in this State of a mother who has not resided in it "for twelve months", is chargeable for maintenance upon the county in which it is born. State v. McQuaig, 63 N. C. 550.

Duration of Settlement.—A legal settlement continues until a new one is acquired. Commissioners v. Commissioners, 121 N. C. 295, 296, 28 S. E. 412.

§ 153-160. Removal of indigent to county of settlement; maintenance; penalties.—Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person is sick or disabled, and cannot be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal. The county wherein he was last legally settled shall repay all charges occasioned by his sickness, maintenance, cure and removal, and all charges and expenses whatever, if such person die before removal. If the board of commissioners of the county to which such poor person belongs refuses to receive and provide for him when removed as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of commissioners of the county where such person was legally settled refuses to pay the charges and expenses aforesaid, they shall be liable for the same. If any housekeeper entertains such poor person without giving notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars. (Rev., s. 1334; Code, s. 3545; R. C., c. 86, s. 13; 1777, c. 117, s. 17; 1834, c. 21; C. S. 1343.)

Liability of Commissioner.—It is thus provided that the board of commissioners of the county to which such poor person belongs shall receive and provide for him, under a penalty for refusal to do so, and they are made liable if they refuse to pay the expenses mentioned in the section. Commissioners v. Commissioners, 101 N. C. 520, 524, 8 S. E. 176.

§ 153-161. Burial of indigent veterans of the world war.—The county commissioners of any county in North Carolina are authorized, empowered, and directed to appropriate out of the general fund of the county a sum of not more than twenty-five dollars ($25.00) to provide for the burial of any former member of the army, navy, or marine corps, who served in the recent world war, who shall die within the boundaries of the said county and whose estate or relatives are unable to provide for the burial of said veteran, and whose burial has not otherwise been provided for. (1923, c. 119; C. S. 1343(a).)

Editor's Note.—This section was reviewed in 1 N. C. Law Rev. 296.

Art. 14. District Hospital Home.

§ 153-162. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may by action of the county commissioners in said counties, as hereafter provided, establish a district hospital-home for the aged and infirm, to be located at some suitable place within the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said hospital-home, each county to have one representative. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 129, s. 1.)

Editor's Note.—This article was codified from the Act of 1931, which is very similar to and takes the place of Public Loc. Laws, 1923, c. 611, s. 1, made a public law by Public Laws 1927, c. 192.

§ 153-163. Present properties to be sold; application of proceeds.—The county commissioners of the aforesaid counties are hereby authorized and empowered to sell and convey by deed all properties held by the aforesaid counties for the care and maintenance of their county's poor, and from the proceeds of such sale appropriate so much as may be required to meet said county's proportionate part of the funds necessary to perfect the completion of said community home for the aged and infirm as provided herein. (1931, c. 129, s. 2.)

§ 153-164. Funds raised by taxation.—Should it be deemed wisest not to sell said properties, or should any county not have said properties in its possession, or should any counties have said properties which would not be for sale, the necessary funds shall then be raised by direct taxation within the county or counties preferring this method of raising their pro rata part. (1931, c. 129, s. 3.)

§ 153-165. Appointment of trustees. — The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district hospital-home for the aged and infirm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district hospital-home for the district comprising ..... counties; the members of said board of trustees shall be ap-

pointed every two years by the boards of county commissioners, the term of office for said trustees shall be two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 129, s. 4.)

§ 153-166. Organization meeting; site and buildings.—This board of trustees shall, as soon as possible after appointment, assemble and organize by the election of a chairman, a secretary and a treasurer, which last officer shall be bonded. They shall proceed promptly with the purchase of a site for such hospital-home, including, if they deem it desirable, a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities, and shall then cause to be erected suitable plain, substantial, comfortable and permanent buildings for the accommodation of those for whom this article is intended, giving due regard to the separation of the sexes and races, and such other plans for segregation as their judgment and existing conditions may suggest. Said buildings are to be furnished with plain, substantial furniture, and such other equipment as conditions demand. Necessary hospital facilities may be included, but provisions for such facilities and equipment shall have the approval of the State Board of Charities and Public Welfare and the State Board of Health. (1931, c. 129, s. 5.)

§ 153-167. Apportionment of cost. — The several counties constructing, equipping, and operating a district hospital-home shall pay for the site and for the construction and equipment of the plant in proportion to the population of the individual county to the total population of the several counties comprising the district, but each county shall pay fo the number of persons maintained at the hospital-home at the actual per capita cost of such maintenance. (1931, c. 129, s. 6.)

§ 153-168. Plans and specifications for hospital-home.—The State Board of Charities and Public Welfare shall have prepared plans for such district hospital-home and shall furnish such plans on request to any board of trustees of any district hospital-home at cost; and all such hospital-homes shall be built in accordance with plans furnished or approved by the State Board of Charities and Public Welfare. (1931, c. 129, s. 7.)

§ 153-169. Closing of county homes. — As soon as the district hospital-home is ready for occupancy the several county homes or poorhouses, heretofore owned by the several counties, shall be closed and occupants shall be transferred and located in the district hospital-home for the aged and infirm herein provided for. (1931, c. 129, s. 8.)

§ 153-170. Superintendent and employees.—The board of trustees of the said district hospital-home shall elect a capable superintendent or matron, preferably a woman who is a trained nurse, and such other employees as it may deem necessary to the efficient management of said district hospital-home, and shall fix their salaries with due regard to number and condition of inmates occupying said district hospital-home. (1931, c. 129, s. 9.)

§ 153-171. Meetings of trustees.—The board of trustees shall meet at least twice a year for the transaction of such business as the provisions of this article may require. They shall have the general conduct and management of the district hospital-home's affairs. They shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. (1931, c. 129, s. 10.)

§ 153-172. Purpose of special meetings set out in call.—The matter to be considered at any special meeting shall be set out in the call for the special meeting, but any business may be transacted at special meetings which received a two-thirds' vote of the entire board of trustees, although not mentioned in the call. (1931, c. 129, s. 11.)

§ 153-173. Powers of trustees.—The board is vested with all powers not already mentioned which are possessed by boards supervising State institutions. (1931, c. 129, s. 12.)

§ 153-174. Sending of inmates to institution. — The counties constructing, operating and maintaining a district hospital-home for the aged and infirm shall, as required by law now in force for the care and maintenance of those not able to care for themselves, send such person or persons to the district hospital-home for the aged and infirm in lieu of the county home if it appears to the commissioners and the superintendent of public welfare that such persons need institutional care. (1931, c. 129, s. 13.)

§ 153-175. Annual report on affairs of institution.—As soon after the first day of January of each year as may be practicable the board of trustees shall cause a report to be made of the hospital-home, which report shall show the number of inmates, the county admitting them, date of admission, age, condition of health, sex, color, educational acquirements, diagnosis of disease if diseased, total number of inmates received during the year, average number cared for per month, names and disposition of those dismissed, pro rata cost of maintenance, the total amount of money expended, the total amount of money received from each county, and such information as the State Board of Charities and Public Welfare and the board of trustees of the district hospital-home may request. It shall also show an inventory and appraisement of property, real and personal, and give a strict account of receipts from farm and expenditure thereon, and such other information as may be required to check up the institution from all viewpoints. (1931, c. 129, s. 14.)

§ 153-176. Copies of report to county commissioners.—A copy of the said report of the said board of trustees shall be furnished the county commissioners of the respective counties interested in and providing said district hospital-home. (1931, c. 129, s. 15.)

Art. 15. County Prisoners.

§ 153-177. Bonds of prisoner in criminal case returned to court.—Every bond taken of any person confined for an offense, or otherwise than on process issuing in a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be of the force and effect of a recognizance. On breach thereof it shall be

forfeited and collected as a forfeiture in the name and for the use of the state, and applied as other forfeited recognizances. (Rev., s. 1340; Code, s. 3467; R. C., c. 87, s. 12; C. S. 1344.)

Bond to Keep Prison Bounds.—A bond to keep the prison bounds need not be proved by the subscribing witness, for it must be deemed a record, so far as concerns proof of its execution. Wynn v. Buckett, 1 N. C. 93.

Discharge of Insolvent Discharges Sureties. — When a prisoner is discharged upon taking the insolvent debtor's oath, the sureties upon his bond to keep the prison rules are also thereupon discharged. Howard v. Pasteur, 7 N. C. 270.

A prisoner's going out of the limits of the rules after he was discharged as an insolvent debtor was lawful, although he was in close jail at the instance of another creditor. The order of liberation extends to discharge him from all imprisonment for debt. Howard v. Pasteur, 7 N. C. 270.

When Entitled to Jury Trial.—In a summary proceeding, by motion for judgment on a bond to keep the prison bounds, if the defendant plead matters of fact in pais, he is entitled to have them tried by a jury. Whitley v. Gaylord, 48 N. C. 286.

§ 153-178. Bond of prisoner committed on capias in civil action. — Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment; and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (Rev., s. 1341; Code, s. 3469; R. C., c. 87, s. 14; 1759, c. 65, ss. 2, 3; C. S. 1345.)

Bond Has Force of Judgment.—This section gives to the bond the force of a judgment, and authorizes the party to have execution sued out thereon, upon mere motion, and the plaintiff cannot elect to treat it as a common deed. Brown v. Frazier, 5 N. C. 421, 422.

When Action Not Maintainable.—An action cannot be maintained upon a bond given by a person arrested upon a capias ad satisfaciendum, to keep within the limits of the rules of the prison. Brown v. Frazier, 5 N. C. 421.

§ 153-179. Jailer to cleanse jail, furnish food and water.—The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner is confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance. (Rev., s. 1343; Code, s. 3464; R. C., c. 87, s. 9; 1816, c. 911, s. 2; C. S. 1346.)

Editor's Note.—See 11 N. C. Law Rev. 172 for comment involving this section.

§ 153-180. Fees of jailers.—Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding fifty cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. (Rev., s. 2799; Code, s. 3746; R. C., c. 102, s. 38; 1878, c. 87; 1919, c. 118; C. S. 3919.)

§ 153-181. Prisoner to pay charges and prison fees.—Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county. (Rev., s. 1346; Code, s. 3461; R. C., c. 87, s. 6; 1795, c. 433, s. 7; C. S. 1347.)

§ 153-182. Prisoner may furnish necessaries. — Prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence. (Rev., s. 1344; Code, s. 3463; R. C., c. 87, s. 8; 1795, c. 433, s. 6; C. S. 1348.)

This section permits prisoners to procure such additional comforts as their circumstances allow. Wilkes v. Slaughter, 10 N. C. 211, 221.

§ 153-183. United States prisoners to be kept.—When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the state. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the state. (Rev., s. 1342; Code, s. 3456; R. C., c. 37, s. 1; 1790, c. 322, ss. 1, 2; C. S. 1349.)

Authority of U. S. Commissioners.—By virtue of this section United States Commissioners have authority to commit prisoners to county jails. United States v. Harden, 10 Fed. 802, 807.

The Mittimus.—The mittimus must be directed to the marshal commanding him to convey the prisoner into the custody of the jailer, and it must also direct and command the jailer to receive the prisoner and keep him in close custody until discharged, or taken from his custody by some proper process of law. United States v. Harden, 10 Fed. 802, 807.

Same—Copy to Jailer.—The marshal must deliver a copy of such mittimus to the jailer as his authority to hold the prisoner. United States v. Harden, 10 Fed. 802, 807.

Jailer Should Have Written Authority.—A jailor ought never to receive a prisoner into his custody without some written authority to detain him, issued by a person having power to grant such authority, except under the order of a court in session. United States v. Harden, 10 Fed. 802, 807.

Commitment Not Absolute.—This is not an absolute commitment, as the marshal can take the prisoner out of the custody of the jailer when it becomes necessary for him to complete the service of the capias by producing the body of the prisoner at the ensuing term of court. United States v. Harden, 10 Fed. 802, 807.

§ 153-184. Arrest of escaped persons from penal institutions.—Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the state, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the state, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1.)

Cross Reference.—As to recapture of persons escaped from the State Prison, see §§ 148-4, 148-40, and 148-41.

§ 153-185. Guard when escape apprehended; compensation.—When the sheriff of the county, or keeper of the jail, apprehends that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it is his duty, without delay, to make information thereof to a judge of the superior court, the attorney-general, or a solicitor, if any of those officers is in the county, and if not, then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the state; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same. (Rev., s. 1345; Code, s. 3460; R. C., c. 87, s. 5; 1795, c. 433, s. 8; C. S. 1350.)

§ 153-186. What counties liable for guarding and removing prisoners.—The expense for guarding prisons shall be paid by the county where the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed. (Rev., s. 1347; Code, s. 3462; R. C., c. 87, s. 7; 1808, c. 757, s. 2; C. S. 1351.)

Expense of Removal.—When upon proper application, the commanding officer of a county is required to furnish the jailer with such guard as may be required for the safekeeping of prisoners, the expenses of the guard so incurred are to be paid by the county from which the prisoners are removed. Board v. Board, 75 N. C. 240.

§ 153-187. Transfer of prisoners to succeeding sheriff.—The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (Rev., s. 1348; Code, s. 3470; R. C., c. 87, s. 15; 1777, c. 118, s. 12; C. S. 1352.)

§ 153-188. Where no jail, sheriff may imprison in jail of adjoining county.—The sheriffs, constables, and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (Rev., s. 1349; Code, s. 3459; R. C., c. 87, s. 4; 1835, c. 2, s. 3; C. S. 1353.)

§ 153-189. Where no jail, courts may commit to jail of adjoining county.—Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (Rev., s. 1350; Code, s. 3458; R. C., c. 87, s. 3; 1835, c. 2, s. 2; C. S. 1354.)

§ 153-190. When jail destroyed, transfer of prisoners provided for.—When the jail of any county is destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff, constable, or other officer of the county deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (Rev., s. 1351; Code, s. 3457; R. C., c. 87, s. 2; 1835, c. 2, s. 1; C. S. 1355.)

§ 153-191. Counties and towns may hire out certain prisoners.—The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the state, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall

be credited to them for the fine and bill of costs in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize. (Rev., s. 1352; Code, s. 3448; 1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; C. S. 1356.)

Cross Reference.—See also, §§ 153-194 and 23-24.

Editor's Note.—This section must be construed with sections 23-24 and 153-94. State v. Morgan, 141 N. C. 726, 53 S. E. 142. Before the enactment of this section, if one in jail in default of payment of fine and costs was not provided with some mode of discharge, he would remain therein indefinitely, or take the insolvent debtor's oath. But it was felt that some other mode of discharge should be provided, and that it was a serious and unjust charge upon the public, that these prisoners should be discharged without burden to themselves, leaving the public to bear the real punishment by paying the cost of their trial and conviction, and also that it was bad policy that prisoners sentenced to the county jail for crime should lie therein in idleness, supported at the expense of the taxpayers. The Legislature, therefore, deeming it had power to so legislate, formulated public opinion into an Act originally passed in 1866-'67, chap. 30, and which, after being several times amended, is now this section. This later Act must be read in connection with sec. 2967 of the Code of 1883, and is, in effect, an amendment thereto. See dissenting opinion of Clark, J., in State v. White, 125 N. C. 674, 675, 681, 34 S. E. 532.

The Act of 6 March, 1867, c. 196, was without the concluding sentence of this section, which leaves it at the discretion of the trial court as to whether or not a convict shall be farmed out. In the February Term, 1878, of the Supreme Court, Rodman, J., delivering the opinion of the court in State v. Shaft, 78 N. C. 464, points out the possibilities of mischief and evil of a provision, unrestrained in its terms, which authorizes the employment of convict labor by individuals or corporations. He suggested that the Legislature might see fit to amend the law, by leaving it to the judge to say, in his sentence, whether the prisoner may be hired out or not; or by allowing the hiring only when the prisoner shall be in prison for the non-payment of a fine.

It seems that the Legislature was attracted by this suggestion, and realizing the opening for evil under the existing law, passed the Amendatory Act of March 13, 1879, c. 218, which added as a third proviso, the last sentence of this section, substantially complying with Justice Rodman's suggestion. See State v. Shaft, 78 N. C. 464; State v. Sneed, 94 N. C. 806.

Constitutionality.—The section is constitutional. State v. Young, 138 N. C. 571, 573, 50 S. E. 213; State v. Weathers, 98 N. C. 685, 4 S. E. 512; State v. Palin, 63 N. C. 471.

When Must Be Released.—A prisoner cannot be held beyond the time fixed by the court. State v. Williams, 97 N. C. 414, 416, 2 S. E. 370.

Same—When Farmed Out.—A prisoner may be discharged from commitment for the fine and cost by taking the pauper's oath though he has been farmed out under the provisions of this section. State v. Williams, 97 N. C. 414, 2 S. E. 270.

Does Not Apply to Employment on Public Works.—The provisions of the section forbidding the hiring out of convicts, unless the court before which such prisoner was convicted shall so authorize in its judgment, only applies to farming out convict labor to individuals and corporations, and does not extend to cases of convicts employed on public works, and under the supervision and control of public agents. State v. Sneed, 94 N. C. 806.

Prisoner Hired to Wife.—A man imprisoned in the county jail upon a conviction for fornication and adultery, may be hired out to his wife, under this section, upon her giving bond with sureties for the price. State v. Shaft, 78 N. C. 464.

Court Not to Designate Kind or Place of Employment.—The section does not authorize the court to designate the employment, or where it shall be performed. That matter is left to the discretion of the county commissioners, under rules and regulations prescribed by them. State v. Norwood, 93 N. C. 578, 580.

§ 153-192. Person hiring may prevent escape.—The party in whose service said convicts may be may use the necessary means to hold and keep them in custody and to prevent their escape. (Rev., s. 1353; Code, s. 3454; 1876-7, c. 196, s. 3; C. S. 1357.)

Cross Reference.—As to allowing hired out prisoners to escape, see § 14-257.

§ 153-193. Sheriff to have control of prisoners hired out.—All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a state officer for the purpose of this section. (Rev., s. 1354; Code, s. 3453; 1876-7, c. 196, s. 2; C. S. 1358.)

§ 153-194. Convicts who may be sentenced to or worked on roads and public works.—It is lawful for and the duty of the judge holding court to sentence to imprisonment at hard labor on the public roads, in accordance with §§ 148-28, 148-30 and 148-32 for such terms of thirty days or more as are now prescribed by law for their imprisonment in the county jail or in the state's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise, wholly or in part, be imprisonment in the state's prison.

There may also be worked on the public works, in like manner, all persons sentenced to imprisonment in jail for less than 30 days by any magistrate; and also, all insolvents imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public works until they repay the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public works shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable. (Rev., s. 1355; 1887, c. 355; 1889, c. 419; C. S. 1359.)

Cross References.—See also, §§ 153-191 and 23-24. As to prisoners sentenced for less than thirty days, see § 153-9, subsection 26.

Editor's Note.—The first paragraph of this section is the Act of 1887, c. 355, and refers exclusively to persons sentenced by the judge holding the courts of the county. The second paragraph is the Amendment of 1889, c. 419, which extends the section as to include persons sentenced by a magistrate, and all insolvents imprisoned for nonpayment of costs in criminal causes.

Public Laws of 1931, c. 145, s. 30, codified as § 148-32 provided for the surrender on July 1, 1931 of county prisoners assigned to work on the county roads to the state highway commission to be worked on the state highways. It was provided that in the future, in lieu of being sentenced to work on the county roads, prisoners should be assigned to the state highway commission to work on the roads of the state. The 1931 law provided that all other laws were amended to conform to its provisions. A proviso permitted the retention and sentencing of prisoners to work on county farms, and Public Laws 1939, c. 243, amended this proviso to permit the working of county prisoners on "parks or other public grounds." For a statute substantially to the same effect as the 1931 law, see Public Laws 1933, c. 172, s. 8, codified as § 148-30.

This section must be construed with §§ 23-24 and 153-191. State v. Morgan, 141 N. C. 726, 53 S. E. 142.

Constitutionality.—A sentence to work the public roads is constitutional and valid. State v. Smith, 126 N. C. 1057, 35 S. E. 615; State v. Weathers, 98 N. C. 685, 4 S. E. 512; State v. Haynie, 118 N. C. 1265, 24 S. E. 536.

A sentence of a defendant convicted of a misdemeanor to thirty days' imprisonment and that he be assigned to the commissioners to be "worked on the public roads of the county" during said term is valid under the section and Article XI, section 1, of the Constituton. State v. Young, 138 N. C. 571, 50 S. E. 213.

Judge's Duty.—When county has made provision for working convicts upon the public roads, it is the duty of the judge holding court in such county to sentence to imprisonment at hard labor on the public roads for such terms as are prescribed by law for imprisonment in the county jail. State v. Saunders, 146 N. C. 597, 598, 59 S. E. 695.

Presumption as to Enforcement. — Where judgment has been rendered imposing such punishment, it will be presumed the county authorities have made the proper provisions for its enforcement. State v. Hicks, 101 N. C. 747, 7 S. E. 707.

An Incident of Sentence Proper.—The order of the commissioners directing the employment of a convict upon the public roads, and committing him to the custody of a superintendent of such public works, is not an additional sentence or judgment pronounced by the commissioners but an incident to the sentence properly imposed by the court in contemplation of which the prisoner committed the offense. State v. Yandle, 119 N. C. 874, 25 S. E. 796.

To Work Roads of Another County.—A sentence to work the public roads of another county is valid when authorized by statute. State v. Hamby, 126 N. C. 1066, 35 S. E. 614.

Half Fees Charged against County.—Where persons are imprisoned for nonpayment of cost, they are to be detained only until they repay the county to the extent of the "half fees charged up against it," thus showing that the Legislature recognized the liability of the county in such cases only for half fees. State v. Saunders, 146 N. C. 597, 599, 59 S. E. 695.

Escape. — Where a prisoner confined in the public jail was used by the county authorities to work on the public roads, the person in charge of him was guilty of an escape for negligently allowing such person to make his escape. State v. Sneed, 94 N. C. 806.

Classes of Prisoners Section Not Applicable to.—This section does not include among those authorized to be worked upon the roads those "sentenced to the house of correction," nor does it include those who fail "to give bond for maintenance of a bastard," nor for "failure to pay costs," except "those imprisoned for nonpayment of costs in criminal causes." State v. Morgan, 141 N. C. 726, 53 S. E. 142.

Husband Convicted of Abandonment.—A husband convicted of abandonment under section 14-322 of this code, and other offenses of like kind, may be assigned to work on the roads during his term. State v. Faulkner, 185 N. C. 635, 116 S. E. 168.

Prisoners Convicted for Affray and Assault.—In State v. Weathers, 98 N. C. 685, 4 S. E. 512, upon conviction for an affray and mutual assault, the court pronounced judgment that "the convicted defendants be put to work on the public roads by the county commissioners," and the judgment was affirmed. The court said, speaking through Smith, C. J., at p. 688: "The form of the sentence is fully warranted in the recent Act regulating the working of convicts on the public roads (Laws 1887, ch. 355), which directly warrants the judgments, and places convicts sentenced to imprisonment and hard labor on the public roads under the control of the county authorities, investing them with power to enact all useful rules and regulations for the successful working of all convicts upon said public roads." State v. Young, 138 N. C. 571, 573, 50 S. E. 213. To the same effect is State v. Pearson, 100 N. C. 414, 6 S. E. 387; State v. Haynie, 118 N. C. 1265, 24 S. E. 536.

Prisoner Convicted for Bastardy.—The Supreme Court declared in Myers v. Stafford, 114 N. C. 234, 19 S. E. 764, that bastardy having become a "petty misdemeanor," a defendant convicted of that offense may, under the authority of section 60-42, be put to work on the public road until the fine and costs are paid. State v. Young, 138 N. C. 571, 573, 50 S. E. 213.

Convicted for Assault and Battery with Deadly Weapon. —State v. Yandle, 119 N. C. 874, 25 S. E. 796, was a conviction for an assault and battery with a deadly weapon, and the Supreme Court held that one legally convicted of any crime or misdemeanor may be, under the authority of this section, sentenced to work upon the public roads. This was cited and approved in Herring v. Dixon, 122 N. C. 420, 425, 29 S. E. 368. State v. Young, 138 N. C. 571, 573, 50 S. E. 213.

§ 153-195. Deductions from sentence allowed for good behavior.—When a convict has been sentenced to work upon the public works of a county, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged from the county works when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape he shall forfeit and lose any deduction he may have been entitled to prior to that time. This section shall apply also to women sentenced to a county farm or county home. (1913, c. 167, s. 1; C. S. 1360.)

§ 153-196. Convicts sentenced to public works to be under county control.—The convicts sentenced to hard labor upon the public works, under the second paragraph of § 153-194, shall be under the control of the county authorities, and the county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public works. The county commissioners may work such convicts in canaling the main drains and swamps or on other public work of the county. (Rev., s. 1356; 1887, c. 355, s. 2; 1891, c. 164; C. S. 1361.)

Unauthorized Whipping. — In the absence of rules and regulations made and promulgated by the county commissioners permitting it, a guard has no legal right or authority to whip convicts in his care or custody. State v. Morris, 166 N. C. 441, 81 S. E. 462.

§ 153-197. Taxes may be levied for expenses of convicts.—The board of county commissioners of the several counties in the state taking advantage of this article shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties. (Rev., s. 1359; 1887, c. 355, s. 6; C. S. 1364.)

§ 153-198. Use of county prisoners in maintaining roads, not within state system.—The state highway and public works commission may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the state highway commission, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½.)

Local Modification.—New Hanover: 1941, c. 75.

Art. 16. District Prison Farm.

§ 153-199. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may, by action of said commissioners in said counties, as hereinafter provided, establish a district prison farm, to be located at some suitable place in the counties composing the district, location and purchase to be controlled by a board of

trustees appointed by the county commissioners of the respective counties owning and controlling said district prison farm, each county to have one trustee. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 142, s. 1.)

§ 153-200. Appointment of trustees; vacancies, expenses and compensation.—The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district prison farm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district prison farm for the district comprising ....., ..., ... counties; the members of said boards of trustees shall be appointed every two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 142, s. 2.)

§ 153-201. Organization meeting; purchase of site; equipment; separation of races and sexes.—The board of trustees shall, as soon as possible, and not later than sixty days after appointment, meet and organize by electing a chairman and secretary. They shall proceed promptly with the purchase of a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities. They shall provide for the necessary stock, tools, and farm equipment, and shall cause to be erected suitable buildings for the housing, detention and keeping the prisoners assigned to said district farm, due regard being given to the separation of the sexes and races and such other plans for segregation as their judgment and existing conditions may suggest. (1931, c. 142, s. 3.)

§ 153-202. Proportion of payment among counties.—The several counties shall pay for the site and for the construction and equipment of the prison farm in proportion to the taxable property of the several counties, and shall own the same in the same proportion, but the operating expense shall be borne by the said counties in proportion to the population of the several counties. (1931, c. 142, s. 4.)

§ 153-203. Election of superintendent and employees; regulations for working prisoners. — The said board of trustees of said district prison farm shall elect a capable superintendent and such other employees as it may deem necessary for the efficient management of said farm and shall make rules and regulations for the working of all prisoners sentenced to said farm to the end that the said district prison farm shall be as near self-supporting as practicable. (1931, c. 142, s. 5.)

§ 153-204. Meetings of trustees.—The board of trustees of said district prison farm shall meet at said farm at least twice each year for the transaction of such business as may come before them. They shall meet at other times on the call of the chairman or on a call by a majority of the board of trustees. (1931, c. 142, s. 6.)

§ 153-205. Notification to boards of commissioners and courts of readiness of farm.—As soon as said prison farm is purchased and the necessary building erected thereon and the farm equipped with stock, tools, etc., the board of trustees of said district prison farm shall notify the boards of commissioners of the several counties, and the said boards of commissioners, upon receipt of said notice, shall promptly notify each and every court in the several counties, including superior courts, recorders' courts and all other courts which are now operating or may hereafter be established in said counties that the prison farm is ready. (1931, c. 142, s. 7.)

§ 153-206. Assignment of prisoners to work on farm.—From and after receipt of the information set out above, it shall be the duty of the judges, recorders and other presiding officers of the several courts in said counties, to assign all prisoners sentenced by them to the county jails to the said district prison farm. (1931, c. 142, s. 8.)

§ 153-207. Bonds and notes for payment for farm; maximum levy.—The several counties of said district are hereby authorized to provide for the payment of their proportionate part of said farm and equipment by the sale of notes or bonds as provided in the County Finance Act and to provide for payment of said bonds and notes by the levy of such tax as may be necessary for said purpose: Provided, not more than a levy of ten cents on the one hundred dollars valuation shall be levied any one year in any county. (1931, c. 142, s. 9.)

§ 153-208. Yearly report of operations. — The said board of trustees shall cause to be made a detailed report of the operations of said district prison farm each year not later than January tenth each year and shall send a copy of said report to the several boards of county commissioners. (1931, c. 142, s. 10.)

Art. 17. Houses of Correction.

§ 153-209. Commissioners may establish houses of correction.—The board of commissioners may, when they deem it necessary, establish within their respective counties one or more convenient institutions to be known as houses of correction, or, in the discretion of the board of commissioners, as training schools, municipal farms, or juvenile farms, with workshops and other suitable buildings for the safekeeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said institutions, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid shall vest in the directors hereinafter provided for, and their successors in office. The said board also has power to make, from time to time, such rules and regulations as it may deem proper for the kind and mode of labor and the general management of the said institutions. (Rev., s. 1360; Code, s. 786; 1866, c. 35, s. 1; 1919, c. 273, s. 1; C. S. 1365.)

Cited in State v. Williams, 97 N. C. 414, 2 S. E. 370; State v. Garrell, 82 N. C. 581.

§ 153-210. Who must or may be committed to such institutions.—It shall be the duty of the

judges of the criminal courts and other committing magistrates of such county or counties to sentence or commit thereto all youthful offenders of the age of sixteen years and under, convicted of any crime or misdemeanor whereof the punishment by statute prescribes a fine or sentence of imprisonment or working the roads. Said judges and committing magistrates may also sentence thereto any female prisoners and such other offenders convicted of misdemeanors who by reason of physical infirmities or mental deficiencies ought not to be imprisoned in the county jail or worked on the public roads. Nothing herein shall be construed to prevent the working at light labor of any partially disabled or infirm convict, or female prisoner, on or about any of the public works, buildings, or grounds in any such county, at and upon the request of the board of county commissioners, with the approval of the court or committing magistrate. (1919, c. 273, s. 1; C. S. 1366.)

Cross Reference.—As to juvenile courts and child offenders, see §§ 110-21 et seq.

§ 153-211. Levy of taxes authorized; to be paid to manager.—The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this article, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable; and he shall disburse the same under the authority of the directors. (Rev., s. 1361; Code, s. 790; 1866, c. 35, s. 5; C. S. 1367.)

§ 153-212. Bonds may be issued.—The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the institutions herein provided for. (Rev., s. 1362; Code, s. 796; 1866, c. 35, s. 11; C. S. 1368.)

§ 153-213. Governor to be notified of establishment.—When any institution is established in pursuance of this article, it is the duty of the chairman of the board of commissioners of the county wherein the same is established to certify the fact to the governor, who shall cause it to be noted in a book kept for that purpose. (Rev., s. 1363; Code, s. 797; 1866, c. 35, s. 12; C. S. 1369.)

§ 153-214. Directors to be appointed; duties. — The board of commissioners shall annually appoint not less than five nor more than nine directors for each such institution hereunder established, whose duty it is to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such by-laws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered, by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated. (Rev., s. 1364; Code, s. 787; 1866, c. 35, s. 2; C. S. 1370.)

§ 153-215. Term of office of directors.—The directors shall continue in office until others are appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors. (Rev., s. 1365; Code, s. 795; 1866, c. 35, s. 10; C. S. 1371.)

§ 153-216. Manager to be appointed; bond; duties.—The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the state of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager is appointed by the board of commissioners. It is the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures. (Rev., s. 1366; Code, s. 788; 1866, c. 35, s. 3; C. S. 1372.)

§ 153-217. Manager to assign employment to inmates.—The manager shall assign to each person sent to such institution the kind of work in which such person is to be employed. (Rev., s. 1367; Code, s. 794; 1866, c. 35, s. 9; C. S. 1373.)

§ 153-218. Compensation of officers. — The said board of commissioners shall direct what compensation the manager and such subordinate officers, assistants and servants, as shall be appointed, shall receive, and shall provide for the payment thereof. (Rev., s. 1368; Code, s. 789; 1866, c. 35, s. 4; C. S. 1374.)

§ 153-219. Sheriff to convey persons committed.—When a person is sentenced to such institution he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the institution, and deliver him to the manager with the certified copy aforesaid, and take

the manager's receipt for the body; which receipt the sheriff shall return to the clerk of the board of commissioners, with his indorsement of the time when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case. (Rev., s. 1369; Code, s. 793; 1866, c. 35, s. 8; C. S. 1375.)

§ 153-220. Absconding offenders punished. — If any offender absconds, escapes, or departs from any such institution without license, the manager has power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he submits to the regulations of such institution; and for every escape each offender shall be held to labor in such institution for the term of one month in addition to the time for which he was first committed. (Rev., s. 1370; Code, s. 791; 1866, c. 35, s. 6; 1919, c. 273, s. 2; C. S. 1376.)

§ 153-221. Release of vagrants. — If a person committed as a vagrant behaves well and reforms, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors, upon such conditions as they may deem proper. (Rev., s. 1371; Code, s. 792; 1866, c. 35, s. 7; C. S. 1377.)

§ 153-222. Suits in name of county. — All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the institution, without designating such directors by name. (Rev., s. 1372; Code, s. 798; 1866, c. 35, s. 13; C. S. 1378.)

§ 153-223. Counties may establish joint house of correction.—Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, for the joint use of the counties so agreeing together; and the same may be established at such place or places, and be in all respects managed under such by-laws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine. (Rev., s. 1373; Code, s. 799; 1866-7, c. 130, s. 1; C. S. 1379.)

§ 153-224. Directors of joint house of correction.—The board of commissioners of each of the respective counties agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties shall annually appoint not less than three nor more than five directors in behalf of their several counties, and the directors so appointed by each of such counties shall together constitute the general board of directors of any such joint establishment. (Rev., s. 1374; Code, s. 800; 1866-7, c. 130, s. 2; 1919, c. 273, s. 3; C. S. 1380.)

§ 153-225. Directors to appoint manager; bond; term; duties.—Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be approved by said board, in such sum as may be required, payable to the state of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter. (Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3; C. S. 1381.)

§ 153-226. Compensation of manager and other officers.—The compensation of the manager and such subordinate officers, assistants and servants as may be appointed by the general board shall be fixed by said general board. (Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3; C. S. 1382.)

Art. 18. Consolidation, Annexation and Joint Administration of Counties.

§ 153-227. Contiguous counties may consolidate into one.—Any two or more counties which are contiguous, or which lie in a continuous boundary may, in the manner herein prescribed, consolidate so as to form a single county. Where any group of counties so situated desires to effect such consolidation, a uniform resolution to this effect, setting forth the name of the proposed new county, shall be adopted by the governing bodies thereof, which resolution shall call a special election to be held on a specified date which shall be the same in all of said counties but not less than sixty nor more than ninety days from the last date of the adoption of such resolution in any of said counties. Said resolution shall also specify what group of counties it is proposed to consolidate, the name of the new county thus to be formed, and the county seat thereof. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein, once a week for a period of six weeks prior to the date of said election. (1933, c. 193, s. 1.)

Editor's Note.—See 11 N. C. Law Rev., 213.

§ 153-228. Election laws applicable. — The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed consolidation be

effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Consolidation
☐ Against Consolidation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the result of said election to the governing bodies of all of the counties in said group, and each governing body shall cause the complete results of said election to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed consolidation, then said consolidation shall be declared to be in effect, and thereupon, the several counties shall stand abolished except as hereinafter provided, and the new county thus created shall for all purposes be constituted one of the counties of this state with all the rights, powers, and functions incident thereto under the general laws. If it appear that a majority in any one of said counties voted against the proposed consolidation, then said consolidation shall be declared to have failed for all purposes. (1933, c. 193, s. 2.)

§ 153-229. New county board of elections. — In case such consolidation be effected, the county boards of elections of the counties thus consolidated, acting together as one board, shall for the time being serve as a temporary county board of elections for the new county thus created, until the expiration of the terms for which they were appointed by the state board of elections. Thereafter the state board of elections shall appoint for such new county a county board of elections consisting of three members, in the manner and for the term now prescribed by law. (1933, c. 193, s. 3.)

Cross Reference.—As to appointment and term of county board of elections, see § 163-11.

§ 153-230. Special election for new county officers.—In case such consolidation be effected, then said temporary county board of elections shall immediately call and shall hold a special election in such new county, on a date not less than forty-five nor more than sixty days after the date on which said consolidation was voted into effect, for the purpose of electing for said new county all constitutional and other county and township officers, except justices of the peace, as now provided by law for counties throughout the state, including a board of county commissioners consisting of five members. No elections shall be held to fill any office theretofore existing in one or more of the group of counties thus consolidated if such office did not exist in each of said counties, but all of such offices peculiar to only a part of the counties brought into said consolidation shall be deemed abolished in respect to the new county. All constitutional county and township offices, all offices created for counties and townships by general laws, and all other offices in the group of counties thus consolidated, provided they existed in each of said counties, are hereby created for the new county effected by such consolidation, with the same rights, powers, duties and functions pertaining to such offices under the existing law. In order that elections by townships may be conducted, the various township lines and names as they existed before consolidation shall continue in effect, and townships of the several counties shall be deemed townships of the new county until thereafter altered in the manner prescribed by law. (1933, c. 193, s. 4.)

§ 153-231. Term of new officers; salaries. — All officers elected for the new county at said special election shall hold office until the next general election at which time their successors shall be elected for the regular term prescribed by law. The salaries of all officers elected for the new county at said special election shall be the same as those now fixed by law for such offices. In case the salaries of any officers in the counties thus consolidated were not uniform, then any officer elected for the new county at such special election shall be entitled to a salary equal to the highest salary paid for that particular office in any of said counties before such consolidation was effected. (1933, c. 193, s. 5.)

§ 153-232. Retention of old officers till qualification of new.—Notwithstanding such consolidation is voted upon favorably, all the existing officers in each of said counties shall continue to function as theretofore and shall have full authority to carry on the regular business of their respective counties, receiving their regular compensation therefor, until the officers for said new county shall have been elected and are qualified, as provided in § 153-230; and pending said election and the organization of the government of the new county, the several counties thus consolidated shall, for the purpose of carrying on their regular business, continue to exist and to function as separate county governments as fully as if said consolidation had never been voted upon. As soon as the officers for said new county are elected and qualified, then all public offices in the separate counties thus consolidated shall stand abolished and said separate counties shall stand dissolved and shall cease to exist for any and all purposes. (1933, c. 193, s. 6.)

§ 153-233. Powers and duties of new officers.—All officers elected for the new county shall become vested with all the rights, powers, duties, and functions which pertained to their respective offices in any one of the counties thus consolidated. It shall be the duty of all public officers theretofore serving in each of said counties forthwith to surrender and turn over to the corresponding officers of the new county all books, records, funds, and other property held by them in their respective offices. Said new county shall become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to each of said counties and shall have full power to collect and disburse any and all taxes, penalties, and other charges which had been

assessed by or had become due to said counties prior to such consolidation. (1933, c. 193, s. 7.)

Cross Reference.—As to criminal liability of officer for failure to deliver records, etc., to successor, see § 14-231.

§ 153-234. Transfer of books, records, etc.—All records, papers, files, funds, and the like held by the clerks of courts in any of said counties shall forthwith be turned over to corresponding officials in the new county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. Wherever counties thus consolidated lie in different judicial districts, the new county thus established shall become a part of that judicial district in which the larger portion of its territory lies. (1933, c. 193, s. 8.)

§ 153-235. Liability for bonded indebtedness. — Any such new county thus established shall be liable for all of the bonded and other indebtedness of the separate counties so consolidated, and any and all rights which might have been enforced against any of said counties may be enforced against said new county as fully as though the proceeding were against the county originally liable. (1933, c. 193, s. 9.)

§ 153-236. Justices of the peace and constables. —All justices of the peace and constables holding office at the time of such consolidation shall continue to serve as such in and for the new county thus established until the expiration of the terms for which they were elected or appointed, at which time, justices of the peace and constables may be elected and appointed for said new county in the manner now provided by law. Such consolidation shall in no wise effect the validity of any proceeding pending in the court of any justice of the peace in said counties. (1933, c. 193, s. 10.)

§ 153-237. Representation in general assembly. —In the event such consolidation be thus effected, the consolidated county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the several counties so consolidated until the next re-apportionment of the membership of the house of representatives by the general assembly. Nor shall such consolidation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 193, s. 10½.)

§ 153-238. Merging of one contiguous county with another authorized.—Wherever two counties are contiguous, and it is their mutual desire that one of said counties shall be annexed to and merged in the other, such annexation may be effected in the manner herein prescribed. The governing body of each of said counties shall adopt a uniform resolution setting forth the willingness of one of said counties to become annexed to and merged in the other pursuant to the authority of §§ 153-238 to 153-246. Said resolution shall also call for a special election to be held on a specified date which shall be the same in both counties but not less than sixty nor more than ninety days from the last date on which said resolution was adopted in either of said counties. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein once a week for a period of six weeks prior to the date of said election. (1933, c. 194, s. 1.)

Liability for County Indebtedness.—The proceeding for annexation is the same as in consolidation, but when it is complete, the county annexed ceases to exist and becomes a part of the other county. The liability of the annexing county for the indebtedness of the annexed county is to be determined in the beginning, when the plan of annexation is submitted. 11 N. C. Law Rev., 213.

§ 153-239. Election laws applicable. — The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed, in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed annexation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Annexation
☐ Against Annexation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the results of said election to the governing body of both counties, and thereupon, the governing body of each county shall cause the results of the said election in both counties to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed annexation, then said annexation shall be declared to be in effect. If it appear that a majority of those voting in either of said counties voted against the proposed annexation, then said annexation shall be declared to have failed for all purposes. (1933, c. 194, s. 2.)

§ 153-240. Dissolution of county merged. — In the event such annexation shall be voted upon favorably in each of said counties, then the county which was voted to be annexed to the other shall thereupon stand dissolved and abolished, and its territory thereby shall be transferred to and for all purposes shall become a part of the annexing county, and townships of the annexed county shall be deemed townships of the annexing county until thereafter altered in the manner prescribed by law. (1933, c. 194, s. 3.)

§ 153-241. Abolition of offices in merged county; transfer of books, records, etc.—In the event such annexation be thus effected, all public

offices except those of justice of the peace and constable, in the county so annexed, shall stand abolished, and it shall be the duty of those who held such offices before annexation to turn over to the corresponding officers of the annexing county all books, records, funds, and other property theretofore held by them in their official capacity, and said corresponding officers of the annexing county shall be vested with all the rights of said offices thus abolished, and shall be entitled to the custody and control of all books, records, funds, and other property formerly held by the incumbents of such abolished offices. (1933, c. 194, s. 4.)

§ 153-242. Court records transferred; justices of the peace and constables hold over.—In the event such annexation be thus effected, all records, papers, files, funds, and the like held by clerks of courts in the annexed county shall forthwith be turned over to corresponding clerks in the annexing county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. All justices of the peace and constables holding office in the annexed county at the time of such annexation shall continue to serve as justices of the peace and constables of the annexing county in and for the new township, until the expiration of the terms for which they were elected or appointed, in as full a measure as if such annexation had not occurred, and the validity of proceedings pending before such justices of the peace at the time of annexation shall continue to serve as justices of the peace the expiration of their terms, justices of the peace and constables shall be elected or appointed in such annexed territory in the manner prescribed by law. Any other officers provided by the general law for a township shall be elected in the new territory at the next general election following such annexation. (1933, c. 194, s. 5.)

§ 153-243. Rights of annexing county. — In the event such annexation be thus effected, the annexing county shall forthwith:

(a) Become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to the annexed county, and shall have full power to collect and disburse any and all taxes, penalties and other charges which had been assessed by or had become due to the annexed county prior to such annexation. Said annexing county shall also be liable for all bonded and other indebtedness of the annexed county, and any and all rights which might have been enforced against said annexed county may be enforced against the annexing county as fully as though the proceeding had been against the county thus annexed;

(b) Said annexing county shall treat said annexed county as a township or division of said annexing county, and said annexing county shall forthwith be vested with title to all property of every kind and character, real, personal and mixed, belonging to said annexed county, and have full power to collect any and all taxes, penalties and other charges which have been assessed by or become due to the annexed county prior to the annexation, and shall disburse the same for the payment of obligations of said annexed county; and the bonded indebtedness of said annexed county shall be a charge only on the property of the township or division of said annexing county which was comprised in the annexed county, and taxes for the payment of same shall be levied only on property within said township or division. And the property in said township or division constituting the property in the annexed county shall not be liable for any of the bonded or other indebtedness of the county annexing it, existing prior to said annexation, and no taxes shall be levied on the property of said township for the payment of same. (1933, c. 194, s. 6.)

§ 153-244. Plan of government.—At the time of entering the resolutions as set out in § 153-238, the counties in said resolution shall specifically provide whether plan A or plan B, as set out in § 153-243, shall govern the two counties as to the bonded indebtedness. (1933, c. 194, s. 7.)

§ 153-245. Membership in general assembly. — In the event such annexation be thus effected, the annexing county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the annexed and annexing counties until the next reapportionment of the membership of the house of representatives by the general assembly. Nor shall such annexation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 194, s. 7½.)

§ 153-246. Joint administrative functions of contiguous counties.—Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments through consolidated agencies, or by means of institutions or buildings jointly constructed, owned and operated.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement has been entered into, then the consolidated agency or institution set up to function jointly for the counties which are parties thereto, shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies so consolidated.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions as herein set out, any municipality may enter into such an agreement with the county in which it is situated, or may join with other municipalities in the same county in making such an agreement with said county, to the end that

the functions of local government may, as far as practicable, be consolidated.

It is the purpose of this section to bring about efficiency and economy in local government through a consolidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195.)

Local Modification.—Guilford: 1933, c. 195, s. 5.

Editor's Note.—See 11 N. C. Law Rev. 213, for a brief summary of this section.

Chapter 154. County Surveyor.

Sec.
154-1. Election and term of office.
154-2. Bond required.
154-3. May appoint deputies.
154-4. Power to administer oaths.

§ 154-1. Election and term of office. — There shall be elected in each county, by the qualified voters thereof, as provided for the election of members of the general assembly, a county surveyor, who shall hold office for the term of two years. (Const., Art. 7, s. 1; Rev., s. 4296; C. S. 1383.)

Cross References.—As to induction into office by county commissioners, see § 153-9, subsection 11. As to power of county commissioners to fill vacancy, see § 153-9, subsection 12. As to time of election, see § 163-4.

§ 154-2. Bond required. — The county surveyor of each county shall enter into bond in the sum of one thousand dollars, payable to the state of North Carolina, with sufficient surety, for the faithful discharge of the duties of his office. (Rev., s. 303; Code, s. 2762; R. C., c. 42, s. 5; 1777, c. 114, s. 13; C. S. 1384.)

Cross References.—As to necessity for approval of bond by county commissioners, see § 153-9, subsection 11. As to action on official bonds, see §§ 109-33 et seq.

A surveyor shall give bond and security for the faithful discharge of his duties. Avery v. Walker, 8 N. C. 140, 160.

§ 154-3. May appoint deputies.—Every surveyor may appoint deputies, who shall, previous to entering on the duties of their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable for the conduct of such deputies, as for his own conduct in office. (Rev., s. 1720; Code, s. 2763; R. C., c. 42, s. 6; 1779, c. 140, s. 5; C. S. 1385.)

A deputy surveyor cannot survey his own land. Avery v. Walker, 8 N. C. 140, 160.

Deputies Must Take Oath. — Surveyors are authorized to appoint deputies; but, before entering on the duties of office, they also must take an oath of office. Avery v. Walker, 8 N. C. 140, 160.

The Act. 1771, ch. 1, declares that no surveys shall be made without chain-carriers, who shall actually measure the land surveyed, and shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor. Avery v. Walker, 8 N. C. 140, 160.

§ 154-4. Power to administer oaths. — The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants. (Rev., s. 2361; Code, s. 3314; 1881, c. 144; C. S. 1386.)

Cross Reference.—As to form of oath, see § 11-11.

Surveyor to Administer Oath.—The surveyor is authorized to administer the required oath to his deputies. Avery v. Walker, 8 N. C. 140, 160.

Chapter 155. County Treasurer.

Sec.
155-1. Election of county treasurer.
155-2. Bond; penalty; when renewed.
155-3. Local: Commissioners may abolish office and appoint bank.
155-4. Office includes person acting as treasurer.
155-5. Is treasurer of county board of education.
155-6. Sheriff acting as treasurer, bond liable.
155-7. Duties of county treasurer.
155-8. Compensation of county treasurer.
155-9. Committee to examine treasurer's books; compensation.
155-10. Treasurer not to speculate in county claims; penalty.
155-11. Treasurer administers property held in trust for county.
155-12. Treasurer to take charge of county trust funds; additional bonds.
155-13. Commissioners to keep record of trust funds.
155-14. Treasurer to exhibit separate statement as to trust funds.
155-15. Treasurer to pay no claim unless audited.
155-16. Treasurer to deliver books, etc., to successor.
155-17. Action on treasurer's bond to be by commissioners.
155-18. Officers failing to account to treasurer sued by commissioners.

§ 155-1. Election of county treasurer. — In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a treasurer. (Rev., s. 1394; Const., Art. VII, s. 1; C. S. 1387.)

Local Modification.—Buncombe: 1937, c. 103; Caswell: Pub. Loc. 1941, c. 157; Chowan: 1941, c. 350; Mitchell: 1931, c. 53; 1941, c. 168.

Cross Reference.—As to duty of county commissioners to fill vacancy in office of county treasurer, see § 153-9, subsection 12.

Editor's Note. — The Legislature in 1875, under authority conferred by section fourteen of Article VII, of the Constitution of 1868, amended sec. 1, of the said section VII, by providing that the boards of justices of the peace, of the several counties, might abolish the office of the county treasurer at will. The Code of 1883, sec. 768, conferred a like power upon the said boards of justices. When the justices chose to abolish the office, the duties and liabilities attaching thereunto devolved upon the sheriff, who became ex officio county treasurer. This was carried forward as sec. 1395 of the Revisal of 1905. However, the potential evil of making the vital and important office of county treasurer a plaything, dependent for its very life upon the whim and fancy of the several boards of justices, who must, by their very nature, react immediately to every manifestation of local prejudice and passion, is quite obvious to the observer. To remove and abolish a situation so pregnant with evil possibilities, and to insure stability to the office of county treasurer, the Legislature, by the Laws of 1919, ch. 141, repealed the provision empowering the justice to abolish the office.

The treasurer is a ministerial officer. Martin v. Clark, 135 N. C. 178, 179, 47 S. E. 397.

The term of office of the county treasurer is two years. State v. McKee, 65 N. C. 257.

Term of Appointee. — The term of office of a treasurer appointed by the board of commissioners in a county to fill a vacancy is only that of the unoccupied term of his predecessor. State v. McKee, 65 N. C. 257.

When Election a Nullity. — The election of a person to the office of county treasurer, which has been abolished, or when there is no vacancy, is a nullity. Rhodes v. Hampton, 101 N. C. 629, 8 S. E. 219.

§ 155-2. Bond; penalty; when renewed. — The county treasurer, before entering upon the duties of his office, shall give bond with three or more sufficient sureties, to be approved by the board of commissioners, payable to the state, conditioned that he will faithfully execute the duties of his office, and pay according to law, and on the warrant of the chairman of the board of commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law or by the board of commissioners. The penalty of his bond shall be a sum not exceeding the amount of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen his bond. A failure to do so within ten days after the service of such an order shall vacate his office, and the board shall appoint a successor. (Rev., s. 297; Code, s. 766; 1868-9, c. 157, s. 4; 1895, c. 270, s. 2; 1899, c. 132; 1899, c. 207, s. 4; 1899, c. 54, s. 52; 1901, c. 536; 1903, c. 12, s. 2; C. S. 1388.)

Local Modification.—Craven, Forsyth: C. S. 1388.

Cross References.—As to limitation of actions upon bond, see § 1-50. As to approval of bond by county commissioners, see § 153-9, subsection 11. As to right of action on official bond, see § 109-34.

Time to File Bond.—It was the duty of a county treasurer elected in August, 1878, to appear before the board of county commissioners on the first Monday in the month next succeeding his election and file his official bond; and on his failure to do so, it was competent for the board of commissioners to declare the office vacant and fill it. Kilburn v. Latham, 81 N. C. 312.

Settlement of Retiring Treasurer Does Not Discharge Bond. — A settlement had between a county and its outgoing treasurer, does not operate as a discharge of liability upon his bond; nor is it conclusive evidence of a proper accounting, but is open to proof that a mistake was made. Commissioners v. MacRae, 89 N. C. 95.

Actual Payment of Funds Alone Discharges Bond.—The actual payment of the funds remaining in a treasurer's hands will alone relieve the bond from liability, and it is his duty to know to what fund the money in hand belonged. Commissioners v. MacRae, 89 N. C. 95.

Demand Unnecessary.—Where the county treasurer collects and retains county moneys or fails to pay over to his successor, no demand is necessary before suit is brought. Commissioners v. Magnin, 86 N. C. 286.

Proper Parties Relator.—The commissioners of a county are proper parties relator to sue upon the official bond of a county treasurer to recover county school funds. Commissioners v. Magnin, 86 N. C. 286, approving Commissioners v. Magnin, 78 N. C. 181.

Limitation of Actions upon Bonds. — An action upon the official bonds of a county treasurer may be brought within six years after a breach thereof; the statute does not begin to run from the date, but only from the breach of the bond. Commissioners v. McRae, 89 N. C. 95.

Bond as Treasurer of Board of Education.—The county treasurer is required, as treasurer of the board of education, to file a separate bond with different conditions from those embraced in that given in his capacity of county treasurer, and in case of any breach an action must be brought by the county board of education; whereas for any default in accounting for the county funds proper, he must be sued by the board of county commissioners. Koonce v. Commissioners, 106 N. C. 192, 199, 10 S. E. 1038.

Protection of School Fund.—The bond of a county treasurer, conditioned "that whereas he has been appointed treasurer and become disburser of the school money, now therefore, if he shall well and truly disburse the money coming into his hands, under the requirements of law," etc., covers an illegal defalcation from the school fund. Commissioners v. Magnin, 86 N. C. 286.

Same—New Duty Not Covered by Bond.—The new statutory duty of being treasurer of the county board of education, requiring an additional and special bond, is not embraced by the bonds formerly required. State v. Bateman, 102 N. C. 52, 8 S. E. 882.

§ 155-3. Local: Commissioners may abolish office and appoint bank.—In the counties of Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Tyrrell, Transylvania, and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer. When the office is so abolished, the board is authorized, in lieu of a county treasurer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking, or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania county and Chatham county and such bank or banks as may be designated by said board of county commissioners. This alternative shall apply only to Chatham and Transylvania counties: Provided, in said county of Chatham the county commissioners of said county shall fix the compensation to be allowed said bank desig-

nated as said financial agent of said county which compensation shall not exceed the sum of five hundred dollars per annum and said bank is to furnish, without cost to the county, a good and sufficient bond as such financial agent.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safe keeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers. (1913, c. 142; Ex. Sess. 1913, c. 35; 1915, cc. 67, 268, 458, 481; 1919, c. 48; 1925, c. 46; 1933, c. 63; C. S. 1389.)

Editor's Note.—This section was amended by the Laws of 1925, c. 46, by inserting the word "Transylvania" after the word "Tyrrell" and before the word "and" in line five of the said section. The said Act also amended the said section by placing a comma after the word "banking" near the end of line twenty-four of said section, and adding the following: "Or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania county and such bank or banks as may be designated by said board of county commissioners."

It might be interesting here to raise the question as to whether the bonds to be executed by the appointee bank, under this section, are the "official bonds of public officers," within the meaning of subsection 1, section 1-50. If they are, the limitation of actions upon them is six years, if not, the limitation will be something different. The question here but raises the point as to whether the bank designated by the commissioners, under the section, becomes ipso facto, a public officer, i. e. county treasurer. Or is it not more in accord with the express provisions of the section, to say that the office is totally abolished, and that the bank merely performs the functions of the said office? This seems to be the legislative intent.

To go back to our first question: If the office of county treasurer has been totally abolished, and the bank, instead of being a public officer, i. e. county treasurer, merely exercises the functions of the said office, how can the bonds executed by it come under the "official bonds of public officers"? Again, we must look to the legislative intent as our guiding star. The section expressly provides that the bonds executed by the bank shall be "the same bonds * * * * * as are now required by law of county treasurers." This would lead us to conclude that, while the bank is not a public officer, yet, since it performs the functions of a public office, the bonds given by it, to insure the faithful performance of a public trust, shall be deemed "the official bonds of public officers."

Public Laws 1933, c. 63, make the alternative applicable in Chatham County and inserts the proviso relative to that county. Section 2 of c. 63 validates the acts of the Bank of Pittsboro as financial agent for the County of Chatham.

Constitutionality. — A mandamus proceeding was brought to compel an ex-treasurer, whose office had been abolished, under the provision of this section, to pay over county funds in his possession to his successor, the bank designated by the commissioners. It was objected that the section was unconstitutional as an unwarranted delegation of legislative power. The court held, however, the section to be constitutional and valid. Tyrrell County v. Holloway, 182 N. C. 64, 108 S. E. 377. A wide discretionary power of local self-government may be vested in municipal subdivisions of the State, without infringement upon the familiar rule that the substance of legislative power cannot be delegated. Thompson v. Floyd, 47 N. C. 313; Manly v. Raleigh, 57 N. C. 370, 377; Stoutenburgh v. Hennick, 129 U. S. 141, 9 S. Ct. 256, 32 L. Ed. 637; 1 N. C. Law Rev. 53.

Abolishing Office. — The section provides that the board of county commissioners of certain specified counties may abolish the office of county treasurer by resolution to that effect passed at least sixty days before a primary or convention held for the purpose of nominating candidates for said office, and when so abolished the board of commissioners may appoint one or more solvent banks or trust companies to perform the duties of treasurer, or sheriff acting as ex officio treasurer of the county, such designated depositaries not being allowed to charge or receive anything in compensation other than the advantages accruing to them from such a deposit. And said banks and trust companies, termed financial agents, are also required to give bond for safekeeping and proper disbursement of said funds, and for faithful performance of their duties concerning them. Tyrrell County v. Holloway, 182 N. C. 64, 67, 108 S. E. 337.

Mandamus against Treasurer. — Where, under the power of a valid statute, § 155-3, the county commissioners have abolished the office of county treasurer, and have vested the duties of the office in certain banks and trust companies which have qualified thereunder, mandamus will lie to compel the treasurer, seeking to hold over and denying the validity of the statute, to turn over to the proper party the moneys that he has received and attempts to hold by virtue of his former office. Tyrrell County v. Holloway, 182 N. C. 64, 108 S. E. 337.

Consideration Moving to Bank. — The consideration moving to a bank when its officers without individual benefit become sureties on its indemnity bond given for a county deposit, under the requirements of the statute, is the deposit so obtained. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795.

Officers of Bank as Sureties. — Where the officers of the bank acting without personal advantage or gain sign as sureties on an obligation of the bank executed to the commissioners of a county in the manner and form required by the section to secure a deposit for county and road purposes, the transaction is valid when unaffected by fraud, and binding upon the receiver afterwards appointed by the court for the bank, subsequently becoming insolvent. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795.

Same—Directors Need Not Authorize. — Where the officers of a bank acting in good faith and without personal profit or advantage execute a bond of indemnity for the deposit of county funds, it is not required for the validity of the bond that the directors authorize the same by a resolution duly passed in order to protect the rights of the sureties, officers of the bank. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795.

Sureties Entitled to Collateral.—The sureties on an indemnity bond, given by a bank to secure a deposit of county funds required by the section, are entitled to the collateral given them by the bank for their protection in becoming sureties, and such collateral is available to them in preference to a receiver of the bank, thereafter appointed by the court, claiming the proceeds for distribution among the general creditors of the bank, when the transaction has been made by the sureties in good faith and without personal advantage to them. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795.

Bank Entitled to All County Funds. — Under Public Local Laws 1917, ch. 46, sec. 1, for Robeson County, the bank selected by the commissioners, upon the abolishment of the office of county treasurer, is entitled to receive all county moneys, including those derived from assessments of a drainage district. Commissioners v. Lewis, 174 N. C. 528, 94 S. E. 8.

Changing Terms of Appointment as Impairing Obligation of Contracts.—Where a bank has been appointed under this section to perform the duties of treasurer of Edgcombe County, and receive as compensation the profits of the moneys deposited by the county arising in the course of the bank's business as such, the arrangement is not a contract contemplated by the provision of the Constitution prohibiting the impairment of the obligations of a contract, but the obligations arise by statutory provisions relating to public matters within legislative control. The county may at a later date, under authority of § 153-135 require the bank to give bonds for the protection of the public funds, or to pay interest on the daily average balance. Farmers Banking, etc., Co. v. County, 196 N. C. 48, 144 S. E. 519. See note under § 155-7.

§ 155-4. Office includes person acting as treasurer.—The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein. (Rev., s. 1396; Code, s. 770; C. S. 1390.)

§ 155-5. Is treasurer of county board of education.—The county treasurer is ex officio treasurer of the county board of education. (Rev., s. 1396; Code, s. 770; C. S. 1391.)

Cross Reference.—As to powers, duties, and responsibilities of the county treasurer in disbursing school funds, see §§ 115-165 et seq.

Sheriff Becomes Treasurer of Board of Education.—In Koonce v. Commissioners, 106 N. C. 192, 198, 10 S. E. 1038, Avery, J., said: "The plaintiff was ex-officio treasurer of

the county by virtue of his election to the office of sheriff, and became, in the same way, treasurer of the county board of education."

§ 155-6. Sheriff acting as treasurer, bond liable. —In counties where the office of county treasurer is abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners as may be deemed necessary to cover the trust funds coming to his hands. (Rev., s. 1397; Code, s. 769; 1879, c. 202; C. S. 1392.)

Cross Reference.—As to duty of county commissioners to take and approve bond, see § 153-9, subsection 11, and § 162-9.

§ 155-7. Duties of county treasurer. — It is the duty of the treasurer—

1. To keep county moneys. To receive all moneys belonging to the county, and all other moneys by law directed to be paid to him; to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law.

2. To keep true accounts. To keep a true account of the receipts and expenditures of all such moneys, taking proper vouchers in every case in books provided for that purpose at the expense of the county; which said books shall at all times show the date, amount, and from whom he has received such moneys; the date, amount, and to whom he has paid out any of the said moneys; the total amount received and the total amount paid out during the current fiscal year for school purposes, for general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his said books shall correctly and accurately show the condition of the said several accounts. His account of expenditures for general county purposes shall also show separately the amounts expended each year on account of the county home, indigent persons, jails, workhouses, courthouse, bridges, insolvent fees, courts, and such other special accounts as the board of commissioners of the county require, the total of said accounts being the aggregate amount expended during the fiscal year for general county purposes. He shall post at the courthouse door on the first Monday in each month a correct statement of such receipts and expenditures, showing the amount received, and from what source, and the amounts paid out, and to whom, and for what purpose, and the balance in his hands belonging to the county.

3. To call on county officers for funds in their hands. To call on the sheriff, or the clerk of the superior court, or other officer having county moneys in his hands, at least once in each month, or oftener if necessary, to pay over to him, and to account for all such moneys.

4. To keep accounts of fines, etc. To enter in a book to be kept by him the exact amount of any fine, penalty or forfeiture paid over to him, giving the date of payment, the name of the clerk or other person so paying the same, the name of the party from whom such fine, penalty or forfeiture was collected, and in what case.

5. To exhibit to the board of commissioners his books and accounts as treasurer for examination. To exhibit his books and accounts and moneys once every three months, or oftener, if the board of commissioners of his county deem it necessary, to a committee to be composed of the chairman of the board of commissioners and one other person to be selected by the board of commissioners, who shall be an expert accountant. It is the duty of this committee to examine the books and accounts of his office, and to see that the accounts are correctly and properly kept, and to count the money in the hands of the treasurer, and to see that it corresponds with the amount shown by the books to be in his hands. At every such examination of the books and accounts of his office the county treasurer shall exhibit a full, perfect and itemized statement to said committee of the use he has made of every dollar of public funds in his hands since the last exhibition of his books to said committee; and if any part of said funds has been loaned out, this statement shall state to whom loaned and on what security and the amount of interest paid on said loan, and such interest shall be covered into the county treasury by the treasurer. This statement shall be sworn to and published in a county newspaper or at the courthouse door. Nothing herein contained shall be construed to authorize the county treasurer to lend any public funds.

If at any time there is a deficit in the amount of money in the hands of the treasurer, the committee shall so report to the board of commissioners, whose duty it is to institute proceedings in the superior court against said treasurer for violation of his official duties. (Rev., s. 1398; Code, ss. 96, 773; 1889, c. 242; C. S. 1393.)

Cross References.—As to duties with respect to school funds, see §§ 115-165 et seq. As to limitation of actions on official bond of public officers, see § 1-50. As to right of action on official bonds, see § 109-34.

To Receive All County Funds.—It is the duty of the county treasurer to receive all moneys belonging to the county. Lewis v. Commissioners, 192 N. C. 456, 457, 135 S. E. 347.

Disburses County Funds. — The county treasurer disburses all public funds. Clifton v. Wynne, 80 N. C. 146, 152.

Warrant on Specific Fund.—It is the duty of the county treasurer to pay a warrant drawn on a specific fund by the county commissioners. Martin v. Clark, 135 N. C. 178, 179, 47 S. E. 397.

Proceeds from Highway Bonds. — Where a county has issued bonds for the purpose of lending their proceeds to the State Highway Commission, to be used for the construction of certain highways within the county, and the county commissioners have such proceeds on hand, mandamus by the county treasurer will not lie for control of the funds as a part of the general county funds coming within her control, under the provisions of the statute. Lewis v. Commissioners, 192 N. C. 456, 135 S. E. 347.

Liability for Interest.—A local bank acting under a valid appointment to perform the duties of a county treasurer, as the fiscal agent of the county, is not required by subsection 5 of this section to pay interest on the deposits of county funds thus received by it, and the surety on its bond is not liable for the failure of the special depository to charge itself interest on the deposits except when the bank has loaned the funds out to third parties. Green County v. First Nat. Bank, 194 N. C. 436, 140 S. E. 38. See note under § 155-3.

§ 155-8. Compensation of county treasurer. — The county treasurer shall receive as compensation in full for all services required of him such a sum, not exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him, as the board of commissioners of the county may allow. As treasurer of the county school fund he shall

receive such sum as the board of education may allow him not exceeding two per cent on disbursements; and the said commissions shall be paid only upon the order of the county board of education, signed by the chairman and secretary, and the county board of education is hereby forbidden to sign any such order until the treasurer shall have made all reports and kept all such accounts required by law in the form and manner prescribed: Provided, that said treasurer shall be allowed no commission or compensation for receipts and disbursements of any loan or loans made to the county by the state board of education out of the state literary fund, the special building fund, nor from funds derived from county or district bond issues for the building of school-houses: Provided, that in counties where the treasurer's total compensation cannot exceed two hundred and fifty dollars per annum the treasurer may be allowed, in the discretion of the board of county commissioners and of the board of education, as to the school fund, a sum not exceeding two and one-half per cent on his receipts and not exceeding two and one-half per cent on his disbursements of all funds handled by him; but the compensation allowed by virtue of the provisions of this last proviso shall not be operative to give a total compensation in excess of two hundred and fifty dollars per annum to such treasurers. (Rev., s. 2778; Code, s. 770; 1899, c. 233; 1909, c. 577; 1913, c. 144; 1919, c. 254, s. 9; 1924, c. 121, s. 6; C. S. 3910.)

Cross Reference.—As to compensation for disbursing funds of a drainage district, see § 156-113.

Editor's Note.—This section was amended by chapter 121, section 6, Laws 1924, by inserting after the words "of the state literary fund" and before the words "for the building of schoolhouses" the words "the special building funds derived from county or district bond issues."

Statutes Construed Together.—The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors, and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Commr's v. Davis, 182 N. C. 140, 108 S. E. 506.

Compensation.—Every county treasurer is entitled to compensation for his labor and responsibility, and in no case less than two and a half per cent per annum on the amount collected, where it can not exceed two hundred and fifty dollars. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038.

Commission for Drainage Assessments.—This section cannot be construed to allow additional compensation to the county treasurer for receiving and disbursing money of a drainage district under section 36, ch. 442, Laws of 1909, the acts being unrelated; but if otherwise, the county treasurer must bring himself within the provisions of this section by showing the amount claimed was allowed to him in the discretion of the county commissioners, within the limit fixed by the statute, and that the regular procedure was followed as to the drawing of the warrants by the drainage commission upon funds on hand derived from collections for the benefit of the drainage district. Board v. Credle, 182 N. C. 442, 109 S. E. 88.

May Enforce Claim by Mandamus.—In the event that the county commissioners refuse to consider the treasurer's claim for his fees, the proper remedy is a mandamus proceeding. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038.

§ 155-9. Committee to examine treasurer's books; compensation.—The board of commissioners shall allow to the committee who examine the books and moneys of the treasurer the same pay per diem that is received by a member of the board, not to exceed pay for one day's service for each examination. (Rev., s. 2779; Code, s. 774; 1879, c. 33; C. S. 3916.)

§ 155-10. Treasurer not to speculate in county claims; penalty.—No county treasurer purchasing a claim against the county at less than its face value is entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter. Any county treasurer who is concerned or interested in any such speculation shall forfeit his office. (Rev., s. 1399; Code, s. 772; 1868-9, c. 157, s. 8; C. S. 1394.)

§ 155-11. Treasurer administers property held in trust for county.—All real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation. (Rev., s. 1400; Code, s. 778; 1869-70, c. 85; C. S. 1395.)

§ 155-12. Treasurer to take charge of county trust funds; additional bonds.—It is the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so without giving a bond payable to the state, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom is worth at least the amount of the penalty of the bond over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and recorded and otherwise treated and dealt with as the official bond of the treasurer. (Rev., s. 1401; Code, s. 779; 1869-70, c. 85, s. 2; C. S. 1396.)

§ 155-13. Commissioners to keep record of trust funds.—The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld. (Rev., s. 1402; Code, s. 780; 1869-70, c. 85, s. 3; C. S. 1397.)

§ 155-14. Treasurer to exhibit separate statement as to trust funds.—The county treasurer, whenever he is required to exhibit to the board of commissioners the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same. (Rev., s. 1403; Code, s. 781; 1869-70, c. 85, s. 4; C. S. 1398.)

§ 155-15. Treasurer to pay no claim unless audited.—It is unlawful for the county treasurer to pay a claim against the county, unless the same has been audited and allowed by the board of commissioners. (Rev., s. 1404; Code, s. 777; 1868, c. 19; C. S. 1399.)

Claims Audited and Allowed by Commissioners. — It is the treasurer's duty to pay claims audited and allowed by the commissioners. Jones v. Commissioners, 73 N. C. 182, 184; State v. Wilkerson, 98 N. C. 696, 701, 3 S. E. 683.

Warrant or Order Drawn by Commissioners. — An order or warrant drawn by the commissioners upon the county treasurer is the appropriate method of disbursing the pub-

lic moneys. State v. Wilkerson, 98 N. C. 696, 701, 3 S. E. 683.

Cannot Refuse Claim Allowed by Commissioners. — It is not within the power or duty of the treasurer of the county to refuse to pay a county order issued by the board of commissioners, because he does not think it a just or lawful claim, or for any other reason, when the order has been passed upon by the board acting within its power. Martin v. Clark, 135 N. C. 178, 180, 47 S. E. 399.

§ 155-16. Treasurer to deliver books, etc., to successor.—When the right of any county treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall, upon his oath, or, in case of his death, upon the oath of his personal representative, be delivered to his successor. (Rev., s. 1405; Code, s. 767; 1868-9, c. 157; C. S. 1400.)

Cross Reference.—As to criminal liability for failure to deliver books, etc., to successor, see § 14-231.

A county treasurer going out of office is bound in contemplation of law to know what moneys he has on hand, and to what specified funds they belong, and to pay over all of the fund he has. Commissioners v. MacRae, 89 N. C. 95, 98.

§ 155-17. Action on treasurer's bond to be by commissioners.—The board of commissioners shall bring an action on the treasurer's bond whenever they have knowledge or a reasonable belief of any breach of the bond. (Rev., s. 1406; Code, s. 771; 1868-9, c. 157; C. S. 1401.)

Cross References.—As to limitation of action on bond, see § 1-50. As to action on bond generally, see § 109-34.

§ 155-18. Officers failing to account to treasurer sued by commissioners.—In case of the failure or refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this article, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county. (Rev., s. 1407; Code, s. 775; 1868-9, c. 157, s. 10; C. S. 1402.)

Cross References.—As to liability of sheriff upon his official bond, see § 162-8. As to liability of clerk upon his official bond, see § 2-4; constable, see § 151-3; register of deeds, see § 161-4. As to limitations of actions on bonds, see § 1-50. As to duty of county commissioners to approve bonds, see § 153-9, subsection 11.

Commissioners May, but Need Not, Necessarily, Bring Suit. — The section does not make it the imperative duty of the board of commissioners of the county to "bring suit on the official bond of the sheriff or other officer," it provides that they "may forthwith do so." It is then left to their sound discretion whether they will or not. There might be substantial reasons why they would not, and, they might be content to leave it to the county treasurer to bring suit, especially as he is the proper officer to do so. Hewlett v. Nutt, 79 N. C. 263; Bray v. Barnard, 109 N. C. 44, 48, 13 S. E. 729.

Liable as Insurer.—It is settled in this State that the bond of a public officer is liable for money that comes into his hands as an insurer, and not merely for the exercise of good faith. Presson v. Boone, 108 N. C. 78, 12 S. E. 897; State v. Bateman, 102 N. C. 52, 8 S. E. 882, 11 Am. St. Rep. 708; State v. Smith, 95 N. C 396; Havens v. Lathene, 75 N. C. 505; Commissioners v. Clarke, 73 N. C. 255, 257, and other cases therein cited. Bonds of administrators, executors, guardians, etc., only guarantee good faith. Moore v. Eure, 101 N. C. 11, 7 S. E. 471, 9 Am. St. Rep. 17; Atkinson v. Whitehead, 66 N. C. 296; Smith v. Patton, 131 N. C. 396, 397, 42 S. E. 849.

Taxpayer May Prosecute Suit.—A taxpayer has the right to prosecute a suit against the register of deeds of the county to enforce payment of taxes collected and wrongfully withheld by him when the county commissioners have refused to institute action to recover them; and when such right of action exists, usually appertaining to the exercise of the equitable jurisdiction of the courts, this jurisdiction is not necessarily withdrawn because the Legislature has provided a legal remedy, unless the statute itself shall so direct. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694.

Same—Parties.—While a taxpayer, in his suit independent of the statute, should make the proper county officials parties to his action against a register of deeds for unlawfully withholding fees collected by him, so they may be heard on the question presented, and that the funds, if recovered, should be in proper custody or control, this matter affects the remedy, and may be cured by amendment. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694.

Bonds Subject to Subsequent Legislation.—A learned author says: "It has been held that all laws enacted during the continuing contract of an official bond are also part of the contract, and that the obligors entered into the engagement in view of the possible and probable modification of their liability by the legislative branch of the government." Murfree on Official Bonds, section 193. And to the same effect is People v. Vilas, 36 N. Y. 458; also see Prarie v. Worth, 78 N. C. 169; State v. Bradshaw, 32 N. C. 229, 232; Daniel v. Grizzard, 117 N. C. 105, 106, 110, 23 S. E. 93.

Chapter 156. Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Art. 1. Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Art. 1. Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding. — The proceeding under this subchapter shall be the same as prescribed in the chapter Eminent Domain, article 2, Condemnation Proceedings. (Rev., s. 4028; Code, s. 1324; C. S. 5260.)

Local Modification.—Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson: Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; City of Washington: Pr. 1921, c. 149.

Cross Reference.—As to condemnation proceedings, see §§ 40-11 et seq.

Constitutionality.—The laws, enacted under this and the following sections of this chapter, are constitutional. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433; Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225, and cases cited. They come within the power of the State for police regulations. Winslow v. Winslow, 95 N. C. 24.

Various Statutes Harmonized.—While the various statutes for the drainage of swamp lands in Eastern North Carolina have not the same provisions in all respects, they have been collected and are to be found in this chapter and should be construed to harmonize, and constitute, with such variations, a system of drainage laws for the State. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

Right to Condemn.—The right of the state to condemn land for drains rest on the same foundation as its right in cases of public roads, mills, railroads, school houses, etc. Norfleet v. Cromwell, 70 N. C. 634.

The right to drain through the banks of a natural watercourse is exactly similar in character to the right to construct dykes or levees to keep their excessive waters from overflowing the adjacent lands, a right which has been recognized in the legislation of all countries from the most ancient times. Sanderlin v. Luken, 152 N. C. 738, 742, 68 S. E. 225.

§ 156-2. Petition filed; commissioners appointed. —Any person owning pocosin, swamp, or flat lands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (Rev., s. 3983; Code, s. 1297; R. C., c. 40, s. 1; 1795, c. 436; 1852, c. 57, ss. 1, 2; C. S. 5261.)

Jurisdiction.—The clerk of the superior court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner, and to assess damages, etc. Durden v. Simmons, 84 N. C. 555.

In such proceeding the law requires the appointment of disinterested freeholders as commissioners. Durden v. Simmons, 84 N. C. 555.

This chapter, and the amendments thereto, are the charts which should guide the commissioners, and that portion of the judge's order, wherein he undertakes to in-

struct the new commissioners as to their duties, should be set aside. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926.

Appeal.—An order in a drainage proceeding directing matters which are properly for the determination of the commissioners to be referred to a jury is appealable. Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997.

Artificial Outlets.—This chapter applies only to artificial outlets made over the land of another to reach a natural watercourse. Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729.

Readjustment.—When the rights and duties of adjoining landowners as to drainage in a certain canal have been determined under this chapter, and judgment entered, proceedings subsequently brought for the purpose of readjustment, owing to change of ownership and partition, etc., are in effect a motion in the cause, in which the judgment, unlike a final judgment, is not conclusive; and the cause can be brought forward from time to time, upon notice to the parties, and further decrees made to conform to the exigencies and changes which may arise. Staton v. Staton, 148 N. C. 490, 62 S. E. 596.

Jury Question.—See Collins v. Haughton, 26 N. C. 420.

Joint Petition.—Two, or more, separate proprietors of land cannot sustain a joint petition for a ditch to drain their lands, without alleging that a common ditch would drain the lands of all the petitioners. Shaw v. Burfoot, 53 N. C. 344.

Diversion of Water—General Rule.—Water cannot be diverted from its natural course so as to damage another, but it may be increased and accelerated. Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729; 125 N. C. 439, 34 S. E. 538; Bardiff v. Norfolk Southern R. Co., 168 N. C. 268, 84 S. E. 290; Lassiter v. Norfolk, etc., R. Co., 126 N. C. 509, 36 S. E. 49; Hocutt v. Wilmington, etc., R. Co., 124 N. C. 214, 32 S. E. 681.

The owners of swamps, whose waters naturally flow into natural watercourses, can make such canals as are necessary to drain them of the water naturally flowing therein, although in doing so the flow of water in the natural watercourse is increased and accelerated so that the water is discharged on the land of an abutting owner. Mizell v. McGowan, 120 N. C. 134, 26 S. E. 783.

Same—Liability for Damages.—Where a person diverts water from a stream by cutting a channel from it, and at a point lower down the stream turns it back into the old channel, and by its own momentum it is carried on to the lands of an adjoining owner, he is liable for damages. Briscoe v. Young, 131 N. C. 386, 42 S. E. 893.

One is liable for damages caused to the lands of another by his diverting the natural flow of surface water thereto. Roberts v. Baldwin, 151 N. C. 407, 66 S. E. 346.

Surface waters should be drained so as to be carried off in the due course of nature. The upper proprietor is liable in damages to the land of the lower proprietor caused by water diverted by his ditches and not carried to a natural waterway. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443.

Same—Landowner's Remedy. — When the lands of the lower proprietor are damaged by the improper drainage of the upper proprietor, he may elect to bring an action for damages or proceed under this and the following sections. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443.

Former Judgment—Setting Aside.—If a former judgment in a similar proceeding has not been pleaded in an action for drainage of lands, as an estoppel or res adjudicata, before final judgment, the party relying thereon must move the court within one year to set the judgment aside for excusable mistake or inadvertence. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

Liability to Maintain Artificial Waterway Constructed for Temporary Purposes. — When an upper proprietor of lands constructs and maintains for his own use and advantage an artificial waterway or structure affecting the flow of water, without invading the rights of the lower proprietor, for a temporary purpose or a specific purpose which he may at any time abandon, the upper proprietor comes under no obligation to maintain the structure, though the incidental effect has been to confer a benefit on the lower tenant. Lake Drummond Canal, etc., Co. v. Burnham, 147 N. C. 41, 60 S. E. 650.

Notice to Landowner.—An order by county commissioners (now superior court) appointing appraisers to assess the value of the benefits and damages which would accrue to the owners of land on account of a certain canal sought to be cut through his land, upon the petition of other parties, filed under the provisions of this chapter, is void, unless said landowner be made a party to the petition. Gamble v. McCrady, 75 N. C. 509.

Drainage System by Original Owner—Duty of Subsequent Owners.—Where separate owners of lands have derived the lands subject to a drainage system placed upon the entire tract by the original owner, each one using the system must bear the costs of maintenance and repair required by the portion of the system on his own premises. Lamb v. Lamb, 177 N. C. 150, 98 S. E. 307.

§ 156-3. Duty of Commissioners.—The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (Rev., s. 3984; Code, s. 1298; R. C., c. 40, s. 2; 1795, c. 436; 1852, c. 57, ss. 1, 2; C. S. 5262.)

Section Not Repealed.—Section 156-16, concerning the drainage of lowlands, does not expressly repeal this section, but leaves in operation such of the provisions as are not repugnant to such act of 1889. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154.

Cited in Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997.

§ 156-4. Report and confirmation; easement acquired; exceptions.—The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (Rev., s. 3985; Code, s. 1299; R. C., c. 40, s. 3; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2; C. S. 5263.)

Report of Commissioners Conclusive.—The report of commissioners appointed to condemn lands and assess damages for the purpose of drainage is, like the verdict of a jury, conclusive of the facts therein ascertained, until set aside. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476.

Commissioners' Report Set Aside.—Where judge set aside report of commissioners because it did not comply with the

statute, and further found as a fact in his order that two of the commissioners had been guilty of gross indiscretion, the Supreme Court would not reverse his order, whether the report conformed to the statute or not. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926.

Jury to Settle Issues of Fact.—Upon an application to condemn lands for the purpose of drainage, the issue of fact raised by the pleadings should be framed and settled by a jury; they cannot be raised or considered upon exceptions to the report of the commissioners appointed to assess damages. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476.

Title in Lands Condemned.—When, upon the petition of one or more parties, under this section, leave was granted by the county court to cut a canal across the land of another for the purposes of drainage, the petitioners and their assignees, upon the report of the jury provided for in said act being confirmed, acquire not merely an easement, but title in fee to the land condemned. Norfleet v. Cromwell, 70 N. C. 634.

Appeal from Judgment of Clerk.—On appeal from the judgment of the Clerk upon the report of commissioners appointed to lay off ditch for drainage of lowlands the Judge could set aside the report either for cause or in his discretion, if in his opinion the ends of justice could be subserved by that course. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154.

§ 156-5. Width of right of way for repairs.—The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (Rev., s. 3985a; Code, s. 1302; R. C., c. 40, s. 6; C. S. 5264.)

When Unnecessary Amount of Land Condemned.—Where, upon an appeal from the report of the commissioners acting under that act, the jury found that the amount of land condemned by them for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission. Winslow v. Winslow, 95 N. C. 24.

§ 156-6. Right of owner to fence; entry for repairs.—Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (Rev., s. 3986; Code, s. 1300; R. C., c. 40, s. 4; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2; C. S. 5265.)

§ 156-7. Earth for construction of dam; removal of dam.—The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (Rev., s. 3987; Code, s. 1301; R. C., c. 40, s. 5; C. S. 5266.)

§ 156-8. Earth from canal removed or leveled.—The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (Rev., s. 3988; Code, s. 1303; R. C., c. 40, s. 7; C. S. 5267.)

§ 156-9. No drain opened within thirty feet.—The proprietor of any swamp or flat lands through which a canal or ditch passes shall not have a right to open or cut any drain within thirty feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (Rev., s. 3989; Code, s. 1304; R. C., c. 40, s. 8; C. S. 5268.)

§ 156-10. Right to drain into canal.—Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county at term-time, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (Rev., s. 3990; Code, s. 1305; 1887, c. 222; R. C., c. 40, s. 9; C. S. 5269.)

Cited in Brooks v. Tucker, 61 N. C. 309, 310.

§ 156-11. Expense of repairs apportioned.—Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (Rev., s. 3991; Code, s. 1306; R. C., c. 40, s. 10; C. S. 5270.)

When Report Fatally Defective.—A report of commissioners under this section, which fails to assess and apportion that part of the labor which is to be contributed by the defendants, is fatally defective. Brooks v. Tucker, 61 N. C. 309.

Applied in Worthington v. Coward, 114 N. C. 289, 19 S. E. 154.

§ 156-12. Notice of making repairs.—Whenever the canals or ditches for the reparation of which

more than one person shall be bound under the provisions of § 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (Rev., s. 3992; Code, s. 1307; R. C., c. 40, s. 11; C. S. 5271.)

§ 156-13. Judgment against owner in default; lien.—In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (Rev., s. 3993; Code, s. 1308; 1899, c. 396; R. C., c. 40, s. 12; C. S. 5272.)

Notice to Landowner. — Before any specific amount may be adjudged against a landowner as a lien on his land he is entitled to be heard, after notice, as to whether the assessment made by the commissioners was unjust or oppressive. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138.

§ 156-14. Subsequent owners bound. — All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (Rev., s. 3994; Code, s. 1309; R. C., c. 40, s. 13; C. S. 5273.)

Applied in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138; Norfleet v. Cromwell, 70 N. C. 634.

§ 156-15. Amount of contribution for repair ascertained.—Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a justice of the peace, who shall give all parties at least three days notice, and shall summons two disinterested free-holders who, together with the justice, shall meet on the premises and assess the damages sustained by the applicant, whereupon the justice shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. The costs of this proceeding shall be in the discretion of the justice. (Rev., s. 3995; Code, s. 1310; 1889, c. 101; R. C., c. 40, s. 14; C. S. 5274.)

Constitutionality. — Section held constitutional and valid. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433.

Proceeding under this section is in effect a motion in the cause which can be brought forward from time to time, upon notice to all the parties to be affected, for orders in the cause, to promote the objects of the proceeding, the whole matter remaining in the control of the court. Staton v. Staton, 148 N. C. 490, 491, 62 S. E. 596.

Action Dismissed for Non-Compliance with Statute—Not Bar to Second Action.—When damages have been sought in an action before a justice of the peace, relating to drainage districts, etc., and the action was dismissed because there had been no contract or agreement between the parties and the requirements of the act had not been met, the plaintiff is not thereby barred from proceeding under the act to have the damages assessed and from bringing another action therefor as the former judgment does not bar the second one. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433.

Enlarging or Deepening Canal.—The method by which the user of a canal by prescriptive right may enlarge or deepen it with an apportionment of the costs, is provided by this section. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300.

Same—Liability for Damages.—Where the users of a canal by prescriptive right enlarge the same, and thereby place water upon the lower proprietor to his damage, they are liable therefor, and, upon conflicting evidence, the issue should be submitted to the jury. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300.

Applied in Porter v. Durham, 98 N. C. 320, 3 S. E. 832.

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138.

§ 156-16. Petition by servient owners against dominant owners.—Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (Rev., s. 4016; 1889, c. 253; C. S. 5275.)

Local Modification.—Lenoir: Rev., s. 4016; 1891, c. 73.

This section does not repeal section 156-3, but leaves in operation such of the provisions as are not repugnant to it. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154.

Analogy to Drainage Law.—The procedure under this and the following sections is analogous to the general drainage law, and its provisions are applicable, and the proceedings are regarded as kept alive for further orders without being retained on the docket, and in this case the original assessment did not constitute a bar to the motion to vacate, and the assessment was properly set aside on the facts found. Spence v. Granger, 204 N. C. 247, 167 S. E. 805.

Judgment—Setting Aside.—In an action brought for the drainage of lands under this and the following sections, the judgment upon motion thereafter will not be set aside merely upon the ground that a similar proceeding had been prosecuted to judgment between several of the parties. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

§ 156-17. Commissioners to examine lands and make report.—The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide

and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (Rev., s. 4017; 1889, c. 253, s. 2; C. S. 5276.)

Local Modification.—Beaufort, Lenoir: Rev., s. 4017; 1891, c. 73, s. 2; Pub. Loc. 1911, c. 545.

Cost of Work Not Required in Report.—The cost of the work to be done in the drainage of lands is not required under this section, and cannot, for its uncertainty of amount, be set out in the report of the commissioners appointed. It is a compliance with the statutes when the portion of the work to be done by the landowners is set out. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

§ 156-18. Cost of repairs enforced by judgment. —Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (Rev., s. 4018; 1889, c. 253, s. 3; C. S. 5277.)

Editor's Note.—See section 156-13 and note thereto.

§ 156-19. Obstructing canal or ditch dug under agreement. — Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days. (Rev., s. 3375; 1899, c. 255; C. S. 5278.)

This section applies only where all the parties contributed under a valid agreement to the lawful digging of a ditch or canal. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799.

§ 156-20. Right of dominant owner to repair.— In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than twelve feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (Rev., s. 4025; 1899, c. 255, s. 2; C. S. 5279.)

Editor's Note.—See note to section 156-19.

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799.

Cited in Elder v. Barnes, 219 N. C. 411, 14 S. E. (2d) 249.

§ 156-21. Canal for seven years necessity presumed; drainage assessments declared liens. — After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and that such judgments shall be subject to execution and collection as in cases of other judgments. (Rev., s. 4026; 1899. c. 255, s. 3; 1917, c. 248, s. 1; 1931, c. 227, s. 1; C. S. 5280.)

Editor's Note.—The Act of 1931 added the latter part of this section relating to drainage assessments as liens.

Interpretation of Section.—The provisions of this section are necessary for the cultivation and improvement of lowlands required to be drained, and should be construed to carry into effect the beneficent purposes of the act, when practicable. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796.

Same—"Ditch," "Canal." — This section should be construed in connection with the other sections of the chapter wherein it is found, relating to the drainage of lowlands, and therein the terms "ditch" and "canal" are used indiscriminately to designate an artificial drain. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796.

An artificial drain in some places from 3 to 5 feet wide and from 2 to 5 feet deep, made for the purpose of cultivating and improving lowlands by draining them is a canal within the meaning of this section. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796.

It is not necessary that the owner of lands lying along a drainage canal, within the meaning of this section shall have contributed to its original construction to make him liable to assessments for its maintenance under the provisions of the statute. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796.

Same—Railroads.—While a railroad company may not be the absolute owner of lands in fee, they have the proprietorship and control of those constituting its rights of way; and when these lands are benefited by a canal which comes within the meaning of this section, the provisions of the statute relative to the maintenance of the canal apply. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796.

Applied in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138.

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors.—The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under § 156-21 or any other section of article 1 of this chapter, are authorized and

empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the Court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and that the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification.—Duplin: 1931, c. 227, s. 2.

Interested Parties Entitled to Notice.—Where drainage assessments are levied against lands under this and related sections, either original assessments or additional assessments to cover unforeseen expenses in the construction of the drainage ditch, the parties whose lands are assessed are entitled to notice and an opportunity to be heard. Spence v. Granger, 207 N. C. 19, 175 S. E. 824.

§ 156-23. Easement of drainage surrendered. — If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition twenty days before the hearing thereof. (Rev., s. 4027; 1887, c. 222, s. 3; C. S. 5281.)

§ 156-24. Obstructing drain cut by consent.— If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3376; 1891, c. 434; C. S. 5282.)

§ 156-25. Protection of canals, ditches, and natural drains.—If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days. (Rev., s. 3382; 1901, c. 478; C. S. 5283.)

Local Modification.—Tyrrell: 1907, c. 438.

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement.—1. Agreement; Names Filed.—Whenever a majority of the landowners or the persons owning three-fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the land owners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

2. Notice.—Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than ten and not more than twenty days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners

who have not made any agreement to appear before him at a certain date, which date shall be not less than thirty days and not more than forty days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

3. Hearing; Views.—Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within fifteen days from the date of their appointment.

4. Report; Bond.—Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

5. Construction Authorized.—Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C. S. 5284.)

Editor's Note.—The provisions of this and the following sections under this article supplant those of the Act of 1915, ch. 141, which was held unconstitutional and void in Lang v. Carolina Land, etc., Co., 169 N. C. 662, 86 S. E. 599, as a taking of private property without providing for just compensation to the private owners of lands, whose consent has not been given.

Withdrawal of Petitioners.—Upon the return day set by the clerk of the court for the hearing of the landowners in a proposed drainage district, it may be shown by those opposed to the petition that some of those who signed it desired to withdraw, and that eliminating their names the petitioners would not represent a majority of the landowners in the district, or such owning three-fourths of the lands, as the statute requires. Armstrong v. Beaman, 181 N. C. 11, 105 S. E. 879.

§ 156-27. Recovery for benefits; payment of damages.—After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cuttng the drainway shall be determined. (1917, c. 273, s. 2; C. S. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers.—After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than twenty days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C. S. 5286.)

§ 156-29. Report filed; appeal and jury trial.—A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, pro-

vided exceptions shall be filed to the report within twenty days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for. (1917, c. 273, s. 4; C. S. 5287.)

Cross Reference.—As to appeal in special proceedings, see §§ 1-272 and 1-276.

Jurisdiction of Superior Court.—The Superior Court, upon certification of the opinion of the Supreme Court, has jurisdiction to retain the cause for hearing upon the appeal from the clerk's order, this section providing that appeals from the clerk in drainage assessment proceedings shall be the same as in special proceedings, and § 1-276, giving the Superior Court jurisdiction to hear and determine all matters in controversy upon appeal from the clerk in special proceedings. Spence v. Granger, 207 N. C. 19, 175 S. E. 824. See Flat Swamp, etc., Canal Co. v. McAlister, 74 N. C. 159.

§ 156-30. Confirmation of report. — Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within twenty days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. (1917, c. 273, s. 5; C. S. 5288.)

§ 156-31. Payment in installments. — The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S. 5289.)

Art. 2. Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.—Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interests of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within ten days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars for the payment of current expenses not otherwise provided for in this article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., ss. 3379, 4011; 1887, c. 267; C. S. 5290.)

Local Modification.—Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.—The board provided for in § 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such water-course, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years. (Rev., ss. 3377, 4012; 1887, c. 267, ss. 2, 7; C. S. 5291.)

§ 156-34. Report filed.—The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited

with the county treasurer by the petitioners. (Rev., s. 4013; 1887, c. 267, s. 3; C. S. 5292.)

§ 156-35. Owners to keep ditch open.—All persons whose lands shall be drained under the provisions of this article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (Rev., s. 4014; 1887, c. 267, s. 4; C. S. 5293.)

§ 156-36. Compensation of board. — The compensation of the board shall be as follows: The county surveyor shall receive three dollars per day and the other members shall receive one dollar and fifty cents per day while engaged in the duties imposed in this chapter. (Rev., s. 4015; 1887, c. 267, s. 5; C. S. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Art. 3. Manner of Organization.

§ 156-37. Petition filed in superior court.—Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (Rev., s. 3996; Code, s. 1311; 1868-9, c. 164, s. 2; C. S. 5295.)

Editor's Note.—As to constitutionality of, and general procedure under, this chapter, see notes to section 156-1.

See also cases cited under section 156-2, and notes thereto.

Jurisdiction.—The Clerk of the Superior Court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner, and to assess damages, etc. Durden v. Simmons, 84 N. C. 555.

§ 156-38. Commissioners appointed; report required.—On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report—

1. Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

2. Through the lands of what other persons a canal to drain the lands of the petitioner should properly pass, considering the interests of all concerned.

3. A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

4. The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

5. The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

6. The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary, and in which each ought, in equity and justice, to pay toward their construction and permanent support.

7. With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (Rev., s. 3997; Code, s. 1312; 1868-9, c. 164, s. 3; C. S. 5296.)

Assessment—Constitutionality.—An assessment made under the provisions of this subchapter is constitutional and valid. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

Same—Collateral Attack.—When an assessment does not appear to be void on its face, it may not be collaterally attacked by a defendant owner of lands embraced in the district, in an action to enforce its payment. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

When Report of Commissioners Confirmed.—The report of the commissioners, assessing persons for benefits accruing to their lands from the operations of the plaintiff canal company, should have been confirmed by the court, as to those defendants who did not object; but as to those who did, the court should have proceeded to try the issues involved in the controversy. Locks Creek Canal Co. v. McKeithan, 89 N. C. 52.

Notice to Landowners.—Landowners, whose interests might be affected under proceedings under the provisions of this chapter, are entitled to notice. Gamble v. McCrady, 75 N. C. 509.

Notice to Owner of Lands.—It is immaterial whether the owner of lands had notice of a meeting at which a committee had been appointed to assess the lands in the district and determine the amount of each assessment, when the assessment has been accordingly made, and duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with the statute, of which he had notice. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

§ 156-39. Surveyor employed. — The commissioners may employ a surveyor to prepare the map required to accompany their report. (Rev., s. 3998; Code, s. 1313; 1868-9, c. 164, s. 4; C. S. 5297.)

§ 156-40. Confirmation of report.—If it appear that the lands on the lower level will be increased in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (Rev., s. 3999; Code, s. 1314; 1868-9, c. 164, s. 5; C. S. 5298.)

§ 156-41. Proprietors become a corporation. — Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement. (Rev., s. 4000; Code, s. 1315; 1868-9, c. 164, s. 6; C. S. 5299.)

§ 156-42. Organization; corporate name, officers and powers.—The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless

the commissioners selected the name, elect a president, vice president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all by-laws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the Corporation Law of the state; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (Rev., s. 4001; Code, s. 1316; 1868-9, c. 164, s. 7; 1939, c. 180, s. 1; C. S. 5300.)

Editor's Note.—This section was so changed by the 1939 amendment that a comparison here is not practical. The amendment did not affect pending litigation or any public-local or private law.

§ 156-43. Incorporation of canal already constructed; commissioners; reports.—Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the name of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such by-laws and regulations as such corporation, shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days notice to each owner of the land, under such rules and regulations as the by-laws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

1. The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.

2. The probable cost of the improvement and enlargement of said canal.

3. The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

4. With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

5. The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

6. A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

7. The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in

rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (Rev., s. 4008; 1889, c. 380; 1901, c. 670; 1939, c. 180, s. 2; C. S. 5301.)

Editor's Note.—The 1939 amendment, which struck out a former proviso to the first paragraph and added the remainder of the section, did not effect litigation pending March 28, 1939, or any public-local or private law.

Art. 4. Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land.—The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (Rev., s. 4002; Code, s. 1317; 1868-9, c. 164, s. 8; C. S. 5302.)

§ 156-45. Shareholders to pay assessments. — Every corporator shall be bound to obey the lawful by-laws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (Rev., s. 4003; Code, s. 1318; 1868-9, c. 164, s. 9; C. S. 5303.)

Cross Reference.—As to collection of assessments out of other property of delinquent, see section 156-106.

Assessments—Lien upon Land.—An assessment made upon owners of lands constitutes a lien upon the lands therein and is enforceable by proceedings in rem in a court having equitable jurisdiction. Personal judgment against the defendant may not be had, as in actions arising ex contractu. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1; Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368.

Same—Enforcement by Justice of Peace.—Therefore, a justice of the peace has no jurisdiction over actions to enforce the payment of such assessments, and they will be dismissed upon motion to nonsuit when brought in that court. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1; Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368.

Same—Execution.—Assessments, made in accordance with the statute, become liens on the lands when properly certified by the officers of the corporation and docketed in the office of the superior court of the proper county; and executions may issue directing that such lands be sold to pay the assessments and the costs. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

Same—Review by Certiorari.—The courts will review by writ of certiorari the action of the drainage corporation in making illegal assessments and enjoin such assessments that are absolutely void upon their face. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

Same—Collateral Attack.—An assessment, that does not appear to be void on its face, cannot be attacked collaterally. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

§ 156-46. Payment of dues entitles to use of canal.—Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. By-laws may be made to regulate these rights, but not so as to produce an inequality. (Rev., s. 4004; Code, s. 1319; 1868-9, c. 164, s. 10; C. S. 5304.)

§ 156-47. Rights of infant owners protected.—If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within twelve months thereafter, to enforce payment of any assessment, and he may, at any time within such twelve months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the twelve months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (Rev., s. 4005; Code, s. 1320, 1868-9, c. 164, s. 11; C. S. 5305.)

§ 156-48. Compensation for damage to lands.—If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (Rev., s. 4006; Code, s. 1321; 1868-9, c. 164, s. 12; C. S. 5306.)

§ 156-49. Dissolution of corporation. — If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (Rev., s. 4007; Code, s. 1322; 1868-9, c. 164, s. 13; C. S. 5307.)

§ 156-50. Laborer's lien for work on canal.—Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their lands, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against

the same by the corporation, and such lien may be enforced in the same manner as provided by the laws of this state for the enforcement of laborers' liens. (Rev., s. 4009; 1899, c. 600, s. 2; C. S. 5308.)

§ 156-51. Penalty for nonpayment of assessments.—Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for thirty days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for thirty days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining into the canal. (Rev., s. 4010; 1899, c. 600, s. 3; C. S. 5309.)

§ 156-52. Corporation authorized to issue bonds.—The corporations organized under this subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C. S. 5310.)

§ 156-53. Payment of bonds enforced.—Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations oganized under this subchapter shall have a right to enforce the lien created by § 156-52 by civil actions in the superior courts of the state. (1908, c. 75, s. 2; C. S. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

Art. 5. Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.—The clerk of the superior court of any county in the State of North Caroiina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the state, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamp lands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the state, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; 1921, c. 7; C. S. 5312.)

Cross References.—As to provision that county prisoners may be used to maintain and keep up public drainage districts, see § 153-198. As to construction of this subchapter, see § 156-135.

Editor's Note.—This section, as amended by acts of 1921, ch. 7, extends the authority of the clerk of the superior court to the effect that he has now power to establish levee or drainage districts, either wholly or partly located in his county, whereas his authority, under the former section was limited to his county alone.

Under the new section, the drainage districts constitute political subdivision of the state, "with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works."

Vested Rights Not Affected.—But the rights of landowners in the Mattamuskeet Drainage District having been determined in a court having jurisdiction as to assessments in proportion to the benefits conferred, cannot be affected by chapter 7, Public Laws of 1921, providing that "the districts heretofore or hereafter created under the law shall be and constitute political subdivisions of the State," later enacted, for such would be to impair the vested rights of those whose property had been assessed by the final judgment. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379.

As to construction of drainage act for Mattamuskeet Lake, see Carter v. Commissioners, 156 N. C. 183, 72 S. E. 380.

The proceedings in forming a drainage district under the provisions of chapter 442, Public Laws 1909, is judicial and not administrative, and the amendment of chapter 7, Public Laws 1921, making all districts theretofore or thereafter created a political subdivision of the State cannot affect vested rights of landowners acquired under orders, judgments, or decrees made in pursuance of the powers conferred by the original act. Broadhurst v. Board of Commissioners, 195 N. C. 439, 142 S. E. 477.

Constitutionality.—This and the following sections of the subchapter are constitutional. Lumber Co. v. Drainage Commissioners, 174 N. C. 647, 94 S. E. 457; Drainage Com'rs v. Mitchell, 170 N. C. 324, 87 S. E. 112; Banks v. Lane, 170 N. C. 14, 86 S. E. 713; Shelton v. White, 163 N. C. 90, 79 S. E. 427; In re Drainage District, 162 N. C. 127, 78 S. E. 14; Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225.

Same—Collateral Attack.—The drainage acts are constitutional and the validity of a district laid off accordingly cannot be collaterally attacked. Banks v. Lane, 170 N. C. 14, 86 S. E. 713; Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266.

Purpose and Nature—Scheme.—This subchapter authorizing the establishment of certain levee or drainage districts, is to present a scheme for the drainage of lowlands in which the public of the locality are generally interested, is at once comprehensive, adequate and effecient, in which the rights of all persons to be affected have been fully considered and protected, and is not objectionable on the ground that it is for the benefit of private landowners and not for public purposes. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225.

The drainage act, with its various amendments, is a statewide public statute. Nesbit v. Kafer, 222 N. C. 48, 53, 21 S. E. (2d) 903.

Same—System.—This section adopts a system for the cooperation of landowners in the drainage of lands by forming drainage districts, which are to become quasi-public corporations, for the purpose of improving the health of the district and the fertility of the lands, under which the lands are assessed in proportion to the benefits derived and an organization is effected in each district, to execute and maintain a system of drainage. In re Drainage District, 162 N. C. 127, 130, 78 S. E. 14.

Same—Police Regulation.—The drainage of swamps and of surface water from agricultural lands in a drainage district are of public benefit and conducive to the public health, etc., thus falling within the police regulations; and proceedings thereunder are in the exercise of the right of eminent domain. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027.

Basis of Legislative Authority.—The authority of the Legislature to provide for the creation of levee and drainage districts is based upon the police power, the right of eminent domain, and the taxing power. Shelton v. White, 163 N. C. 90, 79 S. E. 427.

Lands in Several Counties.—Where, in a proceeding in Beaufort county, a drainage district, comprising lands in

both Beaufort and Craven counties, is duly created and organized under this and the following sections, and assessment rolls, showing assessments against each tract of land in the district, have been made and filed in each county, such assessments, as they become due, are liens upon the lands within the district to which they relate, and it is error for the court to dismiss an action in the nature of a mortgage foreclosure, for the collection of such drainage assessments against lands in Craven county, even where the assessment rolls for Craven county have been removed and there is left in that county no other record relating to the drainage district, except a map on which are shown the boundaries of the several tracts of land within the district in Craven county—the map itself being sufficient notice to a subsequent purchaser of the proceedings, including the assessment rolls filed in Beaufort county. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903.

Clerk's Authority Not a Delegation of Legislative Power.—The authority and powers conferred by this subchapter upon the clerk of the court is not a delegation of legislative power and duty to the judicial department of the State prohibited by the Constitution, the powers and duties conferred being of a judicial nature in relation to the prescribed proceedings to be instituted for the establishment of drainage districts. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225.

Right of Receiver to Intervene and Become Party to Suit in Federal Court.—See Board of Drainage Comr's v. Lafayette Southside Bank, 27 Fed. (2d) 286.

Proceedings Not Defective for Delay.—Proceedings for the establishment of a drainage district, under this and the following section of this article, and bonds to be issued therefor, will not be held as defective because further steps were not taken for several years after they had been commenced, the court holding, they were still pending, and because of the fact that the engineer and viewers did not file a profile map showing the surface of the ground, bottom grades, etc., at the time of the final report, as required by sec. 156-69, it appearing that this was later done upon order of the board of drainage commissioners, and otherwise the provisions of the statutes had been strictly followed. Oden v. Bell, 185 N. C. 403, 117 S. E. 340.

§ 156-55. Venue; special proceeding. — When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary. (1909, c. 442, ss. 2, 38; C. S. 5313.)

Similar to a Proceeding in Rem.—Proceedings to form drainage district under this subchapter, are regarded as proceedings in rem. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027; Banks v. Lane, 170 N. C. 14, 86 S. E. 713; Staton v. Staton, 148 N. C. 490, 62 S. E. 596.

§ 156-56. Petition filed.—A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three-fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98; C. S. 5314.)

Local Modification.—Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

Editor's Note.—By Public Laws, 1921, ch. 76, a proviso was added to this section, to the effect that in case of the construction of a particular improved highway, necessitating the digging of a drainage canal through the lands of residents of the county, it should not be necessary that the petition be signed by a majority of the resident landowners, or by the owners of three-fifths of all the land which will be affected or assessed, but that the petition should have the same effect if filed by the state highway commission. This amendment was repealed by Public Local Laws 1923, c. 88, inapplicable to Franklin, Hyde, Nash and Wilson Counties, and also by Public Laws 1925, ch. 85. The act of 1923 added a proviso to this section which was also repealed by the said act of 1925. The final paragraph of the section was added by Pub. Laws, 1927, ch. 98. For the distinction between the reclamation districts and improvement districts, see section 156-62, par. 5.

Statutory Number of Owners Is Sufficient.—It is not necessary that every owner of land within a drainage district should have assented to its formation when the statutory number thereof have done so. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027.

A Flexible Proceeding.—This is a flexible proceeding, and to be modified and molded by decrees from time to time to promote the objects of the proceeding. In re Lyon Swamp Drainage District, 175 N. C. 270, 272, 95 S. E. 485; Staton v. Staton, 148 N. C. 490, 62 S. E. 596; Adams v. Joyner, 147 N. C. 77, 60 S. E. 725.

Property Should Be Described.—One of the essentials of the proceeding is that the property sought to be charged shall be identified by description in the proceedings. Dover Lumber Co. v. Board, 173 N. C. 117, 119, 91 S. E. 714, 845.

§ 156-57. Bond filed and summons issued.—Upon filing with the petition a bond for the amount of fifty dollars per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk shall issue a summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendants who cannot be personally served as provided by law. (1909, c. 442, s. 2; C. S. 5315.)

Cross Reference.—See Local Modification under § 156-56.

In General.—The drainage laws of North Carolina have been largely copied from the acts in Indiana and Illinois, and following the construction of these acts in these and other States for the long period of time the acts have been in force, it is essential that notice of summons in all such proceedings be given to all parties who will be affected thereby. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 118, 91 S. E. 714, 845.

Summons on All Landowners.—This section is mandatory in requiring a "summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 118, 91 S. E. 714, 845. "But the statute requires only landowners to be made parties in such drainage proceedings." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 120, 91 S. E. 714, 845.

Same—Mortgagee Not Included.—It would interfere with a

much-needed public development if, as a prerequisite thereto, and before a final order can be made, all defects of title and mortgages or liens that may be claimed must be looked up and adjudicated. It is sufficient that summons shall be served upon the parties in possession under an apparent legal title, and that before final adjudication notice shall be given in the manner prescribed in order that parties claiming liens by mortgage or otherwise, or title to the land adversely to those in possession, shall have opportunity to come in and oppose confirmation of the final report. Banks v. Lane, 170 N. C. 14, 17, 86 S. E. 713. See Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 701, 81 S. E. 947.

Effect of Failure to Serve Summons.—Where a landowner having an interest within the meaning of the statute, has not been served, and it does not appear that he was an apparent party, an order laying an assessment on his property is void, and the proceedings as they relate to him are a nullity, and the assessment may be restrained. Banks v. Lane, 170 N. C. 14, holding a mortgagee not a necessary party, cited and distinguished. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845.

Same—Subsequent Notification.—The proceedings for forming a drainage district are in rem; and where a valid statute has been complied with therein, and it appears that an owner has not been served with process, it is admissible to notify him, in possession, nunc pro tunc, and have the lands therein assessed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027.

§ 156-58. Publication in case of unknown owners.—If at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the owners of the whole or any share of any tracts of land, whose names are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C. S. 5316.)

Owners Bound if Section Is Followed.—By virtue of the notice required by this section the owners of land have opportunity to intervene and assert any right they might have to oppose the proceeding, if deemed contrary to their interest. Not having done so, they are bound by the judgment under which the bonds were issued for this improvement. Banks v. Lane, 170 N. C. 14, 16, 86 S. E. 713.

Judgment Presumed Regular.—Where publication in accordance with this section has been made, every presumption is in favor of the regularity of the judgment. Taylor v. Commissioners, 176 N. C. 217, 225, 96 S. E. 1027.

Mortgagee Must Assert Rights.—Notice by publication is given in proceedings to form a drainage district under this section, of the filing of the report in the office of the clerk of the Superior Court, which is open to inspection to the landowner or other person interested, and a mortgagee of lands who does not intervene and assert his rights to oppose the proceedings is bound by the final judgment. Banks v. Lane, 170 N. C. 14, 86 S. E. 713.

§ 156-59. Board of viewers appointed by clerk.—Upon the return day the clerk shall appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the board of conservation and development; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S. 5317.)

Cross Reference.—See Local Modification under § 156-56.

§ 156-60. Attorney for petitioners.—The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C. S. 5318.)

§ 156-61. Estimate of expense and manner of payment.—The clerk shall make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual

survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement. (1917, c. 152, s. 1; 1941, c. 342; C. S. 5319.)

Editor's Note.—The third sentence of this section was added by the 1941 amendment, which became effective March 15, 1941 and did not apply to pending litigation.

§ 156-62. Examination of lands, and preliminary report.—The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within thirty days, unless the time shall be extended by the court, a written report, which shall set forth:

1. Whether the proposed drainage is practicable or not.

2. Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.

3. Whether the improvement proposed will benefit the lands sought to be benefited.

4. Whether or not all the lands that are benefited are included in the proposed drainage district.

5. Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; 1927, c. 98, s. 2; C. S. 5320.)

Editor's Note.—Paragraph 5, distinguishing between reclamation districts and improvement districts, was added by Pub. Laws 1927, ch. 98, sec. 2.

§ 156-63. First hearing of preliminary report.—The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; 1927, c. 98, s. 3; C. S. 5321.)

Editor's Note.—The last part of the second sentence of this section, providing that the petition be dismissed where it is sought to set up a reclamation district and the viewers report unfavorably as to the cost, was added by Pub. Laws 1927, ch. 98, sec. 3.

Date for Objections Set by Clerk.—When the two freeholders and surveyors have acted upon the preliminary order of the clerk of the Superior Court in proceedings to establish a drainage district and the required report is made by them to the clerk, as to whether the proposed improvement is practicable and conducive to the general welfare of the district proposed, or whether the lands included will be benefited, etc., and the report filed with map and other things required, it is then the clerk's duty, under this section if the report is favorable, to approve the same and give

notice of the date to hear objection, which then may be made by any person whose land has been embraced, that his land be excluded, which may raise an issue of fact as to whether his lands have been benefited or not. Shelton v. White, 163 N. C. 90, 79 S. E. 427.

§ 156-64. Notice of further hearing.—If the petition is entertained by the court, notice shall be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C. S. 5322.)

§ 156-65. Further hearing, and district established.—At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional land owners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right of way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; 1927, c. 98, s. 4; C. S. 5323.)

Editor's Note.—By Pub. Laws 1927, ch. 98, sec. 4 the last sentence of this section was added. This addition applies when the proposed district is a reclamation district. The distinction between reclamation and improvement districts was introduced by ch. 98, Pub. Laws 1927 and references to it will be found in sections 156-56, 156-62, 156-63, and 156-98. The two classes of districts are defined in section 156-62, par. 5.

Minority Landowner Cannot Contest Formation of District.—A minority landowner included in a proposed drainage district to be laid out may not contest the formation of the district, but can raise only the issue as to his benefits therefrom. Shelton v. White, 163 N. C. 90, 79 S. E. 427.

Same—Public Benefit Governs.—It is because of the benefits which accrue to the public from the establishment of a drainage district under the statute, that power conferred thereby upon the court to include lands of owners who are unwilling to sign the petition, or who oppose the establishment of the district is sustained. O'Neal v. Mann, 193 N. C. 153, 162, 136 S. E. 379.

Signer of Original Petition Can Object.—Upon report of the viewers and surveyors at the final hearing in proceedings to lay off a drainage district, one who signed the original petition may have ascertained from the information contained in the report, contrary to his previous opinion, that the cost of the improvements and damages will amount to more than the benefits to his land, and hence he may then file his objections, and the same procedure is then open to him as if he had not signed the petition. Shelton v. White, 163 N. C. 90, 79 S. E. 427.

Small District Within Larger.—A smaller drainage district may be laid off within the boundaries of a larger one, theretofore organized, the purposes of each harmonizing with the purposes of the other. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947.

§ 156-66. Right of appeal.—Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in term-time, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C. S. 5324.)

Cross Reference.—As to appeal from final hearing, see section 156-75 and notes.

Power to Change Route.—See annotations under section 136-45.

Proceedings upon Appeal.—A petition for the establishment of a drainage district of a majority of the resident landowners or of the owners of three-fifths of the land therein, approved by the report of the viewers and surveyor and affirmed by the clerk, permits a majority owner to raise only the issue of fact for the jury to determine as to the benefit to his lands; and should the jury find in favor of the objector, he is not entitled as a matter of right to have his land excluded, but it is for the judge to decide whether this may be done without injury to the district, and if not, he may order that such land be retained, upon payment of the damages to be awarded by the jury, as in condemnation of lands; all other matters embodied in the report are subject to approval by the clerk, and reviewal by the judge without the intervention of a jury, being questions of fact. Shelton v. White, 163 N. C. 90, 79 S. E. 427.

Proper Appeal Is Notice to Purchaser of Bond.—Where the owner of land in a drainage district has duly excepted under this section and again under section 156-75 and appealed, the purchaser of bonds issued by the district takes with notice of the rights of the complaining party so excepting, and acquires the bonds subject thereto. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229.

Effect of Failure to Appeal.—Under the Drainage Act appeals are separately provided for under this section when the drainage district has been laid off, and under section 156-75 when the final act is passed upon; and where the complaining owner of land in the district has not entered an exception under either of these two sections as the statute provides, and bonds have been duly issued on the lands of the district for drainage purposes, and thereafter application has been made by the commissioners for the issuance of additional bonds, in the further proceedings he may not be permitted to go back and change the formation of the district and the classification and assessments already made, by attacking the reports of the engineers and viewers, and withdraw a large part of his lands from the district theretofore formed. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229.

§ 156-67. Condemnation of land.—If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as provided by law for the condemnation of rights of way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S. 5325.)

§ 156-68. Complete survey ordered. — After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding sixty days. (1909, c. 442, s. 9; C. S. 5326.)

§ 156-69. Nature of the survey. — The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established along the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned, so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done. (1909, c. 442, s. 10; C. S. 5327.)

§ 156-70. Assessment of damages. — It shall be the further duty of the engineer and viewers to assess the damages claimed by any one that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C. S. 5328.)

Independent Action for Damages.—The principles that conclude parties to proceedings in the formation of drainage districts under the statute by final judgment, from a recovery of damages to their lands, applies to such as may have accrued in the laying out and the establishment of the district under the procedure prescribed, and does not prevent an injured proprietor, within or without the district, from maintaining his independent action to recover damages caused by an unauthorized and substantial departure from the scheme and plan established by the decrees and orders in the cause, nor where the damage complained of is attributable to the negligence of the company, or its officers or agents in carrying out the proposed work. Spencer v. Wills, 179 N. C. 175, 102 S. E. 275.

Same—Permanent Damages Recoverable.—The whole of plaintiff's lands were originally included in a drainage district to be established under the statutory provisions, but the final judgment so restricted and modified the survey, plat and boundaries as to exclude all except a comparatively small portion of the land, the preliminary survey showing that a canal would go through the land included as well as through the land, or a large part thereof, excluded by the final judgment. There was no evidence that ancillary proceedings for this outside lands by condemnation had been resorted to and it was held, that the plaintiff, in his independent action, may elect to recover the permanent damages caused to his land. Sawyer v. Drainage Dist., 179 N. C. 182, 102 S. E. 273.

Damage to Timber Included.—While under the drainage acts no assessments for benefits can be made against the owner of timber interests, only the land itself being liable, the owner of the land and of timber within the district, by the provision of the statute, when made a party to the proceedings and duly notified, is required to present his claim for the entire injury, inclusive of that to his timber, and the damages to the timber should thus be included and allowed in the final judgment in the proceedings. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457.

Pendency of Proceedings—Notice to Landowners.—The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice to all the lands embraced in the district. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266.

Same—Notice to Grantees.—And the grantees thereof are bound by the statutory requirements as to the procedure to recover damages to the lands, as were their grantors who were parties to the proceedings and who owned the lands

at that time. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266.

§ 156-71. Classification of lands.—It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or water-course or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one land owner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separate parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law. (1909, c. 442, s. 12; 1923, c. 217, s. 1; C. S. 5329.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—This section was amended by Pub. Laws 1923, ch. 217, sec. 1, by the addition of the last three sentences providing for the inclusion in a drainage district of lands which are not benefitted for agricultural purposes, but which receive other benefits. A higher rate of assessment is provided when the benefits are greater.

Classification May Be Discretionary in Local Act.—The Legislature, in authorizing the establishment of a drainage district, may very largely commit to the commissioners the exercise of their judgment as to what should be done in carrying out the general provisions specified by the statute, and the special act of the Legislature creating the Gaston County Drainage Commission, ch. 427, Public-Local Laws of 1911, thus construed, does not relieve a landowner therein from paying his authorized assessments for benefits solely because the commission failed to strictly and literally divide the lands into the number of classes therein set out. Mitchen v. Drainage Com., 182 N. C. 511, 109 S. E. 551.

§ 156-72. Extension of time for report.—In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C. S. 5330.)

§ 156-73. Final report filed; notice of hearing.—When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than twenty days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made for at least two weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other person interested within the district. (1909, c. 442, s. 15; C. S. 5331.)

When Publication Unnecessary.—It is not necessary to the validity of bonds issued by a drainage district, that the notice of the time of hearing objections to the final report of the engineer and viewers was not published in some newspaper of general circulation in the county, when it appears that no newspaper was published therein, or elsewhere, which has a general circulation in the county, and that the landowners affected had actual and ample notice of such time and raised no objection. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897.

§ 156-74. Adjudication upon final report. — At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages as-

sessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs: Provided, that the board of conservation and development may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; 1925, c. 122, s. 4; C. S. 5332.)

Effect of Final Decree.—A final decree in proceedings to lay off a statutory drainage district is an adjudication that the benefits derived to the land within the district are more than the burdens assessed against it for such purpose. Banks v. Lane, 170 N. C. 14, 86 S. E. 713.

Failure to Object is Waiver.—The question as to whether an owner of land within a drainage district has realized the benefits anticipated is eliminated when there is the establishment of the district upon the report; and where such owner remains silent or makes no objection or exception at the proper time as to the proceedings of the board, his silence is a waiver of any right he may have therein had, and the independent remedy by injunction is not open to him. Mitchem v. Drainage Com., 182 N. C. 511, 109 S. E. 551.

Where a drainage district has been duly laid off in conformity with the statute, and a landowner therein has not excepted to either the preliminary or final report, he may not after the appointment of the commissioners, be heard to complain that the benefits he is to receive are not as great as those he had contemplated. Griffin v. Board, 169 N. C. 642, 86 S. E. 575.

§ 156-75. Appeal from final hearing.—Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the superior court in term-time. Such appeal shall be taken and prosecuted as now provided in special proceedings. Such appeal shall be based and heard only upon the exceptions theretofore filed by the complaining party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in term time or in chambers taken under this section or any other section or provision of the drainage laws of the state, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; 1923, c. 217, s. 2; C. S. 5333.)

Cross Reference.—See § 156-104 as to application of this section.

See also notes under section 156-66.

Editor's Note.—The last two sentences, providing for precedence of cases under this section, were added by Public Laws 1923, ch. 217, sec. 2.

In General.—This section providing for an appeal upon exception to the final report by an owner of lands in a drainage district laid off under the provisions of the statute necessarily refers to the formation of the district and the assessments of the lands embraced in it. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229.

Authority of Referee.—Where, by consent of the parties to an action, the court has ordered a referee for hearing and determining "all matters in controversy," and the controversy has arisen upon exceptions taken by a landowner to the final report on the plan and assessments made in forming a drainage district, by this section, the complaining party may not successfully except to the authority of the referee in passing upon questions therein arising which have been referred to him. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229.

Appeal Only upon Exceptions Filed Below.—An appeal from the final order of the clerk in establishing a drainage district under the provisions of this section is heard only upon the exceptions thereto filed as to issues of law or fact. Shelton v. White, 163 N. C. 90, 79 S. E. 427; In re Drainage District, 162 N. C. 127, 78 S. E. 14. And it is sufficient that the clerk has found as a fact that the allegations set out in the petition are true, if these allegations are sufficient, and distinctly and clearly made. In re Drainage District, 162 N. C. 127, 78 S. E. 14.

§ 156-76. Compensation of board of viewers.—The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation particularly of the drainage engineer, the clerk shall confer fully with the board of conservation and development and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall not exceed four dollars per day for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; 1925, c. 122, s. 4; C. S. 5334.)

§ 156-77. Account of expenses filed.—The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C. S. 5335.)

§ 156-78. Drainage record.—The clerk of the superior court shall provide a suitable book, to be known as the "drainage record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C. S. 5336.)

Purpose of Record Book.—Upon the filing of the final report by the viewers, etc., in a proceeding to establish a drainage district under the provisions of the statute, a record is required by the statute to be kept in a book for the purpose, giving all interested in the proceedings notice of all that has been done materially affecting them; and when they have failed to make objection within three years, semble, they have lost their right to object, by the delay. Griffin v. Board, 169 N. C. 642, 86 S. E. 575.

Art. 6. Drainage Commissioners.

§ 156-79. Election and organization under original act.—After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall ap-

point those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled in like manner. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of ..... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S. 5337.)

Local Modification. — Columbus, Chadburn Drainage District: 1939, c. 70; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466.

See also, Local Modification under § 156-56.

Requirements as to Appointment Directory Merely.—The appointment of commissioners for the drainage district for Mattamuskeet Lake and adjoining lands, ch. 509, sec. 3, Laws of 1909, is to be made, two by the State Board of Education and one by the clerk of the court, without reference to this section, requiring an election by the owners of the land within the drainage or levee district. Semble, the requirements of this section are but recommendatory. State v. Gibbs, 156 N. C. 44, 72 S. E. 82.

Individual Acts Do Not Bind District.—A drainage district is a corporation and as any other corporation, public or private, cannot be bound by the acts of its officials or agents acting separately or individually. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1.

Cannot Confer Special Rights on One Landowner.—The board of drainage commissioners, being a quasi-public corporation, created for the "public benefit", the powers usually pertaining to such corporations would not authorize a drainage district to enter into a contract that would give special or particular rights or claims to one landowner in the drainage district that is not enjoyed by all landowners similarly situated. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 240, 17 S. E. (2d) 1.

§ 156-80. Name of districts.—The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S. 5338.)

§ 156-81. Election and organization under amended act.—

1. Method of Election.—In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

2. Organization.—Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

3. Term of Office.—The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

4. Vacancies Filled.—If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners

shall promptly notify the clerk of the superior court of any vacancy in the board.

5. Failure to Elect.—If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, nineteen hundred and seventeen, and their successors shall be elected on the second Monday in August, nineteen hundred and seventeen, in the manner provided by law.

6. Meetings.—The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

7. Compensation.—The chairman of the board of drainage commissioners shall receive compensation based on an annual payment of fifty dollars per annum in districts containing less than five thousand acres in the aggregate, but the clerk of the superior court shall be authorized to increase this annual compensation to one hundred dollars if the duties required of the chairman shall appear to justify such increase. In addition, the chairman shall receive his actual and necessary expenses of travel and subsistence, for which he shall file an itemized statement of the amounts actually paid. The remaining two members of the board shall receive a compensation of not exceeding five dollars per day while necessarily engaged in attendance upon meetings of the board, or in the discharge of other necessary duties imposed by the board, and, in addition, shall receive their actual and necessary expenses in attending meetings of the board. The secretary of the board, if other than a member of the board, shall receive such compensation for work actually performed as may be determined by the board. In drainage districts of unusually large area and requiring greater time and attention, the chairman of the board may be paid a greater compensation than one hundred dollars per annum, to be allowed by the clerk of the superior court, based on a petition filed by the board with the clerk, setting forth all the facts necessary for a determination of the matter. All such payments allowed to the chairman and members of the board shall be paid by vouchers upon the treasurer of the district issued in proper form.

8. Application of Section.—The provisions of subsection one of this section with respect to the right to vote for and the manner of election of commissioners shall not apply to districts organized prior to the fifth day of March, one thousand nine hundred and seventeen, but in those districts the landowners shall be entitled to vote as provided by the law prior to that date. The term of office of boards of drainage commissioners in districts organized prior to the date last mentioned, and in which no election of drainage commissioners has been held under this section, shall expire on the thirtieth day of September, nineteen hundred and nineteen, and their successors shall be elected on the second Monday in August, nineteen hundred and nineteen, in the manner provided by this section. If for any reason the clerk of the court shall fail to provide for such election he shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold office as commissioners until their successors are elected and qualified. The length of the term of service of commissioners elected hereunder shall be as provided in subsection three of this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; C. S. 5339.)

Local Modification.—Hyde, Mattamuskeet Drainage District: C. S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350.

Where one of three drainage commissioners dies, the two surviving have authority, until the election and qualification of their successors, to levy an additional assessment against the lands of the district necessary to discharge the obligations of the district. Peoples Loan, etc., Bank v. King, 212 N. C. 349, 193 S. E. 663.

§ 156-82. Validation of election of members of drainage commission. — All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(a) That said election was held at the time and place prescribed by law.

(b) That a ballot box was provided for the ballots cast for drainage commissioner.

(c) That the ballots were canvassed and the results declared by the judge of the general election.

(d) That the candidate receiving the greatest number of votes was declared elected.

(e) That no candidate for election as a member of board of drainage commissioners made any deposit as prescribed by law.

(f) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; C. S. 5339(a).)

Art. 7. Construction of Improvement.

§ 156-83. Superintendent of construction. — The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction, by and with the approval and recommendation of the board of conservation and development. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the board of conservation and development, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same man-

ner. (1909, c. 442, s. 20; 1923, c. 217, s. 3; 1925, c. 122, s. 4; C. S. 5340.)

Cross Reference.—See § 156-104 as to application of this section.

§ 156-84. Letting contracts. — The board of drainage commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein such improvement is located; if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C. S. 5341.)

Power of Commissioners Is Discretionary.—This section directs that the levee or drainage commissioners shall convene with the superintendent of construction and let the work contemplated to the "lowest responsible bidder," thereby conferring a discretionary power in adjudging the responsibility of the bidder, in all respects, with which the courts will not interfere in the absence of undue influence or a procurement by fraud. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225.

Section Authorizes Only Minor Changes in Report.—Where a drainage district has been laid out in accordance with the requirements of the Drainage Act, and the final report has been filed and recorded, provision is made for the selection of a board of drainage commissioners, etc., who are charged with the duties of carrying out, substantially, the plans and specifications of the report as recorded, their powers being largely ministerial in character, to make out the assessment rolls constituting a lien on the property, as in case of tax lists, observing the classifications and ratio of assessments determined upon by the board of viewers; and the modification made by this section of the act contemplates only such minor changes of detail as may occur in carrying out the plans, etc., specified in the final report and not a substantial departure therefrom. Griffin v. Board, 169 N. C. 642, 86 S. E. 575.

Acceptance of Work by Commissioners.—The acceptance of the work of the contractors as a compliance on their part with the contract is a judicial act of the board of commissioners and cannot be questioned except for fraud or collusion, and then only to make the commissioners personally and individually liable. Craven v. Board, 176 N. C. 531, 533, 97 S. E. 470.

§ 156-85. Monthly estimates for work, and payments thereon; final payment.—The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C. S. 5342.)

§ 156-86. Failure of contractors; reletting. — If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C. S. 5343.)

§ 156-87. Right to enter upon lands; removal of timber.—In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C. S. 5344.)

Cross Reference.—As to recovery of damages for timber, see section 156-70 and notes.

Purpose of Section.—The drainage acts contemplate that all damages to the owner of lands shall be assessed, including the taking of his timber necessary to carry out its plans, this section being designed to give the owner of the timber the privilege of taking such timber if he so elects. Lumber Co. v. Drainage Comr's, 174 N. C. 647, 94 S. E. 457.

Not an Unlawful Taking.—The objection that this section is an unconstitutional taking of the owner's timber and giv-

ing it to the contractor, without compensation, cannot be maintained. Lumber Co. v. Drainage Comr's, 174 N. C. 647, 94 S. E. 457.

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain, or water-course established under the provisions of this subchapter crosses a public highway, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the fund of the drainage district. Wherever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the State Highway and Public Works Commission as to roads under its supervision, and, as to other roads, to the commissioners of the county where the road is located, of the amount of such assessment, and the commission or county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a highway by reason of enlarging any water-course, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the State Highway and Public Works Commission, or by such other official board or authority as by law shall be required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road: Provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the State Highway and Public Works Commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S. 5345.)

Mandamus against County Commissioners.—A judgment in proceedings for mandamus against the county commissioners to compel them to pay an assessment of a drainage district for benefit to the public roads therein, that the defendants pay the same, with interest and cost, out of the first moneys coming into their hands and not otherwise appropriated, is valid and not in violation of the Constitution or statute relating to taxation. Drainage District v. Board, 174 N. C. 738, 94 S. E. 530.

§ 156-89. Drainage across railroads; procedure.—Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural water-course, and the same would cross the right of way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or water-course crosses the right of way of such company, the notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right of way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C. S. 5346.)

§ 156-90. Notice to railroad. — The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C. S. 5347.)

§ 156-91. Manner of construction across railroad.—

1. Duty of Railroad.—After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time

agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

2. Utilities Commission to Settle.—If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the utilities commission of the state, and thereupon the utilities commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the utilities commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the utilities commission.

3. Penalty for Delay.—In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

4. Payment of Expense.—Within thirty days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right of way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1; C. S. 5348.)

§ 156-92. Control and repairs by drainage commissioners. — Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or water-course in good repair, and for this purpose they may levy an assessment on the lands benefited by the construction of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or water-course in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or water-course constructed or improved under the provisions of this sub-chapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C. S. 5349.)

Editor's Note.—Sections 156-118 and 156-123 were added by Public Laws 1923 ch. 231 and have the effect of amending this section. This section authorizes the drainage commissioners to levy an assessment upon the lands in the district for the purpose of keeping up the drainage. The amending statutes provide that the commissioners may issue bonds instead of levying an assessment. In order to do so, they must file a petition with the clerk of the superior court showing the nature of the work to be done, that the expense will be more than one dollar per acre for the lands in the district, and to raise the money by one assessment would be an unreasonable burden upon the land.

Upon filing such petition, the proceeding is somewhat similar to the original organization of the district, requiring the appointment of a board of viewers, and their report as to whether the bonds should be issued, the filing of maps and profiles, with a reclassification of the lands if found to be necessary. If the commissioners think it would help the sale of the bonds, they may, with the approval of the clerk of superior court, add to the amount so to be secured an amount sufficient to cover all the obligations of the district, so as to have only one bond issue. See 1 N. C. Law Rev. 288.

Meaning of Original Assessments.—Under the provisions of the statute creating the Mattamuskeet Drainage District the control thereof, after its completion, is continued in the board of drainage commissioners for the purpose of its maintenance, and authority is given it to levy assessments therefor on the lands benefited in the same manner and in the same proportion as the "original assessments" were made, and collected by the same officers as those by whom the State and county taxes are collected: Held, the term "original assessments" refers to those made for construction work on bonds issued therefor, and the assessments for maintenance should be collected by the sheriff of the county for the purpose of maintenance, as taxes for general county purposes are to be collected by him. Drainage Comr's v. Davis, 182 N. C. 140, 108 S. E. 506. See notes to sec. 105-424, 156-113, as to collection by sheriff.

Provision Limiting Assessments.—A provision in the petition limiting the amount of assessments to be made on lands within a drainage district being formed under the provisions of the statute, which was not inserted in the final judgment rendered in due course, may not at a susbequent term be applied by amendment, being also contrary to the statutory provisions and invalid. Mann v. Mann, 176 N. C. 353, 97 S. E. 175.

§ 156-93. Construction of lateral drains.—The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or water-course, as herein provided, shall have the right to use the ditch, drain, or water-course as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or water-course by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms

and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C. S. 5350.)

Art. 8. Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained.—After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; 1923, c. 217, s. 4; C. S. 5351.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—This section which requires an estimate of the expense necessary for maintaining for three years the improvement constructed, was amended by Public Laws 1923, ch. 217, sec. 4, by adding a limitation, "not exceeding ten per cent of the estimated actual cost of constructing the drainage works or the contract price thereof." See 1 N. C. Law Rev. 287.

§ 156-95. Assessment and payment; notice of bond issue.—If the total cost of the improvement is less than an average of twenty-five cents per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as state and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within fifteen days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C. S. 5352.)

Assessments Not "Taxes."—Assessments made for the maintenance of a drainage district, incorporated under the provisions of the statute, are not "taxes," though they may be so incorrectly denominated therein; they are only assessments made for the special benefits to the land within the district and not imposed for the purpose of general revenue. Drainage Comr's v. Davis, 182 N. C. 140, 108 S. E. 506.

Assessments Are Liens in Rem.—Assessments upon lands in a drainage district are liens in rem, resting upon the lands, into whosoever hands it may be at the time they accrue, and do not come within the terms of a warranty against encumbrances by deed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027.

Same—Purchaser Takes with Notice.—The purchaser of lands within a drainage district formed under the provisions of this chapter is fixed by the statute with notice of the assessments and the time thereof, whether a resident of another State or not. Pate v. Banks, 178 N. C. 139, 100 S. E. 251.

Timber Interest Not Liable.—A conveyance of the timber, under the usual deed, providing for its cutting and removal from the land within a stated period, is regarded as a severance thereof from the land, and the grantee in the deed is not liable for an assessment for drainage purposes laid thereon. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845.

One Owner Not Liable for Failure of Others.—No owner is responsible for other owners by reason of their failure to pay, except through the method of assessment provided by the statute. Carter v. Drainage Commissioners, 156 N. C. 183, 184, 72 S. E. 380.

Owner Liable for Additional Assessments.—The land of the owner who has paid his assessments, as provided by this section, is subject to additional assessments, the lands in the district being liable until the original bond issue for making the improvements or indebtedness incurred therefor is paid in full. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228.

Courts Can Enjoin Collection of Assessments.—The courts, in proper instances, have the power to interfere and stay amounts assessed against the owner of lands within an established drainage district, when it appears that the commissioners, in carrying out the ministerial duties imposed on them, endeavor to collect from him a sum in excess of their own assessment, or that they had made out these rolls in utter disregard to the classifications and ratio of assessments established by the final report, or they had made such changes in the plans and specifications thereof as to exceed their powers and work substantial wrong and hardship upon a landowner, if he is not guilty of laches and has not unduly delayed asserting his rights. Griffin v. Board, 169 N. C. 642, 86 S. E. 575.

But where a drainage district has been fully and lawfully established in accordance with the statute, and the commissioners duly appointed and bonds issued in furtherance of the scheme, an injunction restraining the collection of the assessment against the landowners therein, at the suit of one of them, will not issue, as against the interest of the holder of the bonds, unless it clearly appears that the commissioners have substantially departed, to the injury of the claimant, from the scheme set forth in the final report of the viewers, etc.; and it appearing in this case that such has not been done, the restraining order is properly dissolved, and the further order that the plaintiff may proceed in his action against the commissioners is approved. Griffin v. Board, 169 N. C. 642, 86 S. E. 575.

Presumption as to Notice.—The presumption is in favor of the regularity of the official proceedings of the commissioners of a drainage district, and applies as to the sufficiency of notice to a landowner within the district of a meeting duly had to assess such owners according to benefits received from the improvements therein. Mitchem v. Drainage Com., 182 N. C. 511, 109 S. E. 551.

Waiver of Notice.—Where the owner of land in a drainage district, formed under the provisions of statute, appears at a meeting of the commissioners held for the purpose, and is silent, making no objection or exception to the assessment imposed upon his land, the question as to whether he had been sufficiently served with notice of the meeting becomes immaterial, his appearance being construed as a waiver thereof, or rather as dispensing with formal notice. Mitchem

v. Drainage Com., 182 N. C. 511, 109 S. E. 551. And he can not collaterally, by injunction, restrain the collection of these assessments by sheriff's sale; and this applies to his grantee who knew that the lands were situate within the district and subject to the assessments. Mitchem v. Drainage Com., 182 N. C. 511, 109 S. E. 551.

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514.

§ 156-96. Failure to pay deemed consent to bond issue.—Every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C. S. 5353.)

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514.

§ 156-97. Bonds issued.—At the expiration of fifteen days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the county treasurer. It shall be optional with the board of drainage commissioners in the issuing of bonds to issue serial bonds in denominations of not less than one hundred dollars nor more than one thousand dollars, bearing not more than six per cent interest from date of issue, payable semiannually. The first annual installment of principal shall fall due not less than three years nor more than six years after date thereof, and each annual installment of principal shall not be less than five per cent nor more than ten per cent of the total bonds authorized and issued. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; 1923, c. 217, s. 5; C. S. 5354.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note. — This section, as to issuing bonds, was amended by Public Laws 1923, ch. 217, sec. 5 by leaving out the requirement to include in the bond issue an amount sufficient to pay interest on the bond issue for the three years following the date of issue; and also by leaving out the last sentence in the section in regard to assessments to pay interest on installments of bonds maturing more than three years from date of issue. These payments are provided for in a subsequent section. See Editor's Note to sections 156-98 and 156-103. 1 N. C. Law Rev. 287.

Bonds Not Void.—An issue of bonds by a drainage commission, is not void by reason that the clerk of the court who appointed the commissioners owned an interest in a tract of land within the drainage district, as such an interest is too minute, and not directly the subject-matter of the litigation. White v. Lane, 153 N. C. 14, 68 S. E. 895.

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377.

§ 156-98. Form of bonds; excess assessment.—All bonds authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten per cent more than the total of interest and principal due in such years; that is to say, for every one hundred dollars of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen per cent of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen per cent thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five per cent of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five per cent toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding thirty days notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semi-annual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three

years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum shall accumulate in any one year in excess of fifteen per centum of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten per cent assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds provided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; 1923, c. 217, s. 6; 1927, c. 98, s. 5; C. S. 5355.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—Public Laws 1923, ch. 217, sec. 6, amended this section by providing that, for the purpose of meeting any deficit, an assessment shall be levied sufficient to yield ten per cent more than the total of principal and interest of bonds due during that year; and when the surplus of the assessment so levied amounts to more than fifteen per cent of the principal of the bonds outstanding, the excess over such fifteen per cent may be used for maintenance in the district. When all the assessments, except the last one, have been paid, if the accumulated surplus is more than five per cent of the total bond issue, the excess over such five per cent may be applied to the reduction of the last assessment. As the surplus may accumulate, the treasurer may deposit the same in some solvent bank at the highest obtainable rate of interest.

Since the first and second installments of interest on the bonds may be due before the collection of the first drainage assessment, the treasurer is authorized to pay such interest out of the funds for maintaining the drainage work for three years after completion, the same to be repaid out of the additional ten per cent assessment above provided for, when there shall be an accumulated surplus in any one year of more than fifteen per cent of the principal of outstanding bonds. The treasurer is required to keep separate accounts of the funds above specified. See 1 N. C. Law Rev. 288.

The second paragraph of the present section, distinguishing between reclamation and improvement districts, was added by Public Laws 1927, ch. 98, sec. 5.

§ 156-99. Application of funds; holder's remedy.—The commissioners may sell these bonds at not less than par and devote the proceeds to the payment for the work as it progresses and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from such bonds shall be for the exclusive use of the levee or drainage district specified on their face, and shall be numbered by the board of drainage commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinafter provided. If any installment of principal or interest represented by the bonds shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holders of such bonds upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, wherein the court may issue a writ of mandamus against the drainage district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and costs of action; and such other remedies are hereby vested in the holders of such bonds in default as may be authorized by law; and the right of action is hereby vested in the holders of such bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this subchapter. The official bonds of the tax collector and county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bonds may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1911, c. 205; 1923, c. 217, s. 7; C. S. 5356.)

Local Modification.—Brunswick, Columbus: 1929, c. 299.

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—Public Laws 1923, ch. 217, sec. 7, amended this section by striking out in the first sentence of the section the words, "and to the payment of the interest on the bonds for the three years next following the date of issue." This payment is taken care of by the amendment to the preceding section and by the amendment to section 156-103. See Editor's Notes to those sections. See 1 N. C. Law Rev. 288.

Action against Land Owner Is Unauthorized.—The remedy provided by statute to the holders of drainage bonds to enforce payment of their obligations is by action against the drainage district and its commissioners and the tax collector and treasurer to compel these officers to perform their legal duties in pursuing the statutory procedure for the collection and application of drainage assessments, which remedy is adequate and exclusive, and the holder of past-due bonds may not maintain an action against the owner of land within the district to enforce the lien of delinquent drainage assessments against the land. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491.

Effect of Foreclosure of Tax Liens under § 105-414.—Where, in an action to foreclose a tax lien under § 105-414 service of process on "bond holders, lien holders or other persons having or claiming some interest in the land" was had by publication, but the publication made no reference to any drainage district, drainage assessment, liens or bonds or bondholders of any drainage district, the publication was held insufficient to give the court jurisdiction of the holders of bonds of the drainage district in which the lands or any part of them lay, and the judgment therein could not preclude the bondholders from exercising their remedy under prescribed conditions to have the drainage district levy additional assessments against the lands for the purpose of paying the drainage bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377.

§ 156-100. Sale of bonds. — In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the state and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number

of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to be sold by the local government commission in the manner provided by the local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; 1941, c. 142; C. S. 5357.)

Editor's Note.—The 1941 amendment added the provision relative to bonds sold by the local government commission.

§ 156-101. Refunding bonds issued.—In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six per cent, payable semiannually, and shall be divided into such annual installments not exceeding ten per cent and not less than five per cent of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C. S. 5358.)

§ 156-102. Drainage bonds received as deposits.—The state treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the state treasurer: Provided, that the attorney general shall have approved the form of such bonds. (1917, c. 152, s. 7; C. S. 5359.)

Local Modification.—Edgecombe, Pitt: 1937, c. 334.

§ 156-103. Assessment rolls prepared. — The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten per cent additional as provided in § 156-98. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of state and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11th, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1st, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the prepara-

tion of such assessment rolls. The state having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes thereof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the state. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; 1921, c. 7; 1923, c. 217, s. 8; C. S. 5360.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The following changes in this section were made by Public Laws 1923, ch. 217, sec. 8. The manner of preparing the assessment rolls, as formerly contained in the first part of this section, was changed and the drainage commissioners are to prepare assessment rolls, giving the names of the owners of the land, a description of the different tracts, and the amount assessed against each tract. The first assessment is to become due on the first Monday in September after the date of the bond issue, and shall provide funds sufficient for the payment of interest on the bonds for one year. The second assessment shall also provide for the payment of interest on the bonds for one year. Thereafter annual assessment shall provide a sufficient fund to meet interest on the bonds for one year; and during the year in which there is an installment of the principal of any bonds due, the assessment shall be sufficient to pay such installment and the interest accruing for that year. The commissioners shall also include in the assessment rolls the ten per cent additional tax above provided for. See 1 N. C. Law Rev. 288.

The assessment arises upon the completion of the assessment rolls. Nesbit v. Kafer, 222 N. C. 48, 51, 21 S. E. (2d) 903.

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377.

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings.—All the provisions of chapter 217 of the Public Laws of 1923 amendatory of §§ 156-71, 156-75, 156-83, 156-94, 156-97, 156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C. S. 5360(a).)

Local Modification.—Hyde: C. S. 5360(a); 1923, c. 217, s. 10.

§ 156-105. Assessment lien; collection; sale of land.—The assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the state and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday, which may be designated by the Board of Drainage Commissioners. After any such sale date has been designated by the Board of Drainage Commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be re-advertised and sold on any day which the Board of Drainage Commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of state and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in

any drainage districts due in one thousand nine hundred and seventeen, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The one thousand nine hundred and thirty-one amendment to this section shall have the same force and effect from and after April thirteenth, one thousand nine hundred and thirty-one, as if it had been ratified and enacted prior to the first day of January, one thousand nine hundred and twenty-nine, and no sale of drainage lands held under the provisions of section five thousand three hundred sixty-one shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section five thousand three hundred sixty-one of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273; C. S. 5361.)

Local Modification.—Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

Editor's Note.—The Act of 1931 struck out the third sentence of the former section and inserted in lieu thereof the third, fourth and fifth sentences above. The original section authorized the sale to be made on the first Monday in February in each year, and if for any cause the sale could not be made on that day, it might be continued from day to day for four days, or readvertised and sold on the first Monday in March, without any order therefor. See 9 N. C. Law Rev. 368.

The Act provides that this amendment shall have effect as if ratified prior to the first day of January, one thousand nine hundred and twenty-nine. It further provides that no sale of drainage lands held under the provisions of this section shall be void by reason of the fact that it may not have been held on the day specified in this section prior to this amendment.

Remedy for Collection Is Adequate.—It is provided by this section that drainage assessments shall be collected in the same manner as taxes are collected, and such liens may be collected by sale of the land by the sheriff, with issue of certificates of sale, with right in the holder of the certificates to foreclose in due time; or by foreclosure of the lien in a suit instituted by the district or the holder of a tax deed or certificate, in the nature of an action to foreclose a mortgage, and this remedy for the collection of such assessments is adequate, and assessments collected are public funds although they are to be used solely for the purpose of paying principal and interest on drainage bonds. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491.

A receiver cannot intervene, in a bank's action against the board, on the ground that he has the right, under this section to collect payments. See Board of Drainage Com'rs v. Lafayette Southside Bank, 27 Fed. (2d) 286.

Assessments Not a Lien Until Due.—The assessments upon lands in a drainage district are a lien in rem on the lands of the owner for the payment of the bonds issued by the district in accordance with the statute, the district being a geographical quasi-public corporation, and the benefits annually accruing to the advantage of successive owners, such assessments are due and payable at stated intervals but are not the personal obligation of the owner until they are due, nor, until they fall due, an encumbrance within the intent and meaning of a warranty in a deed. Pate v. Banks, 178 N. C. 139, 100 S. E. 251.

The legislature intended that the assessments as shown on the assessment rolls which the board of drainage commissioners is required to prepare immediately upon the sale of the bonds, become liens as they become due, affecting all of the lands on the assessment rolls, which relate to the entire district for the entire period over which the payment of the assessments is spread. Nesbit v. Kafer, 222 N. C. 48, 51, 21 S. E. (2d) 903.

Same—Not a Debt of Owner.—"The lien of the charges for drainage is not a debt of the owner of the land therein, but is a charge solely upon the land and accrues, pari passu with the benefits as they shall accrue thereafter. They are not liens until they successfully fall due, and are presumed to be paid out of the increased productiveness and other benefits as they accrue from time to time." Pate v. Banks, 178 N. C. 139, 141, 100 S. E. 251.

Money from Assessments Is Like Public Money of County.—This and the following sections by its provisions for the collection of assessments within an established drainage district by the same officer and by the same method as State and county taxes are collected, the same to be turned into the county treasury, giving right of action by mandamus to holders of the bonds issued by the district against the district, or its officers, including the tax collector and treasurer, to compel the levy of special assessments upon default in payment of the principal and interest on the bonds, with liability on the bonds of the tax collector or treasurer upon default in the duty assigned to them, impress the moneys derived from the assessments whether the organized district be regarded as a public, quasi-public, or private corporation, as public money of the county, to be kept in the depository designated under the statute for such funds, although the funds in question are devoted to a particular or defined use. Comr's v. Lewis, 174 N. C. 528, 94 S. E. 8.

Due Process of Law Not Denied.—The statute under which a drainage district is formed does not deny the district due process of law by providing for the collection and security of the assessments as other county taxes are collected and kept, etc. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8.

Assessments Prior to Mortgage. — The assessments on lands for a bond issue have a prior lien to a mortgage executed thereon prior to the formation of said district. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 703, 81 S. E. 947.

§ 156-106. Assessment not collectible out of other property of delinquent. — Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; 1927, c. 139; C. S. 5362.)

Local Modification.—Cumberland, Robeson: 1927, c. 139, s. 1½.

§ 156-107. Sheriff in good faith selling property for assessment not liable for irregularity.—The sheriff who executes upon property for the collection of drainage assessments under the provisions of this article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C. S. 5363.)

§ 156-108. Receipt books prepared. — The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of..... ....., delivered to the sheriff or tax collector as of the first Monday in September, 19..,

for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners (1917, c. 152, s. 9; 1919, c. 208, s. 2; C. S. 5364.)

Stated in Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903.

§ 156-109. Receipt books where lands in two or more counties.—Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina—County of ..... The Sheriff or Tax Collector of ..... County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of ....., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of ..... These assessments are due on the first Monday of September, 19.., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of ..... county, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this .... day of ....., 19.....

.....,

Clerk Superior Court .....County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of state and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the county treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C. S. 5365.)

The first sentence of the second paragraph must be read in connection with the provisions of § 156-105 that "the assessments shall constitute a first and paramount lien, second only to state and county taxes upon the lands assessed for the payment of bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as state and county taxes are collected," and when so considered, it is clear that this section is not in conflict with § 156-105, but is intended to implement collection of the assessment by the sheriff. Nesbit v. Kafer, 222 N. C. 48, 52, 21 S. E. (2d) 903.

§ 156-110. Authority to collect arrears.—If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year one thousand nine hundred and seventeen, one thousand nine hundred and eighteen, or one thousand nine hundred and nineteen. (1917, c. 152, s. 9; C. S. 5366.)

§ 156-111. Sheriff to make monthly settlements; penalty.—The sheriff or tax collector shall be required to make settlements with the county treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S. 5367.)

§ 156-112. Duty of treasurer to make payment; penalty.—It shall be the duty of the county treasurer, and without any previous order from the board of drainage commissioners, to provide

and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The county treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall wilfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C. S. 5368.)

Effect of Public Local Act for Robeson County.—Chapter 46, section 1, Public-Local Laws 1917, abolishes the office of County Treasurer of Robeson County and substitutes therefor as designated by the county commissioners, one or more solvent banks or trust companies located in the county of Robeson as a depositary and financial agent for that county, with provision (sec. 3) that such bank or trust company shall perform the duties of treasurer in disbursement of the county funds; section 4, that the sheriff, as such, or ex officio treasurer, shall turn over all moneys of the county, from whatsoever source derived, whether belonging to the general county fund or otherwise, to the bank or trust company designated: Held, under these and the further pertinent provisions of the act, moneys derived from assessments of a drainage district, being county funds, should be deposited, as the statute directs, with the depository lawfully designated. Comr's v. Lewis, 174 N. C. 528, 94 S. E. 8.

§ 156-113. Fees for collection.—The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two per cent of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one per cent of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or county treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised for paying off such bonds. (1911, c. 67, s. 13; 1925, c. 271, s. 1; C. S. 5369.)

Local Modification.—Pitt: 1925, c. 271, s. 2.

Construed with Other Sections.—The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Comr's v. Davis, 182 N. C. 140, 108 S. E. 506.

Sheriff's Compensation Restricted.—The bringing forward of sec. 13, ch. 67, Public Laws 1911, in this section, providing that 2 per cent shall be allowed sheriffs "for collecting the drainage assessments as hereinbefore prescribed," is a legislative construction of section 13 of the prior law, and was intended to restrict the compensation of the sheriff to 2 per cent of the amount of the assessments in drainage districts collected by him, and not to allow him a commission of 5 per cent as in case of taxes collected for general governmental purposes. Drainage Comr's v. Davis, 182 N. C. 140, 108 S. E. 506.

Compensation of Treasurer.—This section, dealing with the compensation to be allowed the county treasurer for disbursing the revenue obtained from the sale of bonds of drainage district, provides but one compensation for all services. Drainage Com'rs v. Credle, 182 N. C. 442, 109 S. E. 88.

§ 156-114. Conveyance of land; change in assessment roll; procedure.—1. Status of Land Fixed.—The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

2. Conveyance before Final Report.—If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

3. Conveyance after district established.—After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall effect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new own-

ers, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

4. Duty of chairman of drainage commissioners and clerk.—The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

5. Failure of chairman of board to act.—If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be wilful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

6. When owner may file petition with clerk.—If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

7. Effect of change in assessment roll.—No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the

amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

8. Clerk to prepare new assessment rolls.—It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

9. Number of copies.—In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safe keeping and reference by him.

10. Costs determined.—As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

11. Chairman represents board.—As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

12. Application of section.—The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C. S. 5370.)

§ 156-115. Warranty in deed runs to purchaser who pays assessment.—Where the land assessed by drainage commissioners under the provisions of this article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C. S. 5371.)

Section Does Not Refer to Future Assessments.—An assessment matured and due, under the decisions, would constitute "a lien on the land purchased," but this section does not refer to future assessments not due at the time the land was purchased. Branch v. Saunders, 195 N. C. 176, 179, 141 S. E. 583.

Consequently, liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583.

§ 156-116. Modification of assessments.

1. Relevy.—Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the

lands benefited as the original assessment was made.

2. Upon sale of land for assessments.—If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the county treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the county treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institutue an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created, and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

3. Surplus funds.—If the funds in the hands of the county treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the county treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

4. Insufficient funds.—If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed accordingly to law, and shall be certified to the tax collector as herein provided.

5. Additional bonds issued.—If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

6. Manner of issue.—The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than twenty days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the inter-

est and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five per cent of the total amount originally issued. The additional issue of bonds shall bear six per cent interest per annum and may be made payable in ten annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C. S. 5372.)

Surplus Returned to Owners.—Where a drainage district of a county having assessed the property owners therein for improvements, and when having completed the same there is a surplus in the hands of the county treasurer, the board of drainage commissioners may, upon the exercise of a sound discretion, and in good faith, determine that the fund on hand is not necessary for further disbursements for the benefit of the district, according to the plan adopted, and distribute the same proportionately among those assessed in accordance with law, especially when such owners have thereto agreed. Foil v. Board, 192 N. C. 652, 135 S. E. 781.

Public Local Law Must Be Followed.—Where, under the provisions of statute, a drainage district may loan its money derived from its assessments until required for use in payment of the principal and interest on its bonds maturing serially for a period of 10 years, and the statute provides for a depository for these funds, the drainage commissioners may not contract with a different bank to deposit the funds there, in consideration of such bank buying at par a certain issue of such bonds that could not otherwise have been sold, except below par; nor could the transaction, contemplating a period of 10 years, be construed as a loan to the bank as authorized by the statute, and the transaction is void, regarded either as a deposit of the funds or a loan thereof. Public-Local Laws 1917, ch. 447, sec. 7. Comr's v. Lewis, 174 N. C. 528, 94 S. E. 8.

§ 156-117. Subdistricts formed. — Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C. S. 5373.)

§ 156-118. Bonds for improvement and maintenance; petition.—The board of drainage commissioners for any drainage district heretofore or that may hereafter be formed shall have the right to issue and sell bonds for the maintenance or improvement of their district, if, in the opinion of said board of drainage commissioners, it would be an unreasonable burden on any of the landowners of said district to levy an assessment as provided in § 156-92 and amendments thereto, sufficient to do the necessary maintenance or improvement: Provided, that the board of drainage commissioners shall first petition to the clerk of superior court of the county in which their drainage district was formed, setting forth the facts that the canals in their districts are not sufficient to afford proper drainage, and that, in the opinion of the board, the said canals need to be recleaned, widened, deepened, or lengthened, or that additional canals should be cut in certain places, and that the said work will cost more than an average of one dollar ($1.00) per acre for all of the lands in the district, and to raise such an amount by levying one assessment would be an unreasonable burden on a part of the landowners of their district, and they ask the court to allow them to issue and sell bonds for a sufficient amount to do the work which is needed to be done. (1923, c. 231, s. 1; C. S. 5373(a).)

§ 156-119. Viewers; appointment and report. — Immediately after the presentment of such a petition, the clerk shall appoint a board of viewers (of the same qualifications as is required when a drainage district is first formed) to view the said district over, and report to him (not later than twenty days from date appointed) whether or not any or all of the work asked for in the petition should be done, and whether or not the cost of the work which should be done would be an unreasonable burden on any of the landowners if collected by one assessment, or would it be better to allow a bond issue to cover the work. (1923, c. 231, s. 2; C. S. 5373(b).)

§ 156-120. Disallowance of petition; order; reclassification of lands; map and profile.—If the board of viewers do not favor the bond issue it will be the duty of the clerk to not allow same, but the petition may be presented again any time after six months. If the board of viewers report that a bond issue is preferable, the clerk shall order the board of viewers to make a profile, the same as is required when a district is first formed, and if it is the opinion of the board of drainage commissioners that, on account of subdivisions, a new map of the district should accompany the profile, then the clerk shall order the board of viewers to make a new map of the district, showing the present landowners, and to reclassify all land which has been subdivided since the original map was made, which has not heretofore been reclassified. Said map and profile shall show the total acres in each class for each tract, whether it has been subdivided or not, to be the same as was shown on the original map before the lands were subdivided. It shall also

be the duty of the board of viewers to change any line between two or more land-owners which can be proven to their satisfaction was not correctly shown on the original map, but the total acres of each class for the two or more tracts combined must be the same as when shown by the original classification. Said map and profile shall be filed with the clerk, together with an estimated cost of the work to be done; they shall be filed with the clerk in the same time and same manner as is required when a district is first formed. (1923, c. 231, s. 3; C. S. 5373(c).)

§ 156-121. Redress to dissatisfied landowners.—Any one owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C. S. 5373(d).)

§ 156-122. Increase to extinguish debt.—If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of § 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C. S. 5373(e).)

§ 156-123. Proceedings as for original bond issue.—The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C. S. 5373(f).)

§ 156-124. No drainage assessments for original object may be levied on property when once paid in full.—Whenever any assessment has been made or may be made by any drainage district formed under the laws of the state of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification.—Mecklenburg: 1933, c. 504; 1935, c. 469, s. 5.

Editor's Note.—Public Laws 1935, chapter 469, section 5, re-enacted this section without change.

This section is held not to affect the liability of lands within a drainage district for additional assessments necessary to pay a judgment against the district, rendered prior to the effective date of this section, for improvements theretofore made by the district. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228.

This section does not apply to bonds issued prior to the effective date of the statute, or affect the right of the holders of such bonds under prescribed conditions to require the levying and collection of special assessments for the purpose of paying the bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377.

Art. 9. Adjustment of Delinquent Assessments.

§ 156-125. Adjustment by board of commissioners authorized.—The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ 156-126. Extension of adjusted installments.—Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding twenty years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September first, in accordance with the original assessment, and shall bear interest at the rate of four per centum per annum from December first following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ 156-127. Special fund set up; distribution of collections. — The collection of assessments adjusted under this article and of interest accrued under § 156-126 shall be set aside in a fund and shall be applied as follows: one-third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two-thirds thereof shall be reserved as additional security for the payment of the re-

funding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ 156-128. Approval of adjustments by local government commission.—Any adjustments of delinquent assessments under the provisions of this article shall be effective only upon approval of the local government commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated. — The assessments made under this article shall in no instance, and against no piece of property, be greater in amount than that per cent which the per cent assessment authorized by this article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

Art. 10. Report of Officers.

§ 156-130. Drainage commissioners to make statements.—It shall be the duty of the commissioners of all drainage districts in the state of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in § 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; 1927, c. 98, s. 6; C. S. 5374.)

Cross Reference.—As to this section not applying in case of special local act, see note under section 156-137.

Editor's Note.—The 1927 amendment provided that after construction of the canal, an annual report would be sufficient.

§ 156-131. Annual report.—At the end of each fiscal year the board of commissioners of all drainage districts in the state of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed, and shall post a copy of same at the courthouse door in the county where the district is organized, and, if there be a newspaper published in the county, shall publish such account therein. (1917, c. 72, s. 2; C. S. 5375.)

Cross Reference.—As to this section not applying in case of special local act, see note under section 156-137.

§ 156-132. Penalty for failure.—Any board of commissioners of any drainage district in the state, and each of the members thereof, which shall fail or refuse to file the statements or accounts, and shall fail to post or publish the same as provided in §§ 156-130 and 156-131, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1917, c. 72, s. 3; C. S. 5376.)

§ 156-133. Auditor appointed. — The board of county commissioners of each county in which one or more drainage districts have been established shall, annually, on the first Monday in May, appoint one of the members of the finance committee of the county, if the county has such finance committee, who shall be designated "Auditor for Drainage District;" but if the county has no finance committee, then the board of county commissioners shall appoint an intelligent and competent person of sufficient experience who shall be designated as the "Auditor for Drainage District." Such auditor shall receive such compensation as shall be agreed upon by the board of county commissioners, to be paid out of the general fund of said district, but not to exceed fifty dollars annually. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S. 5377.)

§ 156-134. Duties of the auditor. — The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer of the county for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and

he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the county treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a term of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S. 5378.)

Art. 11. General Provisions.

§ 156-135. Construction of drainage law.—The provisions of this subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C. S. 5379.)

Liberal Construction of Chapter.—The drainage laws apply to the whole State, and by the express provision of this section they should be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897.

A Necessary Provision.—This provision that the collection of assessments shall not be defeated, etc., is absolutely necessary if the public are to be protected in their purchase of the bonds put upon the market. It is to be presumed that when the Court has rendered such final judgment and the bonds are issued there will be no interference with the collection of the assessments to pay the bondholders, but that all controversies were thrashed out and settled before such final judgment. Banks v. Lane, 171 N. C. 505, 506, 88 S. E. 754.

Formation of District Not Subject to Collateral Attack.—Board of Drainage Com'rs v. Lafayette Southside Bank, 27 Fed. (2d) 286.

§ 156-136. Removal of officers.—Any engineer, viewer, superintendent of construction or other person appointed under this chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C. S. 5380.)

§ 156-137. Local drainage laws not affected.—This subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 38½; C. S. 5381.)

Special Local Act Not Affected.—Where a special local statute for the formation and operation of a drainage district is complete in itself in all its details, a general law expressing itself applicable to all such drainage districts in the State, adding further duties and making the failure of the commissioners to file certain reports an indictable offense, sections 156-130, 156-131, will not be construed to apply unless special reference is made to the special local act. State v. Gettys, 181 N. C. 580, 107 S. E. 307.

§ 156-138. Punishment for violating law as to drainage districts.—If any person shall violate any of the provisions of law in reference to drainage districts as provided in this chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3378; 1905, c. 541, ss. 7, 9; C. S. 5382.)

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

Art. 12. Protection of Public Health.

§ 156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies.—When the board of commissioners of any county subject to the provisions of this article shall, by resolution duly adopted, find as facts: (a) That the cleaning out and draining of any portion of any non-navigable stream, creek or swamp area in such county is necessary and/or desirable to protect and promote the health of the citizens of such county, and (b) that the agricultural benefits which the lands along such stream or area might receive from such cleaning out and draining would be so negligible as not to justify the levying of any special assessments against such lands on account thereof, it may order, provide for, and accomplish the cleaning out and draining of such portion of such stream, creek or swamp area by, through, and under the supervision and jurisdiction of, the health department, or any sanitary committee, or any drainage commission, or other governmental agency or department, of such county. (1943, c. 553, s. 1.)

§ 156-140. Tax levy.—In order to carry out and accomplish the objects and purposes of this article, the board of commissioners of any such county may annually levy and collect a county-wide tax not exceeding two cents (2c) upon each one hundred dollars ($100.00) in value of the taxable property in such county. (1943, c. 553, s. 2.)

§ 156-141. Article applicable to certain counties only.—This article shall apply only to those counties which may have a population in excess of one hundred thousand persons. (1943, c. 553, s. 3.)

Chapter 157. Housing Authorities and Projects.

Art. 1. Housing Authorities Law.

Art. 2. Municipal Cooperation and Aid.

Art. 3. Eminent Domain.

Art. 4. National Defense Housing Projects.

Art. 1. Housing Authorities Law.

§ 157-1. Title of article.—This article may be referred to as the housing authorities law. (1935, c. 456, s. 1.)

Editor's Note.—For temporary act authorizing housing authorities to undertake projects to house persons engaged in national defense activities, see Public Laws 1941, c. 63.

For comment on this act, see 19 N. C. Law Rev. 484.

Slum Clearance Held Public Purpose.—"Slum clearance" to rehabilitate crowded and congested areas in cities and towns where conditions conducive to disease and public disorder exist, is a public purpose, for which the legislature may create municipal corporations, and housing authorities established under this and following sections, are for such governmental purpose. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693.

Property Exempt from Taxation.—This article is a constitutional exercise of a legislative power and the agency

therein set up is a municipal corporation within the meaning of the provisions of the constitution. It follows as a corollary to this that the property of the housing authority is exempt from state, county, and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693.

Constitutionality.—A housing authority created under this article is not invested with legislative and supreme judicial powers, and therefore its creation does not violate the constitutional provision that these powers be and remain separate and distinct. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252.

Cited in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (dissenting opinion).

§ 157-2. Finding and declaration of necessity. —It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the state and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the state and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

Editor's Note.—Prior to the 1941 amendment, this section applied to cities and towns of more than five thousand inhabitants.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 481.

Cited in Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281.

§ 157-3. Definitions. — The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than five thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Municipality" shall mean any city, town, incorporated village or other municipality in the state.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the State of North Carolina.

(9) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodation.

(12) "Bonds" shall mean any bonds, interim certificates, notes, debentures, obligations, or other evidences of indebtedness issued pursuant to this article.

(13) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(15) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(16) "Real property" shall include lands, lands under water, structures, and any and all ease-

ments, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(18) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority: (1) live under unsafe or unsanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding. (1935, c. 456, s. 3; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2; 1943, c. 636, s. 1.)

Editor's Note.—The 1938 amendment substituted "five" for "fifteen" in subsection (2).

The 1941 amendment added subsection (18). The 1943 amendment made changes in subsections (5) and (12).

A housing authority created hereunder is a municipal corporation created for a public governmental purpose, and such authority is invested with a governmental function. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252.

§ 157-4. Notice, hearing and creation of authority.—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of over-crowding, the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the Mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners; (2) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be

filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1935, c. 456, s. 4; 1943, c. 636, s. 7.)

Editor's Note.—The 1943 amendment struck out the former seventh paragraph of this section relating to boundaries of housing authorities. See note under § 157-39.1.

Determination of Existence of Facts Justifying Creation of Authority.—The provision of this section investing municipal corporations with the power to determine each for itself the existence or nonexistence of facts necessary for the creation of a housing authority to perform a proper municipal governmental function within its limits is not an unconstitutional delegation of legislative authority. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252.

The existence or nonexistence of facts within its corporate limits justifying the creation of a housing authority is for the determination of the municipal corporation, which duty is political and not judicial, and in proceedings to enjoin the activities of a housing authority created under the act the court does not have authority to hear evidence in regard to the existence of the facts upon which the creation of the housing authority is predicated. Whether an appeal will lie from the municipal corporation to review such findings, quaere. Id.

Publication of Notice.—Under this section publication of notice is not required for the creation of a rural housing authority, and a rural housing authority duly created thereunder is a municipal corporation created for a public purpose and realty acquired by such authority is exempt from taxation. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281.

§ 157-5. Appointment, qualifications and tenure of commissioners.—An authority shall consist of five commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5.)

§ 157-6. Duty of authority and commissioners.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6.)

§ 157-7. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1935, c. 456, s. 7.)

§ 157-8. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating wilfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such wilful violation.

A commissioner shall be deemed to have acquiesced in a wilful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1935, c. 456, s. 8.)

§ 157-9. Powers of authority. — An authority shall constitute a public body and a body cor-

porate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to coöperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corpora-

tions which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

Editor's Note.—The 1939 amendment added the last paragraph.

Not Delegation of Legislative Function.—The fact that an administrative board or municipal corporation is authorized to investigate and determine the existence or nonexistence of facts upon which depend the application of the law it is charged with administering is not a delegation of legislative functions. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252.

§ 157-10. Cooperation of authorities.—Any two or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the boundaries of any one or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on behalf with respect to any or all of such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities. (1935, c. 456, s. 10; 1943, c. 636, s. 2.)

Editor's Note.—The 1943 amendment rewrote this section. See note under § 157-39.1.

§ 157-11. Eminent domain.—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Sections 40-11 to 40-29, both inclusive;

(b) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1935, c. 456, s. 11.)

§ 157-12. Acquisition of land for government.—The authority may acquire by purchase or by the exercise of its power of eminent domain, as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project. (1935, c. 456, s. 12.)

§ 157-13. Zoning and building laws.—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. (1935, c. 456, s. 13.)

§ 157-14. Types of bonds authority may issue.—An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes. An authority shall also have power to issue or exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be: (a) exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds; (b) exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or (c) the income and revenues of the authority generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state in their face) shall not be a debt of any city or municipality and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of

the laws of the state. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute.

This article without reference to other statutes of the state shall constitute full and complete authority for the authorization, issuance, delivery and sale of bonds hereunder and such authorization, issuance, delivery and sale shall not be subject to any conditions, restrictions or limitations imposed by any other law whether general, special or local. (1935, c. 456, s. 14; 1939, c. 150, s. 2.)

Editor's Note.—This section was so changed by the 1939 amendment that a comparison here is not practical.

A city or town is not liable on the bonds of a housing authority within its territory, it being expressly provided that neither the state nor the city or town shall be liable, and the authority not being an agency of the city or town so as to contravene this express statutory provision. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693.

§ 157-15. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semi-annually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York or in the city of Chicago, Illinois, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1935, c. 456, s. 15.)

§ 157-16. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees to be charged, the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any monies held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any monies held for the payment of the principal and interest on its bonds or the sums

due under its leases and/or as a reserve for such payments; and (e) any monies held for any other reserves or contingencies; and to covenant as to the use and disposal of the monies held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bond holders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the monies collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the State and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in § 157-17. (1935, c. 456, s. 16.)

§ 157-17. Power to mortgage when project financed with governmental aid. — In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government shall be the holder of any of the bonds secured by such mortgage.

(b) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved.

(c) To vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved.

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid. (1935, c. 456, s. 17.)

§ 157-18. Remedies of an obligee of authority.—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and

covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority. (1935, c. 456, s. 18.)

§ 157-19. Additional remedies conferrable by mortgage or trust indenture.—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1935, c. 456, s. 19.)

§ 157-20. Remedies cumulative.—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1935, c. 456, s. 20.)

§ 157-21. Limitations on remedies of obligee. —No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in § 157-17. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in § 157-17, and in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21.)

§ 157-22. Title obtained at foreclosure sale subject to agreement with government. — Notwithstanding anything in this article to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority whether pursuant to any foreclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon. (1935, c. 456, s. 22.)

§ 157-23. Contracts with federal government. — In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ 157-24. Security for funds deposited by authorities. — The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or (2) by any securities in which savings banks may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1935, c. 456, s. 24.)

§ 157-25. Housing bonds, legal investments and security.—The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, adminis-

trators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this state: Provided, however, that nothing contained in this article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3.)

Editor's Note.—The 1941 amendment rewrote this section.

§ 157-26. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1935, c. 456, s. 26.)

Since a housing authority created under § 157-1 and following section, is a municipal corporation created for a public, governmental purpose, its property is exempt from state, county and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693.

§ 157-27. Reports.—The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1935, c. 456, s. 27.)

§ 157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by utilities commission. — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 456, s. 28.)

§ 157-29. Rentals and tenant selection.—It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve. In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection: (a) it may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding; (b) it may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons; (c) it may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (d) it shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or

not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

Preference of Landowners Conveying Property.—An agreement of a rural housing authority giving priority in occupancy of its dwelling units to those landowners, or the tenants, sharecroppers or farm wage hands of such landowners, who convey property to the authority, provided that they come within the definition of families of low income is not an unlawful discrimination in favor of such class. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281.

§ 157-30. Creation and establishment validated.—The creation and establishment of housing authorities under the provisions of chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended by chapter two, Public Laws of one thousand nine hundred and thirty-eight, Extra Session, and as further amended by chapter one hundred and fifty, Public Laws of one thousand nine hundred and thirty-nine, and any additional amendments thereto, known as the Housing Authorities Law [§ 157-1 et seq.], together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 1; 1941, c. 62, s. 1.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—For comment on the 1941 act, see 19 N. C. Law Rev. 484.

§ 157-31. Contracts, agreements, etc., validated.—All contracts, agreements, obligations and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States housing authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States housing authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to coöperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 2; 1941, c. 62, s. 2.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—The 1941 amendment re-enacted this section without change.

§ 157-32. Proceedings for issuance, etc., of bonds and notes validated.—All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 3; 1941, c. 62, s. 3.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—The 1941 amendment substituted "of" for "or" in the next to the last line.

§ 157-32.1. Other validation of creation, etc.—The creation, establishment and organization of housing authorities under the provisions of the Housing Authorities Law (Chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended, codified as § 157-1 et seq.), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 1.)

Editor's Note.—This section and §§ 157-32.2 and 157-32.3, validating housing authorities created under §§ 157-1 et seq., together with certain acts done in connection therewith, are similar to §§ 157-30 to 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of §§ 157-30 to 157-32, do not appear in the other sections and they differ slightly in other particulars.

§ 157-32.2. Other validation of contracts, agreements, etc.—All contracts, agreements and undertakings of such housing authorities heretofore entered into relating to financing, or aiding in the development or operation of any housing projects, including (without limiting the generality of the foregoing) loan and annual contributions contracts, agency contracts and leases, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to coöperation in aid of housing projects, payments to public bodies in the state, furnishing of municipal services and facilities and the elimination of unsafe and unsanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 2.)

Cross Reference.—See Editor's Note under § 157-32.1.

§ 157-32.3. Other validation of bonds and notes.—All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated and declared legal in all respects. (1943, c. 89, s. 3.)

Cross Reference.—See Editor's Note under § 157-32.1.

§ 157-33. Notice, hearing and creation of authority for a county.—Any twenty-five (25) residents of a county having a population of more than sixty thousand (60,000) may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (1) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county and/or (2) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of the land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an appplication signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 7.)

Editor's Note.—The 1943 amendment struck out the former sixth paragraph of this section relating to the area of operation of housing authorities. See note under § 157-39.1.

§ 157-34. Commissioners and powers of authority for a county.—The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a

housing authority created for a county shall not be subject to the limitations provided in clause (d) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4.)

§ 157-35. Creation of regional housing authority.—If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than sixty thousand (60,000) by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties shall (after the commissioners thereof file an application with the secretary of state as hereinafter provided) thereupon exist for and exercise its powers and other functions in such counties; and thereupon any housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, that the board of county commissioners shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds) (a) unsanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and (b) that a regional housing authority for the purposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the purposes of the housing authorities law and any amendments thereto, in such county. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that both (a) and (b) of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinater provided, of the commissioners to act as the regional housing authority, said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that the boards of county commissioners made the aforesaid determination and that they have been appointed as commissioners; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the applica-

tion; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, ss. 3, 7.)

Editor's Note.—The 1943 amendment inserted the words in parenthesis in the first paragraph and added that part of the paragraph appearing after the word "outstanding" in line twenty-four. The amendment also struck out the former sixth paragraph relating to the area of operation of housing authorities. See note under § 157-39.1.

§ 157-36. Commissioners of regional housing authority.—The board of county commissioners of each county included in regional housing authority shall appoint one person as a commissioner of such authority, and each such commissioner to be first appointed by the board of county commissioners of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided in this article, the board of county commissioners of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of county commissioners of each county shall appoint the successor of the commissioner appointed by it. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of county commissioners of such county shall be thereupon abolished. A certificate of the appointment of any such commissioner signed by the chairman of the board of county commissioners (or the appointing officer) shall be conclusive evidence of the due and proper appointment of such commissioner. If the area of operation of a regional housing authority consists at any time of an even number of counties, the governor of North Carolina shall appoint one additional commissioner to such regional housing authority whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the governor and filed with the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be conclusive evidence of the due and proper appointment of such additional commissioner. The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the board of county commissioners appointing him, or in the case of the commissioner appointed by the governor, by the governor: Provided, that such commissioner shall have been given a copy of the charges against him at least ten days prior to the hearing thereon and: Provided, that such commissioner shall have had an opportunity to be heard in person or by counsel.

The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. (1941, c. 78, s 4; 1943, c. 636, s. 4.)

Editor's Note.—The 1943 amendment inserted the first six sentences of the first paragraph in place of the first four sentences as formerly appearing. See note under § 157-39.1.

§ 157-37. Powers of regional housing authority.—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a regional housing authority shall not be subject to the limitations provided in clause (d) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. Except as otherwise provided in this article, all the provisions of law applicable to housing authorities created for counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 6.)

Editor's Note.—The 1943 amendment added the last sentence. See note under § 157-39.1.

§ 157-38. Rural housing projects. — Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such lease or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this article. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. (1941, c. 78, s. 4.)

§ 157-39. Housing applications by farmers.— The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. (1941, c. 78, s. 4.)

§ 157-39.1. Area of operation of city, county and regional housing authorities.—The boundaries or area of operation of a housing authority created for a city shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the secretary of state has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of five thousand, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the secretary of state has heretofore issued a certificate of incorporation. (1943, c. 636, s. 5.)

Editor's Note.—The act inserting this section also inserted §§ 157-39.2 to 157-39.8, inclusive, and amended §§ 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37. Section 9 of the amendatory act provided: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.2. Increasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of county commissioners of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, bonds, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vested in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the

regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if (a) the board of county commissioners of each such additional county or counties find that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford, and (b) the board of county commissioners of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (1943, c. 636, s. 5.)

§ 157-39.3. Decreasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of county commissioners of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area: Provided, that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds or notes, unless first all holders of such bonds or notes consent in writing to such action: Provided, further, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created, and constituted a public and corporate body for such county pursuant to other provisions of this housing authority law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of county commissioners of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if: (a) each such board of county commissioners of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area, and (b) the board of county commissioners of each county or counties to be excluded and the commissioners of the regional housing authority each also find that (because of the aforesaid changed facts) another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties. Nothing contained herein shall be construed as preventing a county or counties excluded from the area of operation of a regional housing authority, as provided above, from thereafter being included within the area of operation of any housing authority in accordance with this article.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority as herein provided, shall (as soon as practicable after the exclusion of said county or counties, respectively) be disposed of by such authority in the public interest. (1943, c. 636, s. 5.)

§ 157-39.4. Requirements of public hearings.—The board of county commissioners of a county shall not adopt any resolution authorized by §§ 157-35, 157-39.2 or 157-39.3 unless a public hearing has first been held which shall conform (except as otherwise provided herein) to the requirements of this housing authorities law for hearings to determine the need for a housing authority of a county: Provided, that such hearings may be held by the board of county commissioners without a petition therefor.

In connection with the issuance of bonds, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation. (1943, c. 636, s. 5.)

§ 157-39.5. Consolidated housing authority.—If the governing body of each of two or more municipalities (with a population of less than five thousand, but having an aggregate population of more than five thousand) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority: Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this housing authorities law as are applicable to the creation of a regional housing authority and that all of the provisions of this housing authorities law appli-

cable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further, that the area of operation of boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in § 157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality", the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by § 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5.)

§ 157-39.6. Findings required for authority to operate in municipality.—No governing body of a city or other municipality shall adopt a resolution as provided in § 157-39.1 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (a) that insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (b) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality: Provided, that such findings shall not have the effect of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk (or the officer with similar duties) of the city or other municipality shall give notice of the public hearing and such hearing shall be held in the manner provided in § 157-4 for a public hearing by a council to determine the need for a housing authority in the city.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation. (1943, c. 636, s. 5.)

§ 157-39.7. Meetings and residence of commissioners.—Nothing contained in this housing authorities law shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this housing authorities law. (1943, c. 636, s. 5.)

§ 157-39.8. Agreement to sell as security for obligations to federal government.—In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of bonds issued by such authority for purposes of the project involved), and to confer upon the federal government such rights and remedies, as said housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government upon the occurrence of such conditions, or upon such defaults on bonds for which any of the annual contributions provided in said contract are pledged, as may be prescribed in such contract,

and at a price (which may include the assumption by the federal government of the payment, when due, of the principal of and interest on outstanding bonds of the housing authority issued for purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of this state. (1943, c. 636, s. 5.)

Art. 2. Municipal Coöperation and Aid.

§ 157-40. Finding and declaration of necessity. — It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 408, s. 1.)

Editor's Note.—For an analysis of this article, see 13 N. C. Law Rev. 379.

§ 157-41. Definitions. — The following terms, whenever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority organized pursuant to the housing authorities law of this State.

(2) "City" shall mean any city of the State having a population of more than fifteen thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of a housing authority.

(3) "Municipality" shall mean any city, town or incorporated village of the State.

(4) "Housing project" shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing, and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations. (1935, c. 408, s. 2.)

§ 157-42. Conveyance, lease or agreement in aid of housing project.—For the purpose of aiding and coöperating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city or municipality of the state may, upon such terms, with or without considerations as it may determine:

(a) Dedicate, release, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the United States of America or any agency thereof;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake;

(d) Plan or replan, zone, or rezone; make exceptions from building regulations and ordinances; any city or town also may change its map;

(e) Cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit dwellings;

(g) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken pursuant to any of the powers granted by this article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by the state, a city, county, municipality, subdivision or agency of the state without appraisal, public notice, advertisement or public bidding.

(h) With respect to any housing project which a housing authority has acquired or taken over from the United States of America or any agency thereof and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no city or county shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. (1935, c. 408, s. 3; 1939, c. 137.)

Cross Reference.—As to the authority of municipalities in the repair, closing and demolition of unfit dwellings, see §§ 160-182 et seq.

Editor's Note.—This section was so changed by the 1939 amendment that a comparison here is not practical.

§ 157-43. Advances and donations by the city and municipality.—The council or other governing body of the city included within the territorial boundaries of such authority is authorized to make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first

year following the incorporation of such housing authority, and to appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and to cause the moneys so appropriated to be paid the authority as a donation, and moneys so appropriated and paid to a housing authority by a city shall be deemed to be a necessary expense of such city. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it. (1935, c. 408, s. 5.)

§ 157-44. Action of city or municipality by resolution.—Except as otherwise provided in this article or by the constitution of the State, all action authorized to be taken under this article by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. (1935, c. 408, s. 5.)

§ 157-45. Restrictions on exercise of right of eminent domain; duties of utilities commission; investigation of projects. — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. That in addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of public convenience and necessity for said project. (1935, c. 408, s. 6.)

Cross Reference.—As to proceedings before the utilities commission and appeal therefrom, see §§ 62-13 to 62-26.

§ 157-46. Purpose of article.—It is the purpose and intent of this article that the State, its subdivisions and agencies, and any county, city or municipality of the State shall be authorized, and are hereby authorized, to do any and all things necessary to aid and coöperate in the planning, construction and operation of housing projects by the United States of America and by housing authorities. (1935, c. 408, s. 7.)

§ 157-47. Supplemental nature of article.—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1935, c. 408, s. 8.)

Art. 3. Eminent Domain.

§ 157-48. Finding and declaration of necessity.—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 409, s. 1.)

§ 157-49. Housing project.—The term "housing project" whenever used in this article shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the occupants of such dwelling accommodations. (1935, c. 409, s. 2.)

§ 157-50. Eminent domain for housing projects.—Any corporation, which is an agency of the United States of America, shall have the right to acquire by eminent domain any real property, including improvements and fixtures thereon, which it may deem necessary for a housing project being constructed, operated or aided by it or the United States of America. Any corporation borrowing money or receiving other financial assistance from the United States of America or any agency thereof for the purpose of financing the construction or operation of any housing project or projects, the operation of which will be subject to public supervision or regulation, shall have the right to acquire by eminent domain any real property, including fixtures and improvements thereon, which it may deem necessary for such project. A housing project shall be deemed to be subject to public supervision or regulation within the meaning of this article if the rents to be charged by it are in any way subject to the supervision, regulation or approval of the United States of America, the State or any of their subdivisions or agencies, or by a housing authority, city, municipality or county, whether such right to supervise, regulate or approve be by virtue of any law, statute, contract or otherwise.

Any such corporate agency of the United States of America or any such corporation, upon the

adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain pursuant to the provisions of either: (a) Sections 40-11 to 40-29, both inclusive; (b) Any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain. (1935, c. 409, s. 3.)

§ 157-51. Certificate of convenience and necessity required; right of appeal; investigation of projects.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 409, s. 4.)

Cross Reference.—As to proceedings before the utilities commission and appeal therefrom, see §§ 62-13 to 62-26.

Art. 4. National Defense Housing Projects.

§ 157-52. Purpose of article.—It is hereby found and declared that the National Defense Program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State which impedes the National Defense Program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of National Defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities which otherwise would not be provided at this time, and that such provisions are for the public use and purpose of facilitating the National Defense Program in this State. It is further declared to be the purpose of this article to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the Federal Government, or to cooperate with or act as agent of the Federal Government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in National Defense activities. (1941, c. 63, s. 1.)

§ 157-53. Definitions.—(a) "Persons engaged in National Defense activities," as used in this article shall include: Enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(b) "Persons of low income," as used in this article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(c) "Development" as used in this article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the Federal Government.

(d) "Administration," as used in this article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the Federal Government.

(e) "Federal Government," as used in this article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) The development of a project shall be deemed to be "Initiated," within the meaning of this article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the Federal Government with respect to the exercise of powers hereunder in the development of such project of the Federal Government for which an allocation of funds has been made prior to the termination of the present war.

(g) "State public body," as used in this article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State.

(h) "Housing authority," as used in this article, shall mean any housing authority established or hereafter established pursuant to article one of this chapter. (1941, c. 63, s. 8; 1943, c. 90, s. 2.)

Editor's Note.—The 1943 amendment struck out the words "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of subsection (f) and inserted in lieu thereof the words "the termination of the present war."

§ 157-54. Rights, powers, etc., of housing authorities relative to National Defense Projects.—Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing au-

thority shall initiate the development of any such project pursuant to this article after the termination of the present war.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities as provided in this article, and housing projects developed or administered hereunder shall constitute "housing projects" under article one of this chapter, as that term is used therein: Provided, that during the period (herein called the "National Defense Period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its authorized area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the National Defense Program in this State and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in National Defense activities, any project developed or administered by such housing authority (or by any housing authority cooperating with it) in such area pursuant to this article, with the financial aid of the Federal Government (or as agent for the Federal Government as hereinafter provided), shall not be subject to the limitations provided in § 157-29; and provided further, that, during the National Defense Period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvemeets furnished for or in connection with any such projects. After the National Defense Period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of article one of this chapter. (1941, c. 63, s. 2; 1943, c. 90, s. 1.)

Editor's Note.—The 1943 amendment struck out the words "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of the first paragraph and inserted in lieu thereof the words "the termination of the present war."

§ 157-55. Cooperation with Federal Government; sale to same.—A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the Federal Government in the development or administration of projects by the Federal Government to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities and may undertake the development or administration of any such project for the Federal Government. In order to assure the availability of safe and sanitary housing for persons engaged in National Defense activities, a housing authority may sell (in whole or in part) to the Federal Government any housing projects developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project. (1941, c. 63, s. 3.)

§ 157-56. Coöperation of state public bodies in developing projects.—Any state public body shall have the same rights and powers to cooperate with housing authorities, or with the Federal Government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities that such state public body has pursuant to article two of this chapter, for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income. (1941, c. 63, s. 4.)

§ 157-57. Obligations issued for projects made legal investments; security for public deposits.—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this article shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to article one of this chapter for the development of a slum clearance or housing project for persons of low income. (1941, c. 63, s. 5.)

§ 157-58. Bonds, notes, etc., issued heretofore, validated.—All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the Federal Government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. (1941, c. 63, s. 6.)

§ 157-59. Further declaration of powers granted housing authorities.—This article shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities as provided in this article and for a housing authority to cooperate with, or act as agent for, the Federal Government in the development or administration of similar projects by the Federal Government. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the Federal Government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities and to effectuate the purposes of this article. (1941, c. 63, s. 7.)

§ 157-60. Powers conferred by article supplemental.—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority. (1941, c. 63, s. 9.)

Chapter 158. Local Development.

§ 158-1. Purposes of chapter.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may annually set apart and appropriate from the funds derived annually from the general taxes levied and collected in such city, incorporated town, or county, an amount not less than one-fortieth of one per cent, nor more than one-tenth of one per cent, upon the assessed valuation of all real and personal property taxable in any such city, incorporated town, or county, which funds shall be used and expended under the direction and control of the mayor and board of aldermen, or other governing body of such city, or the governing body of any incorporated town, or the county commissioners of any county, under such rules and regulations or through such agencies as they shall prescribe, for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city, or incorporated town or in such county; encouraging the building of railroads thereto, and for such other purposes as will, in the discretion of the mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, increase the population, taxable property, agricultural industries and business prospects of any city, incorporated town, or any county. (1925, c. 33, s. 1.)

§ 158-2. Ratification or petition of voters required.—No city, incorporated town, or county, shall raise or appropriate money under this chapter unless and until this chapter shall have been approved by a majority of the qualified voters of such city, incorporated town, or county, at an election as provided in this chapter; or by a petition of the registered voters in any town of less than three thousand inhabitants, as provided in this chapter. (1925, c. 33, s. 2.)

§ 158-3. Election to adopt chapter.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may at any time by ordinance call a special election for the purpose of submitting the question of the approval of this chapter to the voters of such city, incorporated town, or county. In said ordinance said board of aldermen, or other governing body of any city, or town, or said county commissioners, shall specify the time of holding the election and determine and set forth whether or not there shall be a new registration of the voters for such election. Notice of the registration of the voters and of the election shall be given, the voters shall be registered, the election shall be held, the returns shall be canvassed, and the results shall be determined, declared and published under and pursuant to the provisions of § 160-387, known as the Municipal Finance Act, and as therein provided for an election upon a bond ordinance providing for the issuance of bonds for a purpose other than the payment of necessary expenses of a municipality. A ballot or ballots shall be furnished to each qualified voter at said election. The ballots for those who vote in favor of this chapter shall contain the words "for the act to aid in the development of any city, incorporated town, or county," and the ballots for those who vote against this chapter shall contain the words "against the act to aid in the development of any city, incorporated town, or county." Except as otherwise provided in said § 160-387, the registration and election shall be conducted in accordance with the laws then governing elections for municipal or county officers in such municipality or county, and governing the registration of the electors for such election of officers. (1925, c. 33, s. 3.)

§ 158-4. Action to invalidate election; limitation.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of the statement showing the result of the election. (1925, c. 33, s. 4.)

§ 158-5. Petition to adopt chapter in certain towns.—In any incorporated town of less than three thousand inhabitants, in lieu of an election as herein provided, the will of the voters may be determined by a petition in writing giving approval of this chapter, which petition shall be signed by at least three-fourths of all the registered voters of said municipality whose names appeared upon the registration books of the municipality for the election of municipal officers next preceding the time of the filing of said petition: Provided, that such three-fourths of the voters shall be the owners of at least seventy-five per cent of the total taxable property of said town, as shown by the assessed valuation, and the tax lists of such town as last fixed for municipal taxation. The residence address of each signer shall be written after his signature; each signature to the petition shall be verified by a statement (which may relate to a number of signatures) made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths to the effect that the signature was made in his presence, and is the genuine signature of the person whose name it purports to be. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet. The board of aldermen or other governing body of said town shall canvass said petition and shall include in their

canvass the voters signing the petition, and the number of voters upon the registration books and qualified to sign the petition, and the assessed valuation at last fixed for municipal taxation of the property owned by the voters signing the petition, and the entire assessed valuation of property within the town, and shall judiciously determine and declare the result of the canvass of said petition, and shall prepare and publish a statement of the result, and publish the same as required in the case of an election by ballot under this chapter. The same limitation upon the right of action or defense founded upon the invalidity of the petition shall apply in the case of an election by ballot under this chapter. (1925, c. 33, s. 5.)

§ 158-6. Effect of adoption of chapter.—If and when this chapter shall have been approved by the voters of any city, incorporated town, or county, at an election or by petition as provided by this chapter, then and thereafter the governing body of such city, or incorporated town, or the county commissioners of such county, may raise by taxation and appropriate money within the limits and for the purposes specified in this chapter. (1925, c. 33, s. 6.)

Local Modification.—Pamlico: 1925, c. 33, s. 7.

Chapter 159. Local Government Acts.

Art. 1. Local Government Commission and Director of Local Government.

Art. 2. Validation of Bonds, Notes and Indebtedness of Unit.

Art. 1. Local Government Commission and Director of Local Government.

§ 159-1. Official title. — This article shall be known and may be cited as the Local Government Act. (1931, c. 60, s. 1.)

§ 159-2. Definitions. — The word commission will herein be used to refer to the Local Government Commission created by this article; the word Director will refer to the Director of Local Government; the word unit will be used to refer to a county, city, town, incorporated village, township, school district, school taxing district or other district or political sub-division of government of the State; and where bonds or notes are mentioned reference shall be deemed made to any obligations to pay money issued by or in behalf of any unit unless otherwise indicated or specified. (1931, c. 60, s. 2.)

County Government Advisory Commission Abolished.— The Local Government Commission is the successor to the County Government Advisory Commission, § 3 of the Local Government Act having abolished the latter agency and ordered its books, records, documents, and files to be turned over to the Local Government Commission. It was further provided that all the functions, powers, and duties of the old commission should be transferred to the Director of Local Government. Section 6 of the Local Government Act gave the Local Government Commission discretion to require the State Auditor and the State Sinking Fund Commission to turn over books, records, and files made or filed under Public Laws 1927, c. 214, or Public Laws 1929, c. 277, or to require the same to be retained subject to the inspection of the new commission.

Duties Transferred to Director of Local Government.— The duties of the County Government Advisory Commission, now transferred to the Director of Local Government, were set out in Public Laws 1927, c. 91, s. 16, as follows: "The duties of the commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the Governor from time to time as they may deem advisable as to changes in the general laws controlling county government, and such recommendations may be submitted by the Governor, upon his approval, to the next meeting of the General Assembly."

§ 159-3. Creation of local government commission.—There is hereby created a commission to be known as the local government commission, consisting of nine members of whom the state auditor and the state treasurer and the secretary of state and the commissioner of revenue shall be members ex-officio and of whom five members shall be appointed by the governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the commission, both ex-officio members and appointed members, shall be required to give such bond, if any, as the governor may require. The state treasurer shall be ex-officio director of local government and shall also be the treasurer and chairman of the commission. The board shall elect a vice-chairman from its members who shall hold office at the will of the commission. The appointed members of the commission shall be entitled to ten dollars for each day actually spent in the service of the commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The director shall appoint some competent person as secretary of the commission and assistant to the director and may appoint such assistants as may be necessary, who shall be responsible to the director, and may fix their compensation subject to the approval of the governor. The commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The commission shall hold quarterly regular meetings in the city of Raleigh at such place and times as may be designated by the commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the attorney general or any assistant thereof for legal advice in relation to its powers and duties. The functions of the local government commission and of the director of local government shall be maintained and operated as a separate and distinct division of the department of the state treasury. (1931, c. 60, s. 7; 1931, c. 296, s. 8; 1933, c. 31, s. 1.)

Editor's Note.—Public Laws 1933, c. 31, made the secretary of state an ex officio member of the commission, made the treasurer ex officio director, and provided for the appointment by the director of the secretary of the commission and assistant to the director; deleted a provision which excepted the director from the $10 remuneration, and added the last sentence as to maintenance and operation as separate and distinct division. Section 3 of the act provides for the transfer of the records to the state treasurer.

See 11 N. C. Law Rev. 251, for comment on this section as amended in 1933.

§ 159-4. Executive committee; powers; quorum.—The state auditor and state treasurer, the commissioner of revenue and secretary of state shall constitute the executive committee of the commission and shall be vested with all the powers of the commission except when the commission is in session and except as otherwise provided in this article. Action of the commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon passage by a majority of the members of the commission or the committee present at the meeting at which such resolution is passed. A majority of the commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

Editor's Note.—Public Laws 1933, c. 31, substituted secretary of state for the director as a member of the committee.

§ 159-5. Executive Committee may act for Commission; bond for expenses for attending special meetings.—All action herein required or permitted to be taken by the Commission may be taken by the Executive Committee and shall be regarded as action by the Commission unless otherwise herein expressly provided, but the Committee shall not overrule or reverse any action of the Commission as a whole. The Commission shall not be required to meet as a whole except at the times fixed for quarterly sessions, and may demand that any application for a special meeting may be accompanied by a bond or other security for the costs and expenses of such special meeting to be given by the unit or person at whose request the special meeting is called. (1931, c. 60, s. 9.)

§ 159-6. Review by Commission of actions of Executive Committee. — Action of the Commission taken by the Executive Committee, except approval of notes maturing not more than six months from their date, shall be subject to review by the Commission as a whole upon the application of any aggrieved party, including any taxpayer or citizen, and including any member of the Executive Committee, if the aggrieved party shall within five days after such action by the Executive Committee file with the Commission a request for such review. (1931, c. 60, s. 10.)

§ 159-7. Application to Commission for issuance of bonds or notes.—Before any bonds or notes are issued by or in behalf of any unit and before the question of such issuance shall be submitted at an election, except bonds or notes whose issuance has heretofore been approved by the State Sinking Fund Commission under the provisions of Public Laws 1929, c. 277, the board authorized by law to issue the same or an officer thereof shall make application to the Commission (either before or after such authorization) for its approval of the proposed bonds or notes and shall state such facts in such application or by exhibits annexed thereto in regard to such bonds or notes and such unit and its financial condition as may be required by the Commission. The Commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11.)

Cross Reference.—As to purposes for which bonds may be issued and taxes levied, see § 153-77.

§ 159-8. Determining advisability of proposed issues.—In determining whether a proposed issue of bonds or notes shall be approved, the Commission may consider the necessity for any improvement to be made from the proceeds of any such bonds or notes, the amount of indebtedness of the unit then outstanding, the fact that sinking funds for existing debts have been adequately maintained or have not been adequately maintained, the percentage of collections of taxes for the preceding fiscal year, the fact of compliance or non-compliance with the law in the matter of budgetary control, the question of whether the unit is in default in the payment of any of its indebtedness or interest thereon, the existing tax rates, the increase of tax rate, if any, necessary to maintain such sinking funds adequately, the assessed value of taxable property, and the reasonable ability of the unit to sustain the additional tax levy, if any, necessary, to pay the interest and principal of the proposed obligations, as the same become payable. If the proposed issue is for a public improvement in the nature of establishing or enlarging a revenue producing enterprise, the Commission shall take into consideration the probable earnings of the improvement and the extent to which such earnings will be sufficient to pay the interest and principal when due of the proposed obligations or that part thereof to be devoted to such improvement. The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and to give consideration to any other matters which it may believe to have a bearing on the question presented. (1931, c. 60, s. 12.)

§ 159-9. Commission to order issue if satisfied of certain points enumerated; public hearing on refusal. — If, upon the information and evidence received the Commission is of the opinion (a) that issuance of the proposed obligations is necessary or expedient and (b) that the amount proposed is adequate and not excessive and, except as to funding and refunding bonds, (c) either that adequate sinking funds have been maintained or that reasonable assurance has been given that thenceforth they will be maintained to the extent required by or under the authority of law, and (d) that the increase in tax rate, if any, that will be necessitated for the proper maintenance of sinking funds as so required will not be unduly burdensome and (e) that the unit is not in default in the payment of the principal or interest of any of its indebtedness and (f) that the requirements of law for budgetary control have been substantially complied with and (g) that at least eighty (80%) per

cent of the general taxes of the unit for the preceding fiscal year have been collected, then and in such event the Commission shall make its order approving such issuance. If upon the information presented the Commission is not of such opinion or is in doubt as to any facts or as to any conclusions to be drawn therefrom, it shall so notify the officer or board making the application, and if such officer or board so request, shall give notice that the Commission will hold a public hearing on the application at a time and place to be specified in such notice, at which public hearing the officers and citizens and tax-payers of the unit may be heard. The Commission may designate its Secretary or any other suitable person to conduct any such hearing and to prepare a digest of testimony and submit the same and his recommendations for the consideration of the Commission. (1931, c. 60, s. 13.)

§ 159-10. Order of refusal after hearing; vote of unit to veto action of Commission. — If after any such hearing the Commission should not be of such opinion, it shall enter an order giving its reasons for not holding such opinion and in that event the proposed obligations shall not be issued except in such amount and in such manner, if any, as the Commission may approve, or unless, and until, the proposed indebtedness shall have been submitted to and approved by a vote of the voters of the local unit for which such indebtedness is proposed, such election to be held in the manner, if any, provided by law for the holding of elections on the question of issuing such bonds, and otherwise in such manner as may be required by the Commission (1931, c. 60, s. 14.)

§ 159-11. Review by Commission of approval or refusal of Executive Committee. — An order of the Commission made by the Executive committee approving such issuance shall not be reviewable by the Commission as a whole unless request for such review shall be filed with the Commission within five days, Sundays excepted, after such order shall be given (except an order passed by unanimous vote of members present approving notes running not more than six months, which shall not be reviewable) but orders of the Commission by the Executive Committee declining to approve issuance may be reviewed by the Commission as a whole if application therefor shall be filed with the Commission within thirty days after such order. New evidence and information may be considered upon any such review, and the Commission as a whole shall not be bound by the evidence or information considered by the Executive Committee. (1931, c. 60, s. 15.)

§ 159-12. Legality of bonds and notes not involved.—The approval by the Commission of bonds or notes shall not extend to or be regarded as an approval of the legality of the bonds or notes in any respect. (1931, c. 60, s. 16.)

§ 159-13. Sale of bonds and notes.—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the commission at its office in the city of Raleigh, but the commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (a) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the court house, and (b) such notice, in the discretion of the commission, may be published also in some other newspaper of greater general circulation published in the state. The commission may in its discretion cause such notice to be published in a journal approved by the commission and published in New York City, devoted primarily to the subject of state, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days notice has been given in the manner specified in clause (a) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the commission through the state treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids a certified check upon an incorporated bank or trust company payable unconditionally to the order of the state treasurer for two per cent of the face value of the bonds and one-half of one per cent on notes bid for, drawn on some bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17; 1931, c. 296, s. 1; 1933, c. 258, s. 1.)

Editor's Note.—See 12 N. C. Law Rev. 325, where it is suggested that this agency would hold in check bond issues for erecting and extending electric systems.

See 11 N. C. Law Rev. 215, for comment on this section as amended in 1933.

This section formerly provided that the bonds or notes might be exchanged for a like or greater face amount and interest on the exchanged notes collected. The section now provides for exchange of a like or greater "amount of such

indebtedness and make such adjustment of accrued interest as may be requested by the said board or body." The change was effected by Public Laws 1933, c. 258.

Public Laws 1941, c. 141, s. 1, repealed § 4392 of the Consolidated Statutes which made it a misdemeanor for certain agencies of a county, city or town to sell bonds without giving the notice required by that section. Section 2 of the 1941 Act provides that "no bonds heretofore [March 12, 1941] sold or contracted to be sold in the manner provided by the Local Government Act, being Chapter sixty, Public Laws of one thousand nine hundred and thirty-one, as amended, shall be held to have been illegally sold by reason of failure to observe the requirements of section four thousand three hundred and ninety-two of the Consolidated Statutes."

§ 159-14. Proposals opened in public; award; rejection of bids.—All proposals shall be opened in public and the bonds or notes shall be awarded to the highest legal bidder, if a fixed rate of interest is named in the notice, or shall be awarded to the highest bidder for the lowest interest rate upon which a legal offer is made if the notice states that bidders may specify the rate of interest, or, if a notice of sale of bonds states that bidders may name one rate for part of the bonds of an issue and another rate or rates for the balance, to the bidder offering to purchase the bonds at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon all of the bonds until their respective maturities, or, if a notice of sale of notes so provides, to the bidder offering to purchase the notes at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon the notes until their maturity. No legal bids may be rejected unless all bids are rejected. If the bids rejected contain any legal bid which is legally acceptable under the advertisement, the bonds or notes shall not be sold until after further advertisement and under the conditions herein prescribed for the first advertisement. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3.)

§ 159-15. Minimum price; private sale in event of no bids.—No bonds or notes shall be sold at less than par and accrued interest, nor except as herein otherwise provided or permitted shall any bonds or notes be sold except upon sealed proposals, after publication of notice as hereinabove provided, unless no bid is received upon such notice which is a legal bid and legally acceptable under such notice, in which event the bonds or notes may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice. (1931, c. 60, s. 19.)

§ 159-16. Rejection in event of objection by unit. — If after the receipt of bids and before an award of the bonds or notes an authorized representative of the unit shall object to any award which the Commission may be about to make pursuant to the foregoing provisions and shall not withdraw such objection, the Commission shall reject all bids and shall make no award until after further advertisement as herein provided. (1931, c. 60, s. 20.)

§ 159-17. Make-up of bonds or notes. — No such bond or note shall be engraved, lithographed, printed, typewritten or written upon more than one sheet of paper (but a separate sheet or sheets may be used for interest coupons), and the Commission may in its discretion require the use of a protectograph or other means to prevent the raising of the amount thereof or imitation of such bonds or notes. (1931, c. 60, s. 21.)

§ 159-18. Obligations of units must be certified by Commission.—No bonds or notes or other obligations of any unit hereafter issued shall be valid unless on the face or reverse thereof there be a certificate signed by the Secretary of the Commission or an assistant designated by him either (a) that the issuance of the same has been approved, under the provisions of the Local Government Act, or (b) that the bond or note is not required by law to be approved by the Commission. Such certificate shall be conclusive evidence that the requirements of this article as to approval by the Commission, advertisement and sale have been observed, and shall also be conclusive evidence that the requirements of §§ 159-19 and 159-20 have been complied with. (1931, c. 60, s. 22; 1931, c. 296, s. 2.)

Time Debt Contracted.—The debt is contracted during the fiscal year following that in which the debt was reduced in accordance with Constitution, Article V, § 4, even though the certificate of the secretary of the local government commission was not executed within that time. Board of Education v. State Board of Education, 217 N. C. 90, 6 S. E. (2d) 833.

§ 159-19. Detailed record of all issues to be kept by Commission.—Prior to the execution of such certificate the Commission shall cause to be entered of record in its office a description of such bonds or notes, giving their amount, date, the times fixed for payment of principal and interest, the rate of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and the purpose of issuance, together with the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of such bonds or notes and a reference to the law under which it is claimed such bonds or notes are issued, and shall require to be filed with the Commission a statement of the recording officer of the unit that all proceedings of the board in authorizing the bonds or notes have theretofore been and remain correctly recorded in a bound book of the minutes and proceedings of the board, giving in such statement the designation of the book and the pages or other identification of the exact portion of the book in which such record was made. (1931, c. 60, s. 23.)

§ 159-20. Contract for services must be approved by Commission.—All contracts and agreements made by any unit with any person, firm or corporation for services to be rendered in the drafting of forms of proceedings for a proposed bond or note issue, except contracts and agreements with attorneys at law licensed to practice before the courts of the State within which they have their residence or regular place of business, which involve no agreement, express or implied, except for legal services, shall be void unless approved by the Commission, whose duty it shall be before causing the certificate of its approval to be endorsed or placed on any such bonds or notes to satisfy itself, by such evidence as it may

deem sufficient, that no such contract not so approved by the Commission is in effect in relation to such bonds or notes. (1931, c. 60, s. 24.)

§ 159-21. State Treasurer to deliver bonds or notes to purchaser; application of proceeds. — When the bonds or notes are executed by the proper officers they shall be turned over to the State Treasurer and after the certificate of the Commission hereinabove required shall be placed thereon, he shall deliver them to the purchaser or order, collect the purchase price or proceeds and before the close of the following day remit the same to the lawful custodian of funds of the unit or, in his discretion, to the properly designated depositary or depositaries of the unit, after assurance that the safe-guarding of such proceeds has been provided as required by law and after deducting all necessary expense including the expense of advertising, selling, shipping and delivering the bonds or notes; nevertheless in the case of bonds or notes sold for refunding or funding purposes the Treasurer may provide that such proceeds shall be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness or under the conditions hereinabove provided he may provide for the exchange of such bonds or notes for the evidences of indebtedness to be refunded or funded thereby, or, if such indebtedness is not evidenced by bonds, notes, coupons or similar instruments, he may provide for the delivery of said new bonds or notes against a receipt or release from the creditor to whom or to which the indebtedness to be funded or refunded is owing. Coupons or notes issued in exchange for outstanding coupons shall be deemed to be notes issued for refunding or funding purposes, within the meaning of this section. (1931, c. 60, s. 25; 1935, c. 356, s. 2.)

Editor's Note.—The amendment of 1935 added the latter part of the first sentence beginning with the phraseology "or, if such indebtedness is not evidenced by bonds, notes, coupons, etc." It also added the last sentence.

§ 159-22. Suit on behalf of unit for fulfillment of contracts of sale. — The Commission shall have power to enforce by action or suit in Superior Court of the county or unit affected or in the Federal Court of the District, for and in behalf of the State or the unit affected, any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26.)

§ 159-23. Unit must remit interest and principal as they fall due; cancellation of obligations paid. — It shall be the duty of every officer of a unit upon whom is imposed by law the duty of remitting funds for the payment of bonds, notes and interest coupons of the unit to remit to the place at which the same are payable sufficient funds for the payment of such bonds, notes and coupons in sufficient time for the payment thereof as the same fall due, and at the same time to remit to such place of payment the necessary fiscal agency fees of the disbursing bank or trust company at which such bonds, notes or coupons are payable. Upon surrender of the bonds, notes or coupons so paid the same shall be cancelled. It shall be the duties of the officers remitting said funds to report to the Director, simultaneously with making the remittance, upon forms to be provided by the Director. (1931, c. 60, s. 27.)

§ 159-24. Records of unit sinking funds. — It shall be the duty of the Director to ascertain by reports which he is hereby authorized to require made to him by any financial officer of any unit and by such other means as he may determine upon, the amounts of sinking funds collected for the payment of bonds of each unit not maturing in annual series and the investments of such sinking funds and the rate of taxation levied to provide for such sinking funds. It shall be his further duty to determine from such information whether the provisions of law for the raising and maintenance and preservation of such sinking funds have been observed and if he shall find that in any respect such provisions of law have not been observed he shall issue an order to the officers and/or board members of such unit in charge of such matters who have failed to observe such provisions, requiring them to comply therewith and stating the amount or amounts to be raised annually by taxation for such purpose, and in other respects requiring such officers and/or board members fully to comply with such laws. Within five days after the issuance of any such order, unless the Commission in its discretion shall extend such time, any officer or board member receiving the same shall be entitled to apply to the Commission for a modification of such order, and unless modified by the Commission, and if so modified, to the extent of the order as so modified, it shall be the duty of all officers and board members to whom such order is directed to comply with the same. (1931, c. 60, s. 28.)

§ 159-25. Investment of unit sinking funds. — It shall be the duty of all officers having charge of the investment of sinking funds of each unit either to deposit such funds under security therefor as provided by this article, or to invest the same (or deposit in part and invest in part) in bonds or notes of the United States or of the state of North Carolina, or in bonds or notes of such unit, or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States, with its principal office in this state; provided, that no such funds may be so invested in a building and loan association unless and until authorized by the insurance commissioner, or in shares of a federal savings and loan association unless and until authorized by an officer of the Federal Home Loan Bank at Winston-Salem, or in such bonds or notes of North Carolina municipalities, counties and school districts as are eligible for investment of the sinking funds of the state under any law in force at the time of investment of such local sinking funds, provided, however, that no investment shall be made in any bonds or notes of any city, county or school district except with the approval of the commission, which is hereby directed to scrutinize with great care any applications for any such investment and to refrain from approving the same unless such investment is prudent and is safe in the opinion of the commission and unless the legality thereof has been approved by an attorney believed by the commission to be compe-

tent as an authority upon the law of public securities. No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146.)

Cross References.—As to investing sinking funds in bonds guaranteed by the United States, see § 53-44. As to investing sinking funds in refunding bonds, see § 142-29.

Editor's Note.—Public Laws 1933, cc. 143, 436, deleted two clauses from this section, one qualifying the deposit in bonds of a unit by the words "if such sinking funds are applicable to the payment of such bonds or notes" and the other limiting the approval to cases where the unit is not in default of any payment of principal or interest. See 11 N. C. Law Rev. 216.

The 1939 amendment inserted the part of the section dealing with investments in shares of building and loan associations and federal savings and loan associations.

§ 159-26. Notification to unit officers of unfavorable state of sinking funds; sale of unsafe investments. — If it shall appear to the Director at any time that the sinking funds of any unit are not deposited under security or invested in securities as required by this article, it shall be his duty to notify the officer or officers in charge of such sinking funds of such failure to comply with law, and thereupon it shall be the duty of such officer or officers to comply therewith within thirty days, except as to the sale of investments held by any such sinking fund which are not eligible for the investment thereof, and as to such investments it shall be the duty of such officer or officers to sell the same within nine months after such notification of the Director is received, at a price approved by the Director, provided, however, that the Commission in its discretion may extend from time to time the time for sale of any such investments, but no one extension shall be made to cover a period of more than one year from the time the extension is made: Provided further, that the Director in his discretion may extend for a period not exceeding ninety days the time for securing funds deposited in banks prior to March eighteenth, one thousand nine hundred and thirty-one, and the Commission may, in its discretion, further extend said time, but no such extension or extensions of the time for securing such funds shall be made for a period ending later than October first, one thousand nine hundred and thirty-one, without the approval of the Commissioner of Banks. (1931, c. 60, s. 30, c. 296, s. 6.)

§ 159-27. Reports to Director as to sinking funds.—It shall be the duty of all officers in charge of the sinking funds of units to report on forms to be furnished by the Director to the Director on the first day of July, one thousand nine hundred thirty-one, and on the first day of each January and July thereafter, a statement of the amounts of the sinking funds of such unit, and whether the same are on deposit, and if so, how the same are secured, or whether the same are invested, and if so, a description of the investments with the respective amounts thereof, in order that the Commission and the Director may be kept informed in regard to such sinking funds; but the Commission or the Director may at any other times require such reports to be made and it shall be the duty of the officers in charge of the sinking funds of any unit to make such reports as herein provided. (1931, c. 60, s. 31.)

§ 159-28. Funds of unit on deposit must be secured by corporate surety bonds.—It shall be the duty of each officer having charge or custody of funds of a unit, of whatever kind or nature or for whatever purpose the same has been raised or shall be held, to keep them safely and to deposit the same in the depository or depositories designated in the manner provided by law; but before making such deposit, if the amount then on deposit shall exceed the amount insured by the Federal Deposit Insurance Corporation, he shall require of said depository or depositories that the excess of such deposit over and above the amount so insured shall be secured by a surety bond or bonds, issued by a surety company or companies authorized to transact business in the state of North Carolina, the form of such surety bonds to be approved by the commission in an amount sufficient to protect such excess deposits; but the commission may, at any time, in its discretion, require an additional bond: Provided, however, that in lieu of a surety bond both as to all or any part of such excess deposits it shall be lawful to secure the same by lodging with the proper custodian hereinafter provided for such securities as are by this article made eligible for investment of sinking funds of local units, such securities to be selected under the terms and conditions of investments of such sinking funds, including approval of certain classes of securities by the commission. Any bank or trust company furnishing United States government bonds, North Carolina state bonds, county or municipal bonds, as security for such excess deposits, shall deposit said bonds with another bank which has been approved by the commission as a depository bank for such purposes, the state treasurer, or the federal reserve bank, and said bonds when so deposited shall be held for the benefit of the unit and subject to the order of the governing body or board of such unit, and subject to the inspection at any time by a representative of the governing body or board of such unit and by a representative of the commission. Each such officer having charge or custody of the funds of a unit and the surety or sureties on his official bond, after a deposit of said funds has been secured by him in the manner hereinabove required, shall not be liable for any losses sustained by the unit by reason of the default or the insolvency of the said depository or depositories. No security shall be required for the protection of funds of a unit remitted to and received by any bank or trust company within or without the state of North Carolina for the sole and exclusive purpose of paying the maturing principal of or interest on bonds or notes of the unit, when such bank or trust company is the agreed place of payment of such principal or interest and when such funds are remitted within sixty days prior to the maturity of such principal or interest. (1931, c. 60, s. 32; 1931, c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1.)

Local Modification.—Alleghany, Ashe, Rockingham: 1935, c. 375, s. 2.

Editor's Note.—This section was so changed by the amendments that a comparison here is not practical.

Section 2 of the 1939 act repealed all laws and clauses of

laws in conflict therewith except subsection (4) of section 53-45.

§ 159-29. Semi-annual reports to Director on status of unit funds.—It shall be the duty of all officers having the charge or custody of any funds of any unit to report to the Director on the first days of January and July of each year (or such other semi-annual dates as may be fixed by the Director) and at other times upon direction of the Commission or the Director the amounts of funds of the unit then in their charge or custody, and the amounts of deposits of such funds in any depositary or depositaries, and a description of the surety bonds or collateral securities deposited to secure the same. It shall be the duty of the Director to require such reports to be made and to see that the provisions of this section are complied with. (1931, c. 60, s. 33.)

§ 159-30. Officers of local units relieved of personal liability when bank deposits are insured.—If it shall be impossible or impracticable to safeguard any funds of the unit in the manner required by this article, if deposited in any depository within the unit, the officer having charge or custody of such funds may deposit the same without personal responsibility in any bank or trust company organized under the laws of the United States of America, or of any state within said country, either within or without the boundaries of said unit in which deposits are insured by the federal deposit insurance corporation, in accordance with the acts of Congress: Provided, that without the approval of the local government commission, the sum on deposit in any such bank, at any time, shall not exceed the amount insured by the said federal deposit insurance corporation. (1931, c. 60, s. 34; 1935, c. 424.)

Local Modification.—Ashe: 1935, c. 424, s. 2.

Editor's Note.—The amendment of 1935 added the phrase "without personal responsibility" and also added the phrase "either within or without the boundaries of said unit," etc. It also added the proviso at the end of the section.

§ 159-31. Appointment of unit administrator of finance in event of default.—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the director, but not in excess of three hundred dollars monthly nor for a period of more than one year except with the approval of the governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall comply, on behalf of such units, with all the requirements of law applicable to such unit, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the commission on the application of any officer, taxpayer or citizen of the unit or on the application of the director, and the commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the director and the commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum of the indebtedness of the unit, the director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and the entry of the order, which shall be done within ten days after the date the petition is filed with the director, the director shall certify, over his hand and the seal of the treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the director, and cause the same to be published in a newspaper of general circulation published in the state and in a journal approved by the commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall

be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of thirty days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said thirty-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the director, for good cause shown, shall have the right to remove the administrator of finance appointed, and, with the consent of the director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 35; 1933, c. 374.)

Editor's Note.—Public Laws of 1933, c. 374, added all the paragraphs of this section except the first paragraph. The first paragraph formerly comprised the whole section.

This section was amended, 1933, by providing an additional method for the adjustment of the indebtedness of local government units, and the proceeding so authorized seems to be in the nature of a creditors' bill, with a very general power in the court to make orders. The duties and powers of the Administrator of Finance are not defined, but they would probably be similar to those of a receiver in a creditors' suit. See 11 N. C. Law Rev., 215.

§ 159-32. Director to inform unit of amount of taxes to be levied.—At least thirty days before the time for the levy of taxes in each unit of the State for the payment of the principal or interest of its obligations, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of each board having power to levy such taxes, a statement of the amount to be provided by taxation or otherwise for the payment of the interest and sinking fund requirements upon such obligations within the fiscal year and for the payment of the obligations maturing in such year. (1931, c. 60, s. 36.)

§ 159-33. Director to notify due dates of obligation.—At least thirty days before the date upon which the principal or interest of any obligation of any unit shall be payable, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of such unit a statement of the amount of principal and interest so payable and a statement of the requirement of this article that such amount shall be remitted to the place at which the same are payable. (1931, c. 60, s. 37.)

§ 159-34. Unit must levy sufficient taxes to provide for maturing obligations.—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 38; 1933, c. 332.)

Editor's Note.—Public Laws of 1933, c. 332, added the proviso appearing at the end of this section.

§ 159-35. Failure to meet obligations when due if funds are in hand a misdemeanor.—If the officer of any unit whose duty it shall be to pay any of the principal or interest of valid obligations of the unit or to remit the same to the place of payment as provided in this article, shall have funds for such payment at his disposal but shall fail or refuse so to do within the time required hereby and in sufficient amount for such payment, whether or not such payment or remission for payment shall have been ordered or forbidden by any board or officer of the unit, the officer so failing or refusing shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages

on the suit of any one aggrieved thereby. (1931, c. 60, s. 39.)

§ 159-36. Voting for appropriation for other purposes than obligations or application of funds otherwise a misdemeanor. — Every member of any board of a local unit who shall knowingly vote for any appropriation to any purpose other than the payment of the interest or principal or sinking fund of any bonds or notes of the unit any money raised by taxation or otherwise for such purpose, until all of such principal and interest shall have been paid, and any disbursing officer who shall knowingly pay out any of such money for any other purpose than the payment of such interest or principal or sinking fund until all of such principal and interest shall have been paid, whether or not such payment shall have been ordered or forbidden by any board or officer of the unit, shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 40.)

§ 159-37. False statement a misdemeanor. — If any officer or any member of any board upon whom duties are imposed by this article shall knowingly make or certify any false statement in any certificate or statement required or permitted by this article, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 41.)

§ 159-38. Wilful failure to perform duty a misdemeanor.—If any officer or any member of any board of any local unit upon whom duties are imposed by this article or of whom duties are required pursuant to the provisions of this article shall knowingly and wilfully fail or refuse to perform any such duty, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any aggrieved person. (1931, c. 60, s. 42.)

§ 159-39. Other violations misdemeanor.—Notwithstanding the declarations of this article that certain specific offenses shall constitute misdemeanors and be punishable, the wilful violation by the Director or by any member of the Commission or any officer or member of a board of a unit of any duty whatsoever imposed upon him by or under the provisions of this article, or his wilful failure, neglect or refusal to perform any such duty, shall be, and is hereby declared to be a misdemeanor, and shall be punishable by fine and/or imprisonment in the discretion of the court, and shall render the offender liable for damages at the suit of any aggrieved party. (1931, c. 60, s. 43.)

§ 159-40. Prosecution by Attorney General; investigation of charges. — In case of the violation of any criminal provisions of this article, the Attorney General of the State of North Carolina upon complaint of the Director, whose duty it shall be to make such complaint in case of any such violation, shall investigate the charges preferred and if in his judgment the law has been violated he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. Upon request of the Governor, the Attorney General shall take charge of such prosecution and, at the request of the Governor, special counsel may be employed to assist the Attorney General or the Solicitor. (1931, c. 60, s. 44.)

§ 159-41. Removal by Governor of offending persons.—Without abating any of the provisions of this article for criminal and civil actions, and for penalties and damages, it shall be the duty of the Director in the case of any breach of the provisions of this article or any failure or refusal to comply with any requirement made herein or permitted to be imposed hereby, by any member of the Commission or by any officer or member of a board of any unit (but in case of any such non-compliance, failure or refusal by the Director himself, it shall be the duty of the Attorney General through the Solicitor of the proper district) to bring the offense to the attention of the Governor, who shall consider the same and may in his judgment remove from office the offending officer or member and appoint a successor, subject to other provisions of law as to the appointment or election of successors of officers or members so removed. Such order of removal, however, shall not be effective until after a hearing before the Commission, which shall set a time therefor and shall give due notice thereof to the offending officer or member, and the order of the Commission after such hearing, whether such order shall confirm or refuse to confirm the removal, shall be final. In the event the Commission shall refuse to confirm the order of removal such officer or member shall continue his duties as such officer or member, but otherwise shall be removed from office pursuant to the order of removal issued by the Governor. (1931, c. 60, s. 45.)

§ 159-42. Law applicable to all counties, cities and towns.—The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any special or local Act enacted before the adjournment of the Regular Session of the General Assembly in one thousand nine hundred and forty-one. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191.)

Editor's Note.—The amendment of 1935 added a clause at the end of the section reading "before the adjournment of the regular session of the general assembly in one thousand nine hundred thirty-five."

Prior to the 1941 amendment the law was made applicable to all counties, cities and towns. The amendment changed the date at the end of the section from 1935 to 1941.

§ 159-43. Temporary loans and notes for.— In the issuance of notes for temporary loans as provided by the County Finance Act, the Municipal Finance Act and this article, the governing body may delegate to any officer of the unit the power to fix the face amount, the rate of interest, the time of maturity and the place of payment of principal and interest within and under the limitations, if any, established by the resolution authorizing the issue of such notes and the limitations fixed by this article and other laws. (1931, c. 60, s. 75, c. 296, s. 4.)

§ 159-44. Notes and bonds of units redeemable before maturity.—Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. There may also be incorporated in or endorsed upon notes, bonds or coupons of a unit provisions reserving to the unit the right to extend the time for payment thereof to a fixed or determinable future time, specified in such provisions. The word "determinable" is here used in the same sense that it is used in the Negotiable Instruments Law of North Carolina (chapter twenty-five). The negotiability of bonds, notes and coupons of a unit shall not be affected by the reservation therein of a right of redemption or extension pursuant to this section. (1931, c. 296, s. 3; 1933, c. 258, s. 2; 1935, c. 356, s. 4.)

Cross Reference.—As to accelerating maturity of bonds and notes of counties and municipalities, see § 153-81.

Editor's Note.—Public Laws 1933, c. 258, made this section applicable to all units instead of the bonds issued "pursuant to the county or municipal finance act." The quoted words were omitted by the amendment.

The amendment of 1935 added the last three sentences of this section.

§ 159-45. Plans or agreements for funding or refunding; exchange for outstanding coupons or interest notes.—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating to the issuance of funding and refunding bonds. Such plan or ageement may provide among other things for the issuance of funding bonds and refunding bonds; for the issuance of new coupons or notes in exchange for outstanding coupons, for the purpose of enabling the unit to reserve the right to extend the time for payment of the whole or a part of the interest represented by such outstanding coupons; for the endorsement or stamping of bonds, notes or coupons, for the purpose of extending the time for payment of the principal thereof or interest thereon or for the purpose of reserving the right to extend said time; and for the doing of any other thing authorized by law with respect to outstanding indebtedness of the unit. All such plans or agreements made or entered into prior to May 9, 1935, and approved by the local government commission are hereby ratified and validated. New coupons or interest notes issued in exchange for outstanding coupons as aforesaid shall be executed in such manner as may be determined by said board or body, and approval thereof by the local government commission need not be noted thereon. A certificate signed by the secretary of the local government commission or by an assistant designated by him, stating that such new coupons or interest notes have been approved by the local government commission or under the provisions of the local government Act, shall be conclusive evidence that the requirements of this article with respect to approval by said commission have been complied with. All provisions of law relating to the means of payment of coupons surrendered in exchange for new coupons or interest notes as aforesaid shall apply to the payment of such new coupons or interest notes. The powers conferred by this section with respect to the issuance of new coupons or interest notes in exchange for outstanding coupons, and with respect to the endorsement or stamping of bonds, notes or coupons, may be exercised by resolution of the board or body authorized by law to issue funding bonds or refunding bonds of a unit, and any such resolution shall be in force and effect from and after its passage, and need not be submitted to the voters of the unit.

The State of North Carolina hereby gives its assent to the act of Congress approved May twenty-fourth, one thousand nine hundred and thirty-four, entitled "An Act to amend an act entitled 'an act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," and hereby authorizes all units, after approval has been given thereto by the local government commission, to proceed under the provisions of said act for the readjustment of their debts. (1933, c. 258, s. 4; 1935, c. 356, s. 5.)

Cross Reference.—As to statute authorizing local units of state to avail themselves of Federal Bankruptcy Act, see § 23-48.

Editor's Note.—The amendment of 1935 added all but the first sentence of this section.

Ordinance provision that holders of proposed refunding bonds should be subrogated to all rights and powers of holders of refunded bonds is sanctioned by law, and such provision will enter into and become an integral part of the bonds when issued, with contractual force and effect, and may not be impaired by subsequent legislation. Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398.

Defendant municipality proposed to issue refunding bonds to be exchanged for like amounts of the original bonds in the hands of the holders of the original indebtedness, the refunding bonds to be secured by all rights and powers of taxation which protected and formed a part of the obligation of the original bonds. It was held that the parties and the debt are the same and the transaction amounts in reality to an extension and renewal of the original bonds under legislative sanction, and an act of the legislature, passed after the issuance of the original bonds, limiting the tax rate of the municipality is inoperative as to the refunding bonds when the limitation therein imposed would prevent the payment of the refunding bonds according to their tenor, and the contention that even though the refunding bonds would not create a new debt, such debt would be evidenced by a new contract, and that therefore the refunding bonds would be subject to the limitation of the statute enacted prior to the issuance of the refunding bonds, is untenable. Id.

§ 159-46. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit for the purposes of refunding, funding or renewing indebtedness, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

(a) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so pur-

chased or paid shall be cancelled and shall not be reissued.

(b) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.

(c) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.

(d) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.

(e) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.

(f) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the state treasurer.

(g) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.

(h) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.

(i) Provisions whereby the holders of said bonds or notes, whether such bonds or notes shall have been delivered in exchange for the indebtedness refunded or funded thereby or shall have been sold and the proceeds thereof applied to the retirement of such indebtedness, shall be subrogated to all the rights and powers of the holders of such indebtedness.

(j) Provisions whereby bonds and notes, together with the matured and unmatured interest thereon, may be deposited with the state treasurer as trustee, or some bank or trust company designated as trustee by the governing body of the unit with the approval of the local government commission, and bonds issued from time to time or at specified intervals of time for the funding or refunding of all or any part of the indebtedness so deposited; the indebtedness of any depositor to be cancelled and extinguished at such time or times as the plan or agreement for the settlement, adjustment, funding or refunding of the indebtedness of the unit may specify, and need not be cancelled and extinguished simultaneously with the issuance of bonds for funding or refunding a part of such indebtedness: Provided, that the ordinance, order, or resolution authorizing the issuance of funding or refunding bonds referred to in this clause (j) may be adopted, or passed at such times as the plan or agreement may designate.

No such provisions shall become effective without the approval of the local government commission. (1933, c. 258, s. 4; 1935, c. 356, s. 6; 1939, c. 231, s. 3.)

Cross Reference.—As to what the ordinance must show when a municipality issues bonds, see § 160-379; when a county issues bonds, see § 153-78.

Editor's Note.—The amendment of 1935 inserted subsections (i) and (j) of this section.

The 1939 amendment struck out the words "incurred before July 1, 1933," formerly appearing after the word "indebtedness" in line four.

In Nash v. Board of Com'rs, 211 N. C. 301, 304, 190 S. E. 475, the provision that the holders or purchasers of said bonds "shall be subrogated to all the rights and powers of the holders of such indebtedness," which said provision was given "the force of contract between the unit and the holders of said bonds," was incorporated in the ordinance authorizing issuance of the bonds. Hence the provision, having the sanction of law, will enter into and become an integral part of the bonds when issued, with contractual force and effect, which may not be impaired by subsequent legislation.

§ 159-47. Issuance by local units of new bonds to replace mutilated bonds and bonds registered as to both principal and interest.—In case any bond heretofore or hereafter issued by any unit has heretofore or shall hereafter become mutilated or has heretofore or shall hereafter be registered as to both principal and interest, the governing body of the unit may by resolution provide for the issuance of a new bond in exchange and substitution for and upon the cancellation of the mutilated bond and its interest coupons, if any, or the bond registered as to both principal and interest. The provisions of such resolution must be approved by the local government commission before any exchange shall be made thereunder. In all such cases the holder shall pay the reasonable expenses and charges of the unit and of the commission in connection with such exchange. Such new bond shall mature at the same time and bear interest at the same rate as the bond in exchange for which it shall be issued, and shall be executed in such manner as may be provided in the resolution providing for the issuance of the new bond. Each such new bond shall be signed by the officers who are in office at the time of such signing, and shall contain a recital to the effect that it is issued in exchange for a certain bond (describing such bond sufficiently to identify it) and is to be deemed a part of the same issue as the original bond. (1939, c. 259.)

§ 159-48. Cancellation of own bonds, etc., acquired by unit.—Any bonds or other evidences of indebtedness issued by a unit which have heretofore been or may hereafter be acquired by said unit, unless so acquired for investment of sinking funds of said unit, shall be immediately cancelled and extinguished as obligations of said unit. It shall be the duty of any officer or employee of said unit in whose possession or custody said bonds or other evidences of indebtedness are placed to cancel the same as herein provided and to promptly report such cancellation to the local government commission and furnish in said report a full description of the bonds or other evidences of indebtedness so cancelled. (1939, c. 356.)

§ 159-49. State not liable for debts of units nor units for obligation of each other.—Nothing herein contained shall be construed to bind the State of North Carolina to pay any part of any debt due by any county, municipality or other unit of government, nor shall it be construed that any county or other unit shall be liable for the debts of any other county or unit. (1931, c. 60, s. 77.)

§ 159-49.1. Investment of unused proceeds of sale of bonds by counties, cities and towns in designated securities.—If for any reason the whole or any part of the proceeds of the sale of bonds heretofore issued by a county, city or

town cannot be applied to the purpose for which such bonds were authorized, such proceeds may be invested in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the state of North Carolina, or in bonds of any county, city or town of North Carolina which have been approved by the local government commission for the purpose of such investment. Nothing in this section shall be construed as permitting moneys from realization of such investment, by sale or by payment, to be applied to any purpose other than that now authorized by law, except that such moneys may be reinvested in the bonds, notes or certificates of indebtedness herein provided for investment. Earnings from such investment may be applied to payment of the interest or principal of the bonds from which such proceeds were derived or may be applied as increment to such proceeds. (1943, c. 14.)

Art. 2. Validation of Bonds, Notes and Indebtedness of Unit.

§ 159-50. "Unit" defined. — In this article the word "unit" means a county, city, town, township, school district, school taxing district, or other district or political subdivision of government of the State. (1931, c. 186, s. 1.)

Cited in Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739.

§ 159-51. Validation of bond and note issues by units.—In all cases where a unit has issued its bonds or notes prior to March 26, 1931, and has received for the bonds or notes an amount of money not less than the face amount of the bonds or notes, and has expended said money for public purposes, said bonds or notes are hereby validated, and all bonds or notes subsequently issued to pay or renew said bonds or notes are also hereby validated, notwithstanding any lack of statutory authority or failure to observe any statutory provision concerning the issuance of such bonds or notes. This section shall not be construed as validating any bonds or notes, the proceeds of which have been lost by reason of the failure of any bank. (1931, c. 186, s. 2.)

§ 159-52. Test cases testing validity of funding bonds.—At any time after the adoption of an ordinance, resolution, or order for the issuance of refunding or funding bonds of a unit by the board authorized by law to issue the same, and following the approval of the issuance of such bonds by the local government commission, and prior to the issuance of any such bonds, such board may cause to be instituted in the name of the unit an action in the superior court of any county in which all or any part of the unit lies, to determine the validity of such bonds and the validity of the means of payment provided therefor. Such action shall be in the nature of a proceeding in rem, and shall be against each and all the owners of taxable property within the unit and each and all the citizens residing in the unit, but without any requirement that the name of any such owner or citizen be stated in the complaint or in the summons. Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within twenty days after the date of the last publication of such summons in the manner herein provided. Any interested person may become a party to such action, and the defendants and all others interested may at any time before the expiration of such twenty days appear and by proper proceedings contest the validity of the indebtedness to be refunded or funded or the validity of such refunding or funding bonds or the validity of the means of payment provided therefor. The complaint shall set forth briefly by allegations, references, or exhibits the proceedings taken by such board in relation to such bonds and the means of payment provided therefor, and, if an election was held to authorize such issuance, a statement of that fact, together with a copy of the election notice and of the official canvass of votes and declaration of the result. There shall similarly be set forth in the complaint a statement of the amount, purpose, and character of the indebtedness to be refunded or funded, and such other allegations as may be relevant. The prayer of the complaint shall be that the court find and determine as against the defendants the validity of such bonds and the validity of the means of payment so provided. (1931, c. 186, s. 4; 1935, c. 290, s. 1; 1937, c. 80.)

Editor's Note.—This section was so changed by the amendment of 1935 that a comparison is necessary to determine its full extent.

Public Laws 1937, c. 80, s. 1, substituted the words "date of the last" for the word "full" formerly appearing in the third sentence of this section.

Section 2 of the 1937 act made its provisions applicable to proceedings instituted prior to its ratification on March 1, 1937, in which a decree had not been rendered on that date.

The action authorized by this and the following four sections is in the nature of a proceeding in rem, and is adversary both in form and in substance. These sections contemplate that issues both of law and of fact may be raised by pleadings duly filed, and that such issues shall be determined by the court. The court has no power by virtue of these sections to validate bonds which are for any reason invalid. It has power only to determine whether or not on the facts as found by the court and under the law applicable to these facts, the bonds are valid. Castevens v. Stanly County, 211 N. C. 642, 650, 191 S. E. 739.

Service of Summons by Publication Is Sufficient.—The contention that an owner of taxable property within the unit, or a citizen residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjudging that the bonds and tax to be levied for their payment, are valid, because it is not required by this section that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by this section to be in the nature of a proceeding in rem. In such case, all persons included within a well defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. Castevens v. Stanly County, 211 N. C. 642, 651, 191 S. E. 739.

If Published as Required by This Section.—See Castevens v. Stanly County, 211 N. C. 642, 651, 191 S. E. 739.

§ 159-53. Rules of pleading and practice. — The trial of such action shall be in accordance with the Constitution and laws of the State; and the rules of pleading and practice provided by the General Statutes and court rules for civil actions, including the procedure for appeals, which are not inconsistent with the provisions of this article, are hereby declared applicable to all actions herein provided

for: Provided, however, that an appeal from a decree in such action must be taken within thirty days from the date of rendition of such decree. The court shall render a decree either validating such bonds and the means of payment provided therefor, or adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal. (1931, c. 186, s. 5; 1935, c. 290, s. 2.)

Editor's Note.—The amendment of 1935 inserts the proviso at the end of the first sentence of the section. It also substitutes the words "a decree" for the word "judgment" near the beginning of the second sentence.

§ 159-54. Judgment establishing validity of issue.—If (a) the superior court shall render a decree validating such bonds and the means of payment provided therefor and no appeal shall be taken within the time prescribed herein, or (b) if taken, the decree validating such bonds and the means of payment provided therefor shall be affirmed by the supreme court, or (c) if the superior court shall render a decree adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal, and on appeal the supreme court shall reverse such decree and sustain the validity of such bonds and the means of payment provided therefor (in which case the supreme court shall issue its mandate to the superior court requiring it to render a decree validating such bonds and the means of payment provided therefor), the decree of the superior court validating such bonds and the means of payment provided therefor shall be forever conclusive as to the validity of such bonds and the validity of the means of payment provided therefor as against the unit and as against all taxpayers and citizens thereof, to the extent of matters and things pleaded or which might have been pleaded, and to such extent the validity of said bonds and means of payment thereof shall never be called in question in any court in this State. (1931, c. 186, s. 6; 1935, c. 290, s. 3.)

Editor's Note.—This section was so changed by the amendment of 1935 that a comparison is necessary in order to determine its full extent.

Section Does Not Estop Taxpayer from Challenging Validity of Bonds if Service Inadequate.—The contention that by this section an owner of taxable property within the unit, or a citizen residing therein, is estopped from challenging the validity of the bonds and of the tax, without having had an opportunity to be heard, cannot be sustained. No decree or judgment adverse to his rights can be rendered in an action instituted and prosecuted in accordance with the provisions of the statute, until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. Castevens v. Stanly County, 211 N. C. 642, 651, 191 S. E. 739.

§ 159-55. Taxing costs.—The costs in any action brought under this article may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court. (1931, c. 186, s. 7.)

§ 159-56. Levying special tax for proposed issues.—If the complaint in any action brought under this article, or an exhibit attached to such complaint shows that an ordinance or resolution has been adopted by the unit providing that a tax sufficient to pay the principal and interest of the bonds or notes involved in such action is to be levied and collected, such ordinance or resolution shall be construed as meaning that such tax is to be levied without regard to any constitutional or statutory limitation of the rate or amount of taxes, unless such ordinance or resolution declares that such limitation is to be observed in levying of such tax. (1931, c. 186, s. 8.)

Constitutionality.—This section and the four preceding sections are not unconstitutional either on the ground that the statute confers nonjudicial functions on the Superior Courts of this state or on the ground that the statute denies due process of law to taxpayers or citizens of a local governmental unit in this state, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or of the 17th section of Article I of the Constitution of North Carolina. Castevens v. Stanly County, 211 N. C. 642, 652, 191 S. E. 739.

§ 159-57. Notice of proposed issue to be published by unit.—Any unit may by resolution of the official board of such unit, authorized by law to issue bonds or notes, cause to be published a notice of the intention of said board to issue bonds or notes of the unit for the purpose of funding, refunding or renewing outstanding obligations or alleged obligations issued prior to passage of such resolution. Such notice shall describe said obligations or alleged obligations in a manner sufficient to identify them. It shall also state, either in general or specific terms, the purpose or purposes for which said outstanding obligations were incurred or issued, as determined by said official board of said unit prior to the publication of said notice. Said notice shall further state that a tax is to be levied on all taxable property in the unit sufficient to pay the bonds or notes proposed to be issued, or any bonds or notes that may be subsequently issued for the purpose of refunding, funding, renewing or paying said bonds or notes. Said notice shall be published once in each of three successive weeks in a newspaper published in the unit having the largest or next largest circulation in the unit, or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the court house or building where said official board usually holds its meetings, and published in some newspaper published in the State of North Carolina and circulating in said unit. Such notice shall contain a statement that it is being published under the provisions of this section. After the issuance of any bonds or notes in accordance with the intention expressed in said notice, the validity of said bonds or notes and/or of any subsequently issued instruments evidencing the same indebtedness, shall not be open to question in any court upon the ground that any of the obligations or alleged obligations for the funding or renewal of which such bonds or notes were issued, were or are invalid, nor shall the power of the unit to levy a sufficient tax on all taxable property in the unit for the payment of the principal and interest of said bonds or notes, or of any subsequently issued instruments evidencing the same indebtedness, be open to question in any court upon the ground that the obligations or alleged obligations for the funding or renewal of which said bonds or notes were issued were invalid, or upon the ground that said original obligations or alleged obligations were not issued for a purpose

for which such tax can be levied, except in an action or proceeding commenced within thirty days after the first publication of said notice of intention. The date of such first publication shall be stated in said notice. (1931, c. 186, s. 9; 1935, c. 290, s. 4.)

Editor's Note.—Prior to the amendment of 1935 this section applied only until July, 1932, and the outstanding obligations were those issued since March 1, 1929. The amendment makes the section general and permanent in its application. Prior to the amendment, it was required that a copy of the section be posted with the notice. Now a statement that notice is being published according to the section is all that is required. Prior to the amendment the purposes of levy could be attacked by an action "commenced at least two days prior to the issuance of said bonds or notes." The quoted passage was omitted by the amendment.

§ 159-58. Invalidated issues unaffected. — This article shall not apply to any bonds or notes that have been held invalid by any court of competent jurisdiction. (1931, c. 186, s. 11.)

Art. 3. Funding and Refunding of Debts of Local Units Other than Counties, Cities and Towns.

§ 159-59. Local units, other than counties, cities and towns, authorized to fund outstanding debts. —Any unit other than a county, city or town may issue bonds as provided in this article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, or other district, political sub-division or local governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other unit embracing only a part of the territory of the county. (1933, c. 257, s. 1; 1939, c. 231, s. 4.)

Editor's Note.—The 1939 amendment struck out the words "provided, the indebtedness evidenced by said notes or bonds was incurred before July 1, 1933," formerly appearing at the end of the first sentence.

§ 159-60. General law applicable.—Bonds issued pursuant to this article shall be issued in accordance with the provisions of the county finance act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

(a) They shall be issued in the name of the obligor named in the obligations to be funded or refunded, or in the name of the successor to the obligor named in the obligation to be refunded or funded.

(b) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;

(c) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, §§ 153-78, 153-83, 153-84, 153-85, 153-86 and 153-87 of the County Finance Act, shall be read and understood as if they contained no requirements in respect to such matters;

(d) The bonds shall mature at such time or times, not later than forty years after their date, as may be fixed or provided for in the resolutions under which they are issued;

(e) The bonds shall also be issued in accordance with the provisions of the Local Government Act, as amended. (1933, c. 257, s. 2; 1935, c. 484; 1941, c. 147.)

Editor's Note.—The clause at the end of subsection (a) reading: "or the name of the successor to the obligor" was added by the amendment of 1935.

The 1941 amendment rewrote subsection (e).

§ 159-61. Taxes to pay new obligations authorized.—Taxes for the payment of the principal and interest of bonds issued pursuant to this article shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ 159-62. County finance act applicable. — Except where they are inconsistent with the provisions of this article, all of the provisions of the county finance act, as amended, applicable to bonds issued under that act for the funding or refunding of indebtedness, shall be applicable to bonds issued under this article. For the purpose of applying the provisions of said act to bonds issued under this article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this article to issue bonds, except the words "governing body" in § 153-110 of the county finance act, where said words mean the board or body authorized by this article to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means the clerk or secretary of the board or body authorized by this article to issue bonds; "this act" means this article. (1933, c. 257, s. 4; 1939, c. 231, s. 4(b).)

Editor's Note.—The 1939 amendment struck out the words "incurred before July 1, 1933," formerly appearing after the word "indebtedness" in the first sentence.

Art. 4. Assistance for Defaulting Local Government Units in the Preparation of Workable Refinancing Plans.

§ 159-63. Aid of director of local government to defaulting local units.—Whenever it shall appear that any county, city, town, or other local government unit of this State has defaulted for a period of six months in the payment of the principal or interest of any of its outstanding notes or bonds, the director of local government is hereby given the authority to prepare and certify to the governing body of such local government unit a plan for refinancing, readjustment, or compromising said debt in order to remove the default and prevent its recurrence. (1935, c. 124, s. 1.)

§ 159-64. Investigating fiscal affairs of units; negotiations with creditors; plans for refinancing or readjustment.—For the purpose of determining the financial position, the director of local government may make or cause to be made an investigation of the fiscal affairs of such units which are in default in the payment of principal or interest for a period of six months, and advise with the governing body of such unit regarding the refinancing and/or readjustment of its debts, and is authorized to negotiate with the creditors of such units for the purpose of reaching an agreement with them. Whenever a plan of refinancing and/or readjustment, whether prepared by the director, by a private refunding agency, or by the officials of the unit, appears to the director of local government as being fair and equitable and reasonably within the ability of such unit to meet, it shall be submitted by him to the local government commission for its approval, and upon such approval, the governing body of such local government unit shall adopt same and pass the necessary orders or ordinances for the purpose of carrying said plan into effect. (1935, c. 124, s. 2.)

§ 159-65. Power of director to accept or reject budget of local units.—In order to conserve the financial resources of any local government unit of this State and to provide a means of constant advisory services, the director of local government is hereby given authority to approve or disapprove the budget of any unit which has accepted the plan and put same into effect, and the governing body of such unit shall first obtain the approval of the said director before passing any order or ordinance adopting said budget. (1935, c. 124, s. 3.)

§ 159-66. Annual statements from units.—The director of local government shall have authority to require of the local units in which he functions under this article annual statements showing the collection of revenues and the disbursements for expenses, both divided as between general operating fund, debt service fund, and special funds, if any, and it shall be his duty to require the proper allocation of all collected revenues to the funds for which said revenues were levied, in accordance with the budget, and to require that disbursements shall be made only from appropriations duly made. (1935, c. 124, s. 4.)

§ 159-67. Extent and time limit of director's authority.—The authority hereby granted to the director of local government shall continue in force in such local government units until, in the discretion of the director of local government, said local government unit has performed the duties required of it or has satisfied the director that it will do so, until the agreements made with the creditors have been discharged in accordance with the plan of refinancing and/or readjustment of its debt. (1935, c. 124, s. 5.)

§ 159-68. Certain local laws reserved.—Nothing in this article shall be construed to repeal any Public-Local or Private Act passed by the General Assembly of one thousand nine hundred and thirty-five, relative to the readjustment or refunding of the bonded indebtedness of any local governmental unit in North Carolina, except and until an agreement has been reached between the bondholders and the governing body of said unit, and when said agreement has been reached and certified to the Director of the Local Government Commission by both contracting parties, then and in that event the provisions of said article shall apply to such defaulting local governmental units. (1935, c. 124, s. 6.)

Chapter 160. Municipal Corporations.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

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Art. 1. General Powers.

§ 160-1. Body politic.—Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other. (Rev., s. 2915; Code, s. 702; C. S. 2622.)

Powers.—A municipal corporation has only those powers expressly granted in its charter and by the general law, construing the acts together, and those powers reasonably implied in or incident to the granted powers which are necessary to effect the fair intent and purpose of its creation, and it may exercise a sound discretion as to the means by which the purposes of its creation may be accomplished. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542.

Cited in Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693.

§ 160-2. Corporate powers.—A city or town is authorized:

1. To sue and be sued in its corporate name.

Cross References.—As to venue of an action against a municipality, see § 1-77 and annotation thereto. As to necessity of demand before suit against a municipality, see § 153-64. As to time within which an action against a municipality must be brought, see § 1-53.

In General.—A town must be sued in its corporate name

and not in the name of its officers. Young v. Barden, 90 N. C. 424.

How Served with Summons.—A summons against a city may be served on the mayor and on the secretary of the board of aldermen. Loughran v. Hickory, 129 N. C. 281, 40 S. E. 46.

Form of Action.—As a general rule, whenever a good cause of action exists against a municipal corporation, it may be prosecuted by an action in whatever form would be appropriate against an individual. The creditor is not limited to an action by mandamus. Winslow v. Commissioners, 64 N. C. 218.

Venue in County Where Municipality Located.—Cities and towns must be sued in the county in which they are located, and if suit is brought in another county, they have the right to have it removed. Jones v. Statesville, 97 N. C. 86, 2 S. E. 346, cited in note in 25 L. R. A., N. S., 711. See section 1-77 and the notes thereto.

Action in Name of all the Citizens against a City.—In an action against a municipal corporation to enjoin the collection of an illegal tax, it is not error to allow all citizens other than the original plaintiff to be made parties plaintiff. Cobb v. Elizabeth City, 75 N. C. 1.

2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

Cross References.—As to power to dispose of property, see §§ 160-59 through 160-61. As to power to establish markets, see §§ 160-53 and 160-228. As to power to acquire property, see §§ 160-204 through 160-221.

Erection of a Public Building.—The erection by a city of a public building with funds for the purpose on hand, for governmental offices, academy of music, public meetings, etc., is for a governmental purpose, and within the exercise of the discretionary powers conferred upon the governing body of the municipality, and where no further expense may be incurred such as to pledge the credit of the city, or therein impose an obligation upon it, there is no violation of our Constitution, Art. VII, sec. 7. Adams v. Durham, 189 N. C. 232, 126 S. E. 611.

3. To purchase and hold land, within or without its limits, not exceeding fifty acres (in cities or towns having a population of more than twenty thousand the number of acres shall be in the discretion of the governing body of said city), for the purpose of a cemetery, and to prohibit burial of persons at any other place in town, and to regulate the manner of burial in such cemetery. All municipal corporations purchasing real property at any trustee's, mortgagee's, or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers herein mentioned.

Cross References.—See also, § 160-200, subsection 36. As to care of cemeteries, see §§ 160-258, 160-259 and 160-260.

Editor's Note.—Prior to the amendment of 1927 there was no provision for towns or cities having over twenty thousand inhabitants. The limit of fifty acres applied to all.

City's Power Over Interment.—The ownership of a lot in a cemetery, or license to inter therein, is subject to the police power of the state, and interments may be forbidden, and bodies already interred removed, by ordinance of the city, if authorized by act of the legislature. Humphrey v. Board, 109 N. C. 132, 13 S. E. 793, cited in note in 38 L. R. A. 329.

Relief to Taxpayers when Section Violated.—Where the proper authorities of a city have purchased lands for a Negro cemetery in excess of the fifty acres allowed by this section, in good faith, to meet a necessary need therefor, and at a reasonable price, and have paid therefor and accepted a deed from the owners, injunctive relief at the suit of the taxpayers will be denied. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582.

The title of the purchaser at a tax foreclosure sale may not be challenged by the listed owner upon the purchaser's motion for a writ of assistance, and such purchaser may be a municipality where it does not appear of record that the purchase of the land was ultra vires, a municipality having the power to purchase land for certain purposes under this section. Wake County v. Johnson, 206 N. C. 478, 174 S. E. 303.

4. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

Cross References.—As to power to establish a library, see § 160-65. As to water and lights, see § 160-255 et seq. As to sewerage, see § 160-239 et seq. As to fire department, see § 160-235. As to letting contracts for construction, etc., see §§ 143-129 et seq. As to contractor on municipal building giving bond, see § 44-14.

5. To make such orders for the disposition or use of its property as the interest of the town requires.

Cross References.—As to sale of municipal property, see also, §§ 160-59 through 160-61. As to reconveyance of property donated to municipality for a specific purpose, see § 153-3.

Power to Cede Away, or Control Public Affairs. — Municipal corporations may make authorized contracts, but they have no power under this section to make contracts or pass by-laws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties. The receipt of $600 from a citizen in consideration of locating certain public buildings near his property so as to enhance the value is such a contract. Edwards v. Goldsboro, 141 N. C. 60, 64, 53 S. E. 652.

6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease, upon such conditions and with such terms of payment as the city or town may prescribe, any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity.

Editor's Note.—By amendment, Ex. Sess. 1921, the provision for conditions and terms was inserted.

Public Laws 1933, c. 69, amended this subsection by striking out a provision that the subsection should not apply to Cumberland county.

For Sale of Property Held for Public Use.—The provision of section 160-59 in regard to sale at public out-cry is not applicable to sales under this section, and when the approval of the voters is had there may be a private sale of such property as is included in the provision of this section. Section 160-59 is not applicable to property held in trust, Church v. Dula, 148 N. C. 262, 266, 61 S. E. 639, and it was for a sale of such property that this section was especially intended. See Allen v. Reidsville, 178 N. C. 513, 101 S. E. 267.

In General.—Although the Utilities Commission is the principal agency for regulation of electricity rates in North Carolina, the municipalities still can, if they will, play an important part in view of this section. See 12 N. C. Law Rev., 294.

Franchises for Use of Streets Must Be Expressly Conferred.—"The law is well settled that the title either of the fee in the soil or an easement is vested in the municipality, in trust for the use of the people as and for a public highway, and that it cannot, without legislative authority, divert them from this use." Therefore a grant by a city of a franchise allowing gas pipes to be laid in its streets is void unless allowed by express legislation. Elizabeth City v. Banks, 150 N. C. 407, 64 S. E. 189.

Duty Imposed with Franchise to Water Company.—The acceptance of a municipal franchise by a water company carries with it the duty of supplying water to all persons along the lines of its mains without discrimination and at uniform rates. Griffin v. Goldsboro Water Co., 122 N. C. 206, 30 S. E. 319.

Same—Power to Repudiate.—A water company operating under a franchise-contract from a city or town, and receiving the benefits and advantages arising thereunder, may not

repudiate the duty of supplying water free to public schools, etc., which it had expressly contracted to do in accepting the franchise containing such provision, and collect for water it had furnished them upon a quantum meruit or otherwise. Henderson Water Co. v. Trustees, 151 N. C. 171, 65 S. E. 927.

Rights of Abutting Owners.—As against the rights of abutting owners the municipal authorities have no power to grant to a railroad company an easement to lay its track upon and operate its trains over the streets of a town, even though the title to the streets be in the town. Staton v. Atlantic Coast Line R. Co., 147 N. C. 428, 61 S. E. 455.

Exclusive Privilege Unconstitutional. — Those provisions of an ordinance granting the exclusive privilege to construct and maintain water-works within the corporate limits of a town, and the exclusive use of its streets, alleys, sidewalks, public grounds, streams and bridges, come within the confirmation of sec. 31, of Art. I, of the Constitution of this State, which declares that "perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed." Thrift v. Elizabeth City, 122 N. C. 31, 35, 30 S. E. 349.

License Not a Permanent Easement.—A license granted by a city to a railroad company to lay a track upon and to that extent use the streets, in the absence of an express power in the charter to do so, such license cannot be construed into a grant of a permanent easement. State v. Atlantic & N. C. R. Co., 141 N. C. 736, 53 S. E. 290.

Power to Annul a License to a Street Railroad.—After a city, by ordinance, has granted a street railroad a right to construct its line over certain streets it cannot by subsequent ordinance arbitrarily annul such license. Ry. Co. v. Asheville, 109 N. C. 688, 14 S. E. 316.

7. To provide for the municipal government of its inhabitants in the manner required by law.

Cited in State v. Vanhook, 182 N. C. 831, 833, 109 S. E. 65.

8. To levy and collect such taxes as are authorized by law.

Cross Reference.—As to municipal taxation, see § 160-56 et seq.

9. To do and perform all other duties and powers authorized by law. (Rev., s. 2916; Code, ss. 704, 3817; 1901, c. 283; 1905, c. 526; 1907, c. 978; P. L. 1917, c. 223; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; C. S. 2623.)

Cross References.—As to authority of municipalities to cooperate in planning, constructing, and operating housing projects, see § 157-40 et seq. As to duty of governing body in city of over 10,000 to establish a juvenile court, see § 110-44. As to power to establish and maintain meat inspection, see § 106-161. As to power to contribute toward erection of memorials, see § 100-10. As to power to appropriate money for joint county and municipal hospitals, see § 131-46. As to power to make rules and regulations concerning motor vehicles, see § 20-169. As to authority to contribute to local organizations of state and federal agencies in war effort, see § 153-9.1.

Can Only Exercise Conferred Power. — A municipality has no inherent police powers, but can exercise only those conferred by the state, and any reasonable doubt concerning such powers is resolved against it. State v. Dannenberg, 150 N. C. 799, 63 S. E. 946.

Parking Fee Not Authorized.—This section does not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389. But see § 160-200, subsection 31, which was amended by Public Laws 1941, cc. 153 and 319, after the decision in this case.

§ 160-3. How corporate powers exercised.—The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law. (Rev., s. 2917; Code, s. 703; C. S. 2624.)

Cross Reference.—As to exercise of powers by governing body, see § 160-267 et seq.

Majority of Those Present Validate an Ordinance.—If an act is to be done by an incorporated body, the law, resolution or ordinance authorizing it to be done is valid if passed by a majority of those present at a legal meeting. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271; LeRoy v. Elizabeth City, 166 N. C. 93, 81 S. E. 1072.

§ 160-4. Application and meaning of terms.—This subchapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law. (Rev., s. 2918; Code, s. 3827; R. C., c. 111, s. 23; C. S. 2625.)

Cross Reference.—As to application of Municipal Corporation Act of 1917, see § 160-193.

What General Law Applies to.—A general law applies to all towns and cities in the state if it is not inconsistent with some special law or the charter of a town or city. State v Smith, 103 N. C. 403, 407, 9 S. E. 435.

Inconsistent Laws—Which Prevails. — The general law holds in the absence of special laws. In case of special laws the general law is repealed only to the extent of a conflict. If there is no conflict the two may be construed in pari materia. Raleigh v. Peace, 110 N. C. 32, 45, 14 S. E. 521.

Stated in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907.

Cited in dissenting opinion in Redmond v. Commissioners, 106 N. C. 122, 151, 10 S. E. 845.

Art. 2. Municipal Officers.

Part 1. Commissioners.

§ 160-5. Number and election.—The board of commissioners of each town shall consist of not less than three nor more than seven commissioners, who shall be biennially elected by the qualified voters of the town, at the time and in the manner prescribed by law. (Rev., ss. 2917, 2919; Code, s. 3787; R. C., c. 111, s. 1; C. S. 2626.)

Cross References.—As to number of commissioners, see §§ 160-198, 160-310, 160-317, and 160-340. As to the general election laws, see § 163-148 et seq. As to municipal elections, see also § 160-29 et seq.

§ 160-6. Number may be changed.—After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all the votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen. (Rev., s. 2922; Code, s. 3791; R. C., c. 111, s. 7; C. S. 2627.)

§ 160-7. Oath of office. — The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oaths shall be filed with the mayor of such town and entered in a book kept for that purpose. (Rev., s. 2920; Code, s. 3799; R. C., c. 111, s. 12; C. S. 2628.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7, and 11-11.

§ 160-8. Vacancies filled.—In case of a vacancy after election in the office of commissioner the others may fill it until the next election. (Rev., s. 2921; Code, s. 3793; R. C., c. 111, s. 9; C. S. 2629.)

§ 160-9. Commissioners appoint other officers and fix salaries.—The board of commissioners may appoint a town constable, and such other

officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the state, in proper penalties for the faithful discharge of their duties. (Rev., s. 2925; Code. s. 3800; R. C., c. 111, s. 13; 1862, c. 51; C. S. 2630.)

Cross Reference.—As to power to appoint a health officer, see § 130-31.

Power to Appoint a Special Tax Collector.—Whenever the authorities of a town shall be commanded to levy and collect taxes they may appoint a special tax-collector to collect the same. But this power to appoint such a collector is additional, and does not abridge their right to require the collection to be made by the regular officer appointed for that purpose. Webb v. Beaufort, 88 N. C. 496.

Compensation When no Salary Specified.—Where a municipal corporation engages a commissioner of its sinking fund under the provisions of its charter, by which the incumbent was employed for a term of years continuously, his employment is that of a public officer, which precludes compensation based upon a quantum meruit, and he may not recover for his services in the absence of express statutory provision. Borden v. Goldsboro, 173 N. C. 661, 92 S. E. 694.

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202.

Cited in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907.

Part 2. Mayor.

§ 160-10. How elected; vacancy.—At the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes shall be declared elected. In case of vacancy in the office, the commissioners may fill the same. (Rev., s. 2931; Code, s. 3794; R. C., c. 111, s. 10; C. S. 2631.)

Cross References.—As to election of mayor under Plan "A" of municipal government, see § 160-309; under Plan "B," see § 160-316; under Plan "C," see § 160-335; under Plan "D," see § 160-345. As to governing body filling vacancy, see also § 160-274.

In General.—"The word 'mayor' first occurs in English history in 1189, when Richard I substituted a mayor for the two bailiffs of London. The Romans styled such officer 'prefectus urbi,' and originally the English title for such officer was either 'bailiff' or 'portreeve,' just as the sheriff (who had, however, far greater functions than our officer of that title) was 'shirereeve,' i. e., sheriff. In 5 Words and Phrases, 4450, it is said that the word mayor comes from an old English word 'maier,' which means 'power,' 'authority,' and not from the Latin 'major'—greater. He represents the power and authority of the town, and the duty of presiding at meetings of the town commissioners is only one of the duties he exercises. While the power and duties of the mayor may vary according to the charter of the town or the laws of the state, it is probably without any exception his duty to execute the laws and local regulations of his city and to supervise the discharge of their duties by the subordinate officers of the city government. Such an office could not be left vacant, without public inconvenience, during the illness or absence of the incumbent, and hence our statute provides a mode of selecting a substitute, a pro tem. mayor, who shall 'exercise his duties'—meaning all his duties (for there is no restriction) and as fully as he could have done." State v. Thomas, 141 N. C. 791, 793, 53 S. E. 522.

§ 160-11. Oath of office.—The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners. (Rev., s. 2932; Code, s. 3798; R. C., c. 111, s. 11; C. S. 2632.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7 and 11-11.

§ 160-12. Presides at commissioners' meeting; mayor pro tem.—The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro tempore, to exercise his duties. (Rev., s. 2933; Code, s. 3794; R. C., c. 111, s. 10; C. S. 2633.)

Cross References.—As to veto power of mayor under Plan "A" of Municipal Government, see § 160-314; under Plan "B," see § 160-323. As to power of mayor pro tempore, see § 160-274.

Mayor's Power to Vote.—Ordinarily the office of mayor is of an executive or administrative character, and he is not permitted to vote except in cases where it is especially provided. Markham v. Simpson, 175 N. C. 135, 95 S. E. 106.

Powers of Mayor Pro Tem.—The appointment of a mayor pro tem vests him with all the powers of the mayor, including that of issuing warrants in criminal actions. State v. Thomas, 141 N. C. 791, 53 S. E. 522.

§ 160-13. Mayor's jurisdiction as a court.—The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the state, or under the ordinances of such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace. (Rev., s. 2934; Code, s. 3818; 1871-2, c. 195; 1876-7, c. 243; C. S. 2634.)

Cross References.—As to jurisdiction of a justice of the peace in criminal matters, see §§ 7-129 and 7-211. As to rules of practice before a justice, see § 7-149. As to fees allowed a justice, see § 7-134. As to jurisdiction of municipal recorder's court, see § 7-190. See also § 7-223. As to municipal-county courts, see § 7-240.

Jurisdiction of Mayor.—The legislature has power to grant to the chief officers of cities and towns all the jurisdiction which it could grant to judges of special courts under the constitution. State v. Pender, 66 N. C. 314.

"The duties of a mayor are to cause the laws of the city to be enforced, and to superintend inferior officers." State v. Thomas, 141 N. C. 791, 792, 53 S. E. 522.

The mayors of towns and cities have jurisdiction of the offense of violating town or city ordinances. State v. Wilson, 106 N. C. 718, 11 S. E. 254. They also have the same criminal jurisdiction within the corporate limits as a justice of the peace. Greensboro v. Shields, 78 N. C. 417. They occasionally have concurrent jurisdiction in such matters. State v. Cainan, 94 N. C. 880.

Jurisdiction as to Establishing Streets. — The Mayor's Court has jurisdiction of a case in which the controversy is whether or not a public street has been established, and whether or not a certain party obstructed it in violation of an ordinance. Such a controversy is not as to title to the land for if the street is established title is not material. Henderson v. Davis, 106 N. C. 88, 11 S. E. 573.

Proceedings in Mayor's Court Not a Bar to Prosecution in Higher Courts. — A conviction of violating a city ordinance punishing the disturbance of the good order and quiet of the town by fighting is not a bar to a prosecution by the State for an assault. State v. Taylor, 133 N. C. 755, 46 S. E. 5.

Statute Must Be Set Out.—In a trial before a mayor the statute or ordinance that the accused is prosecuted under must be set out, and the one he is prosecuted under conformed to. Greensboro v. Shields, 78 N. C. 417.

Punishment for Contempt.—In In re Deaton, 105 N. C. 59, 11 S. E. 244, it is decided that the power given justices of the peace by sec. 5-6, is extended to mayors by this section. But, in fact, the power to punish for contempt is inherent

in all courts and essential to their existence. State v. Aiken, 113 N. C. 651, 652, 18 S. E. 690.

Every court inherently possesses power to fine for contempt. As the mayor's court is "an inferior court" it possesses this power. In re Denton, 105 N. C. 59, 11 S. E. 244.

Warrant Must Set Forth Ordinance.—A warrant for violating a town ordinance, held bad for omitting to set forth the act of assembly by virtue of which the ordinance was passed, may be amended after verdict or payment of costs. Commissioners v. Frank, 46 N. C. 436, cited in notes in 35 L. R. A. 594; 39 L. R. A. 673.

Right of Removal.—One prosecuted before a mayor for violating a town ordinance is not entitled to a removal under section 7-147, for that section is applicable only to Justices of the Peace. Although the two officers exercise concurrent jurisdiction in some matters, they are distinct. State v. Joyner, 127 N. C. 541 37 S. E. 201.

Applied in State v. Peters, 107 N. C. 876, 12 S. E. 74; State v. Cainan, 94 N. C. 882, 882; State v. Smith, 103 N. C. 403, 9 S. E. 435.

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793; Board v. Henderson, 126 N. C. 689, 36 S. E. 158; School Directors v. Asheville, 137 N. C. 503, 509, 50 S. E. 279; Barnes v. Cherry, 190 N. C. 772, 130 S. E. 611.

§ 160-14. Enforce ordinances and penalties.—As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the city or town; to enforce penalties by issuing execution upon any adjudged violation thereof, and to execute the laws and rules that may be made and provided by the board of commissioners of the city or town for the government and regulation of the city or town; but in all cases any person dissatisfied with the judgment of the mayor may appeal to the superior court as in case of a judgment rendered by a justice of the peace. (Rev., s. 2935; Code, s. 3819; 1876-7, c. 243, s. 2; C. S. 2635.)

Cross References.—As to punishment for violation of an ordinance, see § 14-4. As to appeal from judgment rendered by a justice of the peace, see § 7-177 et seq., and also § 1-299. As to the adoption of ordinances, see § 160-270.

Superior Court's Jurisdiction Over Ordinances. — An offense against a city must be punished under the ordinances of the city, and the superior court has no jurisdiction. State v. White, 76 N. C. 15; State v. Threadgill, 76 N. C. 17. This is true if the city ordinance does not conflict with the general law. When there is a conflict the general law prevails, and the superior court has jurisdiction. Washington v. Hammond, 76 N. C. 33. The right of appeal to the superior court preserves the constitutional rights of one convicted in a mayor's court. State v. Brittain, 143 N. C. 668, 57 S. E. 352.

Cited in Guano Co. v. Tarboro, 126 N. C. 68, 70, 35 S. E. 231.

§ 160-15. May sentence to work on streets.—In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, the mayor before whom such judgment is entered may order and require such person, so convicted, to work on the streets or other public works until, at fair rates of wages, such person shall have worked out the full amount of the judgment and costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets. (Rev., s. 2937; Code, s. 3806; 1897, c. 270; 1899, c. 128; 1866-7, c. 13; C. S. 2636.)

A Fine is Treated as a Debt.—A fine or penalty imposed by a municipal ordinance is treated as a debt, and, under Art. 1, sec. 16, of the Constitution, a person from whom it is attempted to be collected is exempt from arrest, but he may be indicted and punished for the criminal offense of violation of the ordinance for which it is imposed, under the statute. State v. Earnhardt, 107 N. C. 789, 12 S. E. 426.

§ 160-16. Mayor certifies ordinances on appeal.—In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same. (Rev., s. 2936; 1899, c. 277; C. S. 2637.)

Cross Reference.—As to how ordinance is pleaded and proved, see §§ 160-272 and 8-5.

In General.—This section is construed with section 8-5 and a certificate or affidavit stating that the attached paper is a copy of the ordinance is sufficient to admit it in evidence, although it is not certified that it was in force at the time of the alleged violation. But anything other than strict compliance with this section is not commended. State v. Abernethy, 190 N. C. 768, 130 S. E. 619.

Place of Signature.—"The failure of the mayor to sign the certificate at the bottom does not render it invalid, for the place of the signature is not material. It may be at the top, or in the body, of the instrument, as well as at the foot. Burriss v. Starr, 165 N. C. 657, 81 S. E. 929. 'It is well settled in this State that when a signature is essential to the validity of an instrument, it is not necessary that the signature appear at the end, unless the statute uses the word "subscribe." Richards v. Lumber Co., 158 N. C. 54, 56, 73 S. E. 485; Devereux v. McMahon, 108 N. C. 134, 12 S. E. 902; Boger v. Lumber Co., 165 N. C. 557, 81 S. E. 784.'" State v. Abernethy, 190 N. C. 768, 770, 130 S. E. 619.

Records Kept by Clerk Evidence of Ordinance.—The records of the proceedings of the Board of Aldermen, kept by the town clerk, is competent evidence of town ordinances. State v. Irvin, 126 N. C. 89, 35 S. E. 430.

Part 3. Constable and Policemen.

§ 160-17. Constable to take oath of office.—The town constable shall, before some person authorized to administer oaths, take and subscribe to the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in a book with the oaths of the commissioners. (Rev., s. 2938; Code, s. 3808; R. C., c. 111, s. 20; C. S. 2638.)

Cross Reference.—As to oaths prescribed for public officers, see §§ 11-6, and 11-7.

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 320, 12 S. E. 202.

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793.

§ 160-18. Power and duties of constable.—As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct. Whenever any process or other notice is so directed as to authorize a township constable to execute the same a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for performance of his duties such as is required of township constables who execute civil process. (Rev., s. 2939; Code, ss. 3808, 3810; R. C., c. 111, s. 20; 1879, c. 266; 1897, c. 519; 1899, c. 168; 1907, c. 52, s. 1; C. S. 2639.)

Cross Reference.—As to powers, duties, bond, etc., of township constables, see § 151-1 et seq.

Process Must Be Directed to Constable.—The Court held

in Davis v. Sanderlin, 119 N. C. 84, 25 S. E. 815, that process could not be served by a constable outside of his town or city, where the process was directed to "any constable or other lawful officer of said county," and that to enable a constable of a city or town to serve court process, such process must be directed (addressed) to him, as required, not necessarily by name, but officially as the constable of his city or town. And the law is the same if a constable undertakes to execute process within the limits of the town or city. In all cases where constables undertake to execute process under this section they can do so only in those cases where the process is directed (addressed) to them as constables of such city or town. Forte v. Boone, 114 N. C. 176, 19 S. E. 632; Baker v. Brem, 126 N. C. 367, 370, 35 S. E. 630; Upper Appomattox Co. v. Buffalo, 121 N. C. 37, 27 S. E. 999.

Authority to Serve for Superior Court.—A constable has no authority to serve any paper for the superior court that is not process. Forte v. Poone, 114 N. C. 176, 19 S. E. 632.

Power to Arrest Restricted.—The powers conferred upon city and town constables are limited, in respect to arrests without warrant, to the territory embraced within the corporate boundaries; but when the constable is acting under a valid warrant from duly authorized officer, he may make arrests at any place within the county in which such city or town is situated. State v. Sigman, 106 N. C. 728, 11 S. E. 520.

In the absence of statutory authority, the power of a sheriff or other peace officer is limited to his own county, township, or municipality, and he cannot without a warrant make an arrest out of his own county, township, or municipality, where the person to be arrested is charged with the commission of a misdemeanor—beyond such limits his right to arrest is no greater than that of a private citizen. Wilson v. Mcoresville, 222 N. C. 283, 22 S. E. (2d) 907.

Same—Failure to Carry Prisoner before Magistrate for Investigation.—A town constable who fails to carry a drunk arrested without warrant before magistrate for investigation of charge but instead releases him from "lockup" upon his becoming sober is guilty of assault and battery. State v. Parker, 75 N. C. 249.

§ 160-19. Constable as tax collector.—The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the state of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds. (Rev., s. 2940; Code, s. 3809; R. C., c. 111, s. 21; C. S. 2640.)

Special Tax Collector Does not Effect Duty of Constable.—An act providing for the appointment of a special tax collector to collect taxes to pay a judgment against a town does not abridge the authority of the city to require the constable to collect the taxes, but only affords increased facilities for fulfilling the orders of the court without overtaxing existing collecting officers. Webb v. Beaufort, 88 N. C. 496.

Liable for Failure to Perform Duty.—A constable of a town appointed to collect taxes is liable for his failure to perform his duty. He cannot take advantage of any irregularity of form to avoid liability. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202.

§ 160-20. Policemen appointed.—The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe. (Rev., s. 2926; Code, s 3803; R. C., c. 111, s. 16; C. S. 2641.)

§ 160-21. Policemen execute criminal process.—A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff. (Rev., s. 2927; Code, s. 3811; C. S. 2642.)

Cross Reference.—As to arrest generally, see § 15-39 et seq.

In General.—Where a town charter provides for the appointment of a chief of police or marshal and declares that, in the execution of process, he shall have the same power, etc., which sheriffs and constables have, the service by such officer of a summons directed to "the sheriff of W. county or town constable of W. town" is valid. Lowe v. Harris, 121 N. C. 287, 28 S. E. 535.

Power to Arrest Limited.—The power of a police to arrest without a warrant is restricted to the corporate limits of the city, and an arrest out of the limits without a warrant for the breach of an ordinance is an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757. See also, Wilson v. Mooresville, 222 N. C. 283, 289, 22 S. E. (2d) 907.

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659. See §§ 14-224 and 15-45.

Arrest without a Warrant.—A police officer may arrest without warrant for violation of municipal ordinances, committed in his presence; but the offender must be taken before the mayor as soon as practicable, a warrant obtained and trial had. State v. Freeman, 86 N. C. 683. But to make an arrest out of the town limits he must do so under a warrant or by virtue of sections 15-40, 15-41. Martin v. Houck, 141 N. C. 317, 54 S. E. 291, otherwise the arrest will be an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757.

An instruction to the effect that police officers had a right to enter a cafe without a warrant and make whatever investigation they deemed necessary is held without error, since the officers have a right to enter a public place as invitees unless forbidden to enter therein, and further, officers may enter public or private property upon hearing a disturbance therein and make an arrest without a warrant to prevent a breach of the peace. State v. Wray, 217 N. C. 167, 7 S. E. (2d) 468.

Force Allowed in Making Arrests.—If an officer is resisted in making an arrest, he may use that degree of force which is necessary to the proper performance of his duty; and, after an accused person is arrested, the officer is justified in the use of such force as may be necessary, even to taking life, to prevent his escape, whether the offense charged is a felony or misdemeanor. He may take such precautions as handcuffing or tying the prisoner. State v. Sigman, 106 N. C. 728, 11 S. E. 520.

Authority Does Not Give Right to Kill or Injure One Charged of Misdemeanor.—When a person charged with a misdemeanor is fleeing from arrest, and an officer shoots him, such officer is guilty of assault. If death results the officer is guilty of murder if he intended to kill; manslaughter if unintentional. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757; State v. Sigman, 106 N. C. 728, 732, 11 S. E. 520.

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793.

Part 4. Planning Boards.

§ 160-22. Creation and duties.—Every city and town in the state is authorized to create a board to be known as the Planning Board, whose duty it shall be to make careful study of the resources, possibilities and needs of the city or town, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the municipality. The governing body of such city or town desiring to establish such local planning board shall appoint not less than three nor more than five on said board. (1919, c. 23, s. 1; C. S. 2643.)

Editor's Note.—In North Carolina, the beginning of municipal zoning is seen in the statute of 1919 authorizing cities and towns to create planning boards. This was followed in 1923 by the general zoning law, Pub. Laws, 1923, ch. 250, § 160-172 et seq. of the General Statutes. See 5 N. C. Law Rev. 240.

§ 160-23. Board to make reports.—The board shall make a report at least annually to the governing body of the city or town, giving information regarding the condition of the city or town, and any plans or proposals for the development of

the city or town and estimates of the cost thereof. (1919, c. 23, s. 2; C. S. 2644.)

§ 160-24. Expenses provided for.—The governing body of such city or town may appropriate to such local planning board such amount as they may deem necessary to carry out the purposes of its creation, and for the improvement of the municipality, and shall provide what sums, if any, shall be paid to said board as compensation. (1919, c. 23, s. 3; C. S. 2645.)

Part 5. General Qualification of Officers.

§ 160-25. Must be voters in town or city.—No person shall be mayor, commissioner, intendant of police, alderman or other chief officer of any city or town unless he shall be a qualified voter therein. (Rev., s. 2941; Code, s. 3796; 1870-1, c. 24, s. 3; C. S. 2646.)

Cross Reference.—As to removal when person unlawfully holds office, see § 1-515.

Effect of Statute after Election.—While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, since the case of Rex v. Richardson, 1 Burr., 539, decided by Lord Mansfield and followed by numerous others, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any pre-existing impediment affecting his capacity to hold the office. Ellison v. Raleigh, 89 N. C. 125, 127.

Applied in Foard v. Hall, 111 N. C. 369, 16 S. E. 420.

§ 160-26. Refusal to qualify and act.—Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town and the other half to the use of any person who will sue for the same. (Rev., s. 2942; Code, s. 3812; R. C., c. 111, s. 22; C. S. 2647.)

Cross Reference.—As to time for mayor elected under plans A, B, C, and D to qualify, see § 160-307.

Constitutionality.—The provisions of this section are not in conflict with Art. 1, sec. 17, of the Constitution. London v. Headen, 76 N. C. 72.

§ 160-27. Hold office until successor qualified.—Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner when there is any failure to make the annual election. (Rev., s. 2943; Code, s. 3792; R. C., c. 111, s. 8; C. S. 2648.)

Part 6. Reduction of Salaries.

§ 160-28. Of officers and employees notwithstanding legislative enactment. — Whenever the salary of any officer or employee of any county, city, town, or other municipality has been fixed by legislative enactment, the governing body of such county, city, town, or other municipality may reduce such salary by an amount not to exceed ten per cent of the salary as so fixed: Provided, this section shall not apply to salaries of teachers or other officers in the public schools. (1931, c. 429, s. 21.)

Art. 3. Elections Regulated.

§ 160-29. Application of law, and exceptions.—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Davidson, Edgecombe, Gaston, Lenoir, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson. (Rev., s. 2944; 1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; 1907, c. 165; Ex. Sess., 1908, c. 63; 1909, c. 365; 1931, c. 369; 1933, c. 102; 1935, c. 215, s. 1, c. 353; C. S. 2649.)

Local Modification.—Gaston, Town of Belmont: 1935, c. 161.

Cross References.—As to application of general election laws to cities and towns, see § 163-148. As to primaries in municipalities operating under Plan C of the Act of 1917, see § 160-335.

Editor's Note.—The Act of 1931 struck out Columbus County formerly appearing in this section.

Public Laws 1933, c. 102, omitted the town of Shelby, from the list of excepted places.

Public Laws of 1935, chapter 215, omitted "Mitchell" from the list of counties. Chapter 253 added the town of "Graham" to the excepted list.

Cited in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167.

§ 160-30. When election held. — In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter. (Rev., s. 2945; 1901, c. 750, s. 19; 1907, c. 165; C. S. 2650.)

Local Modification.—Harnett: C. S. 2650; Harnett, Town of Dunn: 1925, c. 67; Mitchell, Town of Spruce Pine: 1935, c. 215.

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167.

§ 160-31. Polling places. — There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city. (Rev., s. 2946; 1901, c. 750, s. 2; C. S. 2651.)

Local Modification.—Alamance, Town of Graham: 1943, c. 591.

Cross Reference.—See also, § 163-163.

In General.—The general law clearly contemplates that the polling place should be fixed by the governing authorities of the city or town; and these places are, as a rule, of the substance (McCrary on Elections, sec. 141) and should be established and fully advertised. Hendersonville v. Jordan, 150 N. C. 35, 38, 63 S. E. 167.

§ 160-32. Registrars appointed.—The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place. (Rev., s. 2947; 1901, c. 750, s. 5; 1903, c. 613; C. S. 2652.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-33. Registrars take oath of office.—Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faith-

fully perform the duties of his office as registrar. (Rev., s. 2948; 1901, c. 750, s. 6; C. S. 2653.)

Cross Reference.—As to oath taken by registrars and judges of elections, see § 163-164.

In General. — Even if no oath is administered to the elector or the registrar, the registration must be accepted as the act of a public officer. State v. Nicholson, 102 N. C. 465, 9 S. E. 545.

Freeholders Not Required.—The registrars are not required to be freeholders. Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167.

§ 160-34. Registration of voters.—It shall be the duty of the board of commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided. (Rev., c. 2949; Code, s. 3795; 1901, c. 750, s. 3; C. S. 2654.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

Cross Reference.—As to qualification and registration of voters, see N. C. Constitution, Art. VI, §§ 2 and 3, and § 163-29 et seq.

Qualified Voter.—A "qualified voter" is one duly registered. Southerland v. Goldsboro, 96 N. C. 49, 1 S. E. 760.

When a town charter provides for registration biennially, one registering as required by the charter answers the requirement, and should be allowed to vote in all city elections. In case a registration is called for by the corporate authorities notice must be given as provided by the preceding section and failure to give such notice will not give the city authorities power to deprive one of the right to vote under his regular registration. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489.

In General.—The words "general elections" refer not to an election purely local, but to one held throughout the State, when the books are required to be kept open for twenty days. If it was intended to refer to municipal elections, the Legislature would not have used the word "general," but the word "regular," the former word being chosen as having a definite and well understood meaning and as contradistinguished from "local" or "municipal." Hardee v. Henderson, 170 N. C. 572, 574, 87 S. E. 498.

Under this statute voters at municipal elections must have the same qualifications as are required in general elections, i. e., in elections for state and county. State v. Viele, 164 N. C. 122, 124, 80 S. E. 408.

How Notice Given.—"In the case of Lawson v. Ry. Co., 30 Wis., 597, it was held: 'Under a statute requiring the notice of election to be given by the board of supervisors of a town, it may be given by order of the board signed only by the clerk.'" Briggs v. Raleigh, 166 N. C. 149, 154, 81 S. E. 1084.

Cited in Gower v. Carter, 195 N. C. 697, 143 S. E. 513.

§ 160-35. Notice of new registration.—In the event a new registration is ordered the board of commissioners shall give thirty days notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town. (Rev., s. 2950; 1901, c. 750, s. 4; C. S. 2655.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-36. Registration books revised. — Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or precinct and still residing therein, without requiring such electors to be registered anew. (Rev., s. 2951; 1901, c. 750, s. 6; C. S. 2656.)

§ 160-37. Time for registration.—Each registrar shall, between the hours of nine o'clock a. m. and five o'clock p. m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p. m. of each Saturday during such registration period and shall be closed for registration on the second Saturday before each election. (Rev., s. 2952; 1901, c. 750, s. 6; C. S. 2657.)

Editor's Note.—This section was intended for the registration of new voters and not for the registration of all the voters. Section 163-31 provides for registration of all the voters. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498.

Section Only Directory.—"The fact that the registration book was not kept open during the whole prescribed period, on the Saturday before the election, cannot be allowed to render the election void, when it was kept open for inspection up to 2 p. m., and no one was denied the opportunity of examining it or sought it afterwards. This does not vitiate the election." State v. Nicholson, 102 N. C. 465, 476, 9 S. E. 545.

The two propositions settled by Hill v. Skinner, 169 N. C. 405, 86 S. E. 351, were these:

1. While the law providing for notices of election and the registration of voters is mandatory as to the officers required to give such notice, it is only directory where a fair election has been held and voters were not deprived of their right of suffrage, in which case the failure to give notice is not ground for disturbing the election where the result could not have been otherwise.

2. Though registration books which by law should have been kept open twenty days were kept open only for eight days, the election will not be set aside where there was an extremely large registration and it did not appear that any voters were deprived of their rights or that a longer period of registration would in any way have affected the result. Hardee v. Henderson, 170 N. C. 572, 574, 87 S. E. 498.

§ 160-38. Registration on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote. (Rev., s. 2953; 1901, c. 750, s. 8; C. S. 2658.)

§ 160-39. Books open for challenge.—On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books. (Rev., s. 2955; 1901, c. 750, s. 7; C. S. 2659.)

§ 160-40. Practice in challenges.—When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "Challenged," and the registrar shall appoint a time and place, on or before the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall

erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the general assembly. (Rev., s. 2956; 1901, c. 750, ss. 7, 9; C. S. 2660.)

§ 160-41. Judges of election.—The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the constitution and laws of the state. (Rev., s. 2958; 1901, c. 750, s. 7; C. S. 2661.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

Cross Reference.—As to oath taken by judges of election, see § 163-164.

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167.

§ 160-42. Vacancies on election day.—If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners. (Rev., s. 2954; 1901, c. 750, s. 20; C. S. 2662.)

§ 160-43. Judges superintend election. — The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners. (Rev., s. 2959; 1901, c. 750, s. 7; C. S. 2663.)

§ 160-44. When polls open and close.—The polls shall be open on the day of election from six-thirty o'clock A. M. until six-thirty o'clock P. M. Eastern Standard Time, and no longer; and each person whose name may be registered shall be entitled to vote. (Rev., s. 2960; 1901, c. 750, s. 10; 1941, c. 222; C. S. 2664.)

§ 160-45. Who may vote.—All qualified electors, who shall have resided for four months immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers. (Rev., s. 2961; 1901, c. 750, s. 9; C. S. 2665.)

Cross Reference.—As to qualification of voters, see N. C. Constitution, Art. VI, §§ 2 and 3.

Qualification for Municipal Suffrage.—Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465; State v. Viele, 164 N. C. 122, 80 S. E. 408; Gower v. Carter, 194 N. C. 293, 139 S. E. 604.

§ 160-46. Ballots counted.—When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballots shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared. (Rev., s. 2963; 1901, c. 750, s. 13; C. S. 2667.)

§ 160-47. Registration books, where deposited.—Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners. (Rev., s. 2957; 1901, c. 750, s. 11; C. S. 2668.)

§ 160-48. Board of canvassers.—The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the close of the election, declare the result thereof. (Rev., s. 2964; 1901, c. 750, ss. 13, 14; C. S. 2669.)

§ 160-49. Meeting of board of canvassers.—The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the county board of elections. (Rev., s. 2965; 1901, c. 750, s. 15; C. S. 2670.)

§ 160-50. Board determines result; tie vote.—The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each precinct for each office, the name of each person voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to pass upon judicially all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the general assembly. (Rev., s. 2966; 1901, c. 750, ss. 16, 17; C. S. 2671.)

Cross Reference.—As to declaration of election and tie vote in county elections, see § 163-91.

In General.—In an action in quo warranto to try title to an office the burden of proof is on the plaintiff to show that the holder of the office has not been duly elected by qualified voters. This is not shown when after rejecting certain votes there is a tie. See Gower v. Carter, 194 N. C. 293, 139 S. E. 604.

§ 160-51. Notice of special election.—No special election shall be held for any purpose in any

county, township, city or town unless at least thirty days notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town. (Rev., s. 2967; 1901, c. 750, s. 24; C. S. 2672.)

In General.—Where the election for the issue of bonds by a township for road purposes has been held in all respects in accordance with the provisions of a statute, at the usual polling places, etc., they will not be declared invalid at the instance of a purchaser, on the ground that the full period of the thirty-day notice of the time and place of the election had not been advertised as set out in this section when there is no suggestion of fraud and full publicity had been given by newspapers of large local circulation, the election had been broadly discussed beforehand, and it does not appear that any voter is objecting to the bonds or has been deprived of his right to vote. Board v. Malone, 179 N. C. 10, 101 S. E. 500.

Art. 4. Ordinances and Regulations.

§ 160-52. General power to make ordinances.— The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalties. (Rev., s. 2923; Code, ss. 3799, 3804; R. C., c. 111, ss. 12, 17; C. S. 2673.)

Cross References.—As to powers to pass ordinances under the Act of 1917, see § 160-200, subsection 7. As to enforcement of municipal ordinances, see §§ 160-13, 160-14, 160-18, 160-21 and 14-4.

Editor's Note.—To exhaust all the illustrations of the general application of the principle of this section which are found in the reports would be too extensive for a work of this kind, but many and varied illustrations are given in this note with no attempt to exhaust them. Reference should be had to digest citations for complete treatment.

In General.—"In construing this and similar legislation elsewhere, the courts have very generally held that the established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations may not be unreasonable or unduly discriminative nor manifestly oppressive and in 'derogation of common right.'" State v. Burbage, 172 N. C. 876, 878, 89 S. E. 795.

It is not necessary now to aver an authority to pass the ordinance conferred by a general and public law, as it was when that authority was derived under a special act of incorporation. State v. Merritt, 83 N. C. 677, 679.

Construction against City.—A doubt as to whether an ordinance is invalid, as conflicting with individual rights, should be resolved against the city. Slaughter v. O'Berry, 126 N. C. 181, 35 S. E. 241, 48 L. R. A. 442.

Courts Slow to Question Discretion of Ordinance. — By this section discretionary power is vested in the city authorities, and the courts will be slow to interfere when the ordinance is not contrary to laws of the state and no fraud, dishonesty or oppression is charged. State v. Austin, 114 N. C. 855, 19 S. E. 919. Or unless their action is so clearly unreasonable as to amount to oppression and manifest abuse of their discretion, and then the power of the court will be exercised with great caution and only in a clear case. Jones v. North Wilkesboro, 150 N. C. 646, 64 S. E. 866.

Ordinances Operative until Repealed. — Succeeding boards of commissioners are deemed to act subject to the provisions of ordinances passed by their predecessors in authority, until they see fit to repeal them. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 723.

General Laws Prevail over Ordinances. — "The true principle is that municipal by-laws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws the by-laws and ordinances must give way." Washington v. Hammond, 76 N. C. 33, 36; State v. Stevens, 114 N. C. 873, 19 S. E. 861.

Classification of Occupations. — The general question of the right of classification was very fully considered by the Supreme Court in State v. Davis, 157 N. C. 648, 73 S. E. 130, and Smith v. Wilkins, 164 N. C. 135, 80 S. E. 168, and the doctrine was approved that the General Assembly or municipal corporation has the power to classify the different occupations, provided the classification is not unreasonable and oppressive, and that usually the extent to which the power will be exercised is for the General Assembly or the governing body of the municipality. State v. Davis, 171 N. C. 809, 813, 89 S. E. 40.

An ordinance of a town, authorized by statute, imposing a fine of $25 upon drug stores for selling cigars, etc., on Sunday, and a fine of $5 for the same offense upon restaurants, cafés, and lunch stands, declaring the same to be a misdemeanor, relates to distinct and easily severable occupations, and in the absence of any finding that those engaged in them come in competition with each other, the ordinance will not be declared unconstitutional and invalid upon the ground that it is discriminatory against the owners of drug stores. State v. Davis, 171 N. C. 809, 89 S. E. 40.

Closing Business on Sundays.—"It is against the public policy of the State that one should pursue his ordinary business calling on Sunday, and it is very generally understood not only that ordinary business pursuits may be regulated, but altogether prohibited on Sunday." State v. Medlin, 170 N. C. 682, 86 S. E. 597; State v. Burbage, 172 N. C. 876, 878, 89 S. E. 795.

An ordinance of a town may, under the provisions of this section prohibit the opening of all places of business on Sunday, except drug stores; and it is not an unreasonable regulation, under the police power of the town, inasmuch as drug stores are open all day Sunday, for the governing authorities to further provide that they may sell articles of common use which are quasi necessities to many, such as mineral waters, soft drinks, cigars and tobacco, only, between certain hours of that day. State v. Medlin, 170 N. C. 682, 86 S. E. 597.

Power to Close Business at Certain Hours. — The right of a city to restrict hours of business is restricted to cases when it is for the protection and benefit of the public. It has no power to require a merchant to close his store at an early hour because other merchants so desire to close all stores at a regular early hour. State v. Ray, 131 N. C. 814, 42 S. E. 960.

A city has power to restrict the use of property in so far as it may injure others, but it has no power to provide against a person sitting in his place of business after a time prescribed for closing it. State v. Thomas, 118 N. C. 1221, 24 S. E. 535.

Regulation of Gasoline Stations.—That the regulation of gasoline filling or gasoline storage stations comes within the police power of the State is freely conceded; and that such power is specifically conferred upon the plaintiff is likewise conceded. Wake Forest v. Medlin, 199 N. C. 83, 85, 154 S. E. 29.

It is not necessary to the validity of an ordinance regulating the establishment of gasoline filling stations in a municipality that it substantially comply with the provisions of §§ 160-172 et seq., since the regulation of filling stations comes within the state police power which has been conferred on municipalities by the general law. Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585.

Power that May Be Conferred on Constable.—An ordinance could not constitutionally confer upon a constable, a ministerial officer, the power to arrest and imprison for a penalty incurred or for any other violation of law, except it may be for safe custody. Men may not be arrested, imprisoned and released upon the judgment or at the discretion of a constable or any one else. State v. Parker, 75 N. C. 249, 250.

Insulting an Officer.—The commissioners of a town have no authority to make it unlawful for one to insult an officer or police while in the discharge of his duty, nor to provide a fine for one convicted of such offense. State v. Clay, 118 N. C. 1234, 24 S. E. 492.

Ordinance against Hogs at Large. — A town ordinance declaring that "all hogs, etc., found running at large within the town" shall be taken up or impounded, is valid, whether the owner resides within the corporate limits of such town or not. Rose v. Hardie, 98 N. C. 44, 4 S. E. 41. See sec. 68-24 and notes.

Parking Fee Not Authorized.—This section does not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389. But see § 160-

200, subsection 31, which was amended by Public Laws 1941, cc. 153 and 319, after the decision in this case.

Applied in State v. Stevens, 114 N. C. 873, 876, 19 S. E. 861.

§ 160-53. Power to establish and regulate markets.—The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof. (Rev., s. 2928; Code, s. 3801; R. C., c. 111, s. 14; 1879, c. 176; C. S. 2674.)

Cross Reference.—As to market houses, their establishment and maintenance, see also, §§ 160-167 and 160-228.

Section Liberally Construed.—"The courts have been disposed to construe much more liberally grants to municipalities of authority to exercise a limited control over the markets by prescribing reasonable regulations either for the protection of the health or the comfort or convenience of its people, than laws that purport to invest such corporations with more extraordinary powers." State v. Summerfield, 107 N. C. 895, 898, 12 S. E. 114.

Contract for Erection of Market.—A contract between a city and individuals for the erection by the individuals of a market house, which shall be under the control of the city, and which provides for a maximum rental for stalls therein, and which declares that the city shall pay a rental equal to the taxes on the property, until the enterprise is on a paying basis, and which permits the city, at its option, to purchase the property, is not in conflict with the Constitution, and does not violate any principle of public policy. State v. Perry, 151 N. C. 661, 65 S. E. 915.

Lease of Building for Market Purposes.—If a municipal corporation has power under its charter to build a market house, it has power also to lease a building for market purposes. Wade v. New Bern, 77 N. C. 460.

Prohibiting Sale of Merchandise outside of Market.—A town or city having the power under its charter to regulate its markets, and prescribe at what places and in what manner in the town market things shall be sold, may prohibit by an ordinance the sale of fresh meats within the corporate limits outside of the market house, and may impose a penalty for a violation of the ordinance. State v. Pendergrass, 106 N. C. 664, 10 S. E. 1002, cited in notes in 24 L. R. A. 586; 38 L. R. A. 312; Angels v. Winston-Salem, 193 N. C. 207, 136 S. E. 489.

Extent of Control over Market when Leased.—The occupant of a market stall, under a license subject to revocation under the provision of the city ordinances, acquires no right in the soil, as under a lease, and no additional right of possession, from the fact that he has been allowed to hold over because there was no annual renting of stalls on the day prescribed by the ordinance; but he is an occupant at the absolute pleasure and discretion of the licensor. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 273, 32 L. R. A. 706.

Power to Require Weighing of Oats. — An ordinance adopted by the intendant and commissioners of the city of Raleigh, requiring oats to be weighed by the public weigh master before being offered for sale, and imposing a penalty for its violation, is not unconstitutional, but valid. Raleigh v. Sorrell, 46 N. C. 49.

Requirement that Cotton Be Weighed—Fee.—A town ordinance providing that the commissioners shall elect a cotton-weigher who shall receive eight cents compensation for every bale weighed by him, one-half to be paid by the buyer and the other by the seller, and prescribing a penalty for buying or selling in the corporate limits without having it weighed by such cotton-weigher, is a valid and reasonable regulation. State v. Tyson, 111 N. C. 687, 16 S. E. 238.

Cited in State v. Austin, 114 N. C. 855, 864, 19 S. E. 919 by Avery, J., dissenting.

§ 160-54. Repair streets and bridges.—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary. (Rev., s. 2930; Code, s. 3803; R. C., c. 111, s. 16; C. S. 2675.)

I. Editor's Note.
II. Use, Repair and Improvement.
  A. Use.
  B. Duty to Repair.
  C. Liability for Damage to Property.
III. Grade Crossings, Viaducts, etc.
IV. Liability for Defects or Obstructions Causing Injury.

Cross References.

As to power of utilities commission to abolish grade crossings, see § 62-50. As to power of city to acquire land by purchase or condemnation for street purposes, see §§ 160-204, 160-205, and § 160-200, subsection 11. As to street and sidewalk improvement, see also, § 160-78 et seq., and § 160-222 et seq. As to maintenance of streets constructed by the state highway and public works commission in towns of less than three thousand, see § 136-18, subsection g.

I. EDITOR'S NOTE.

This section is so general and the subject so vast that it would be impracticable to include within the annotations all the decisions that might fairly be said to be general applications. However, a considerable number of the illustrative cases are included, and reference should be had to the digest citations for a complete and comprehensive treatment of all the cases.

II. USE, REPAIR AND IMPROVEMENT.

A. Use.

Use for Other Purposes.—"While it is the duty of a municipal corporation to use reasonable care to keep its streets in a safe condition to drive upon, it has the right to devote the sides of the streets to other useful public purposes, provided it leaves an unobstructed driveway of ample width for the passage of teams. It may construct sidewalks of a higher grade and gutters of a lower grade than the driveway, place curbing on the line of the gutters, erect hydrants and authorize the erection of hitching posts and stepping stones as well as poles to support the wires of telegraph and telephone lines." Dougherty v. Horseheads, 159 N. Y. 154, 53 N. E. 799, quoted in Rollins v. Winston-Salem, 176 N. C. 411, 413, 97 S. E. 211.

B. Duty to Repair.

Rule Stated.—The duty of keeping the streets repaired devolves upon the city functioning through the proper officials.

In Bunch v. Edenton, 90 N. C. 531, the court said that it is the positive duty of the corporate authorities of a town to keep the streets, including the sidewalks, in "proper repair," that is, in such condition as that the people passing and repassing over them might at all times do so with reasonable ease, speed and safety. And proper repair implies also that all bridges, dangerous pits, embankments, dangerous walls, and like perilous things very near and adjoining the streets, shall be guarded against by proper railings and barriers. Positive nuisances on or near the streets should be forbidden under proper penalties, and, when they exist, should be abated. Fitzgerald v. Concord, 140 N. C. 110, 112, 52 S. E. 309.

Thus the rights, powers, and liability of the municipality extend equally to the sidewalk as to the roadway, for both are parts of the street (Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767); and towns and cities are held to the same degree of liability for failure to repair sidewalks as to repair the other part of the street. Bunch v. Edenton, 90 N. C. 431; Russell v. Monroe, 116 N. C. 720, 726, 21 S. E. 550, 47 Am. St. Rep. 823; Neal v. Marion, 129 N. C. 345, 40 S. E. 116; Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264; Hester v. Traction Co., 138 N. C. 288, 291, 50 S. E. 711.

This duty extends to streets dedicated and accepted by the city but not to streets or portions of streets not accepted by the city although dedicated by some individual. Hughes v. Clark, 134 N. C. 457, 46 S. E. 956, 47 S. E. 462.

Commissioners' Duty.—This section does not impose on the commissioners the duty to personally work the streets but it does impose on them a duty to keep them in repair. Although the power allows discretion, the commissioners are subject to indictment for neglecting to keep public streets in repair. State v. Dickson, 124 N. C. 871, 32 S. E. 961.

Contracts with and Duties of Public Service Companies

to Repair.—A city may by contract with a street railroad provide for the repair of the street between the tracks, as a consideration for the franchise, and the railroad will be required to repair and keep its part in the same condition as the rest of the street. New Bern v. Atlantic, etc., R. Co., 159 N. C. 542, 75 S. E. 807.

Pipes, conduits, rails, and structures erected or constructed in the city streets under a general grant of authority to use the streets therefor are subject to the paramount power and duty of the city to repair, alter, and improve the streets, as the city, in its discretion, may deem proper, and to construct therein sewers and other improvements for the public benefit. Raleigh v. Carolina Power Co., 180 N. C. 234, 236, 104 S. E. 462.

C. Liability for Damage to Property.

General Rule.—The question was first considered by the Supreme Court in 1848 and exhaustively discussed by Judge Pearson, and the conclusion reached that where a municipal corporation has authority to grade its streets it is not liable for consequential damage, unless the work was done in an unskillful and incautious manner. Meares v. Wilmington, 31 N. C. 73. This case has been approved and followed in many adjudications of the court in more recent years. Salisbury v. Western North Carolina Railroad, 91 N. C. 490; Wolfe v. Pearson, 114 N. C. 621, 628, 19 S. E. 264; Wright v. Wilmington, 92 N. C. 160; Tate v. Greensboro, 114 N. C. 392, 397, 19 S. E. 767; Brown v. Electric Co., 138 N. C. 533, 537, 51 S. E. 62; Jones v. Henderson, 147 N. C. 120, 60 S. E. 894; Ward v. Commissioners, 146 N. C. 534, 538, 60 S. E. 418; Small v. Edenton, 146 N. C. 527, 60 S. E. 413. In Thomason v. Seaboard, etc., R. Co., 142 N. C. 300, 307, 55 S. E. 198, the subject is referred to as "the settled doctrine of this State." Dorsey v. Henderson, 148 N. C. 423, 425, 62 S. E. 547.

A discretionary power is conferred by this section and will not be interferred with unless abused. "In numerous and repeated decisions the principle has been announced and sustained that the courts may not interfere with discretionary powers conferred on these local administrative boards for the public welfare unless their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of discretion." Munday v. Newton, 167 N. C. 656, 658, 83 S. E. 695.

Right of Abutting Owner to Remove Nuisance.—When a street is repaired or changed by a city so as to damage an owner of the fee in the street or to cause a nuisance the owner has no right to change the condition of the street so as to remove the nuisance or lesson the damage, and such act will subject him to indictment. State v. Wilson, 107 N. C. 865, 12 S. E. 320.

However, it may be pointed out incidentally that when an unauthorized person does an act of repair to streets that might have been done by a city, a ratification by the city will relieve him of any liability as a trespasser. Wolfe v. Pearson, 114 N. C. 621, 628, 19 S. E. 264.

Shade Trees Cut While Grading.—The discretionary power of repairing and maintaining a street is vested in the commissioners of a city, and an action for damages caused by cutting of trees in the street, by them, will not lie in favor of an abutting property owner, in the absence of negligence, malice or wantonness. Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767.

III. GRADE CROSSINGS, VIADUCTS, ETC.

Power to Regulate.—The right of the city government, both under its police powers and the several statutes applicable to require railroads to construct bridges or viaducts, along streets running over their tracks, is fully established in this jurisdiction and is recognized in well-considered cases elsewhere. Atlantic, etc., R. Co. v. Goldsboro, 155 N. C. 356, 71 S. E. 514; Cleveland v. Augusta, 102 Ga. 233, 29 S. E. 584; Northern P. R. Co. v. Minnesota, 208 U. S. 583, 28 S. Ct. 341, 52 L. Ed. 630. Powell v. Seaboard Air Line R. Co., 178 N. C. 243, 245, 100 S. E. 424.

In fact it is apparent that municipalities through the power delegated to them by the State may make such regulations respecting railroad crossings as in their discretion may be necessary so long as they proceed in accordance with the law, and this discretion will not be interferred with unless manifestly abused.

A city has both inherent power and authority by general statute over its streets for the protection of its citizens, which is not taken from it by section 62-50, conferring like powers upon the Utilities Commission. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17.

The exercise by the State of its power to provide for the safety of its citizens with respect to grade crossings of its streets by a railroad company is within its police powers, and may be exercised by municipal corporations under authority conferred on them, and not being delegated to the National Government, it is not affected by Federal legislation upon Interstate Commerce or the Federal Transportation Act. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17.

This holding was affirmed in 266 U. S. 178, 45 S. Ct. 51, 69 L. Ed. 231.

A city charter giving a city specific authority to erect gates at a railroad crossing, or to require the railroad company to place a flagman there to warn pedestrains, with provision that such authority shall not be exclusive, does not limit the authority of the city therein, or take from it the inherent and statutory right to require that the railroad company construct an underpass for the protection of the public. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17.

In 2 N. C. Law Rev. 104, referring to the case immediately preceding it was said: "The result of the decisions, so far as the question of substantive law is concerned, is that a municipal corporation may, under its charter or by general law, by proper ordinance, require a railroad company to construct, at its own expense, such crossings for the streets as will best promote the public safety in the use of the streets; that the nature of the crossing to be constructed is within the reasonable discretion of the municipal authorities, and that the presumption is in favor of the validity of the city ordinance."

Cited in Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695.

IV. LIABILITY FOR DEFECTS OR OBSTRUCTIONS CAUSING INJURY.

Warranty of Condition of Streets.—While it is the duty of the city to keep its streets in such repair that they are reasonably safe for public travel, it is not an insurer of such condition nor does it warrant that they shall at all times be absolutely safe. A city is only responsible for a negligent breach of duty. Fitzgerald v. Concord, 140 N. C. 110, 113, 5 S. E. 309.

This liability does not exist merely because of the defect but because the defect which was the result of the negligent performance of duty caused an injury to a person, or his property, to whom the city owed the duty of repair. Ed. Note.

Necessity for Notice of Defect.—Since the liability depends upon the negligence of the city, it is evident that before such negligence can exist the city must have had notice of the defect or with the exercise of reasonable diligence would have had notice of it. Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675.

Plaintiff Must Prove Notice.—So in order to establish responsibility, it is not sufficient to show that a defect existed and an injury has been caused thereby. It must be further shown that the officers of the town "knew, or by ordinary diligence might have discovered, the defect, and the character of the defect was such that injuries to travelers therefrom might reasonably be anticipated." Fitzgerald v. Concord, 140 N. C. 110, 113, 52 S. E. 309; Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675.

Implied Notice.—When observable defects in a highway have existed for a time so long that they ought to have been observed, notice of them is implied. Fitzgerald v. Concord, 140 N. C. 110, 113, 52 S. E. 309.

Same—Question for Jury.—On the question of notice implied from the continued existence of a defect, no definite or fixed rule can be laid down as to the time required and it is usually a question for the jury on the facts and circumstances of each particular case. Fitzgerald v. Concord, 140 N. C. 110, 114, 52 S. E. 309.

Notice of Latent Defects.—Notice of latent defects should not be so readily presumed from their continuance as open and obvious defects. Fitzgerald v. Concord, 140 N. C. 110, 113, 52 S. E. 309.

Obstructions.—A city does not have discretionary power to put obstructions in its streets, and it is liable for its negligence in putting or leaving obstructions in the street to one injured by such obstruction. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466.

Same—Bridges Must Be as Wide as Street.—A city under the authority of this section in building and repairing streets has no right in building a bridge to obstruct the street with concrete pilasters, and for injuries caused by such obstruction it is liable. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466.

Same—Joint Liability with Private Individual.—If any person shall unlawfully erect an obstruction or nuisance in the streets of a city, and the town authorities shall permit it to remain an unreasonable length of time, the town and the tort-feasor are jointly and severally liable to the traveler for an injury resulting therefrom, without any fault on his part. The question of primary and secondary liability is for the offending parties to adjust between themselves. Dillon v. Raleigh, 124 N. C. 184, 187, 32 S. E. 548.

Independent Contributory Cause.—When two causes com-

bine to produce an injury to a traveler on a highway, both of which are in their nature proximate—the one being a culpable defect in the highway, and the other some occurrence for which neither party is responsible—the municipality is liable, provided the injury would not have been sustained but for such defect. Dillon v. Raleigh, 124 N. C. 184, 188, 32 S. E. 548.

§ 160-55. May abate nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens. (Rev., s. 2929; Code, s. 3802; R. C., c. 111, s. 15; C. S. 2676.)

Cross References.—As to zoning laws, see § 160-172 et seq. As to protection of water supply, see § 130-108 et seq. As to regulation of privies, see § 130-147 et seq. As to abatement of menaces to health, see §§ 160-234 and 130-25 et seq.

Liberal Construction of Authority.—Authority to abate nuisances is liberally construed by the courts for the benefit of the citizens. State v. Beacham, 125 N. C. 652, 654, 34 S. E. 447.

Encroachment on Street by Buildings.—Any permanent structure or purpresture which materially encroaches upon a public street and impedes travel is a nuisance per se, and may be abated, notwithstanding space is left for the passage of the public, and a failure on the part of a city to abate it in a reasonable time will make it liable as a joint tort-feasor. Graham v. Charlotte, 186 N. C. 649, 663, 120 S. E. 466.

Health Ordinances.—A city has power to require that a dealer in second-hand clothing turn them over to the city to be disinfected and the exercise of the power can not be considered as a restriction of an owner over his property, but is only the proper and lawful use of authority to protect the health of its citizens from diseases. Rosenbaum v. New-Bern, 118 N. C. 83, 24 S. E. 1.

Hog Pens.—"The Board of Town Commissioners could forbid the keeping of hog pens in the town to such an extent as they might deem necessary to prevent nuisances to the public, and, indeed, they could have done so without the express authority. 2 Kent. Com., 340; 1 Dillon Mun. Corp. (4 Ed.), sec. 369." State v. Hord, 122 N. C. 1092, 1094, 29 S. E. 952.

Indecent Language or Cursing.—An ordinance which forbids the use of "abusive or indecent language, cursing, swearing or any loud or boisterous talking, holloing or any other disorderly conduct" within the corporate limits of a town, and imposes a fine of twenty-five dollars for a violation of it, may be enacted by proper authorities under the powers granted to them in the general law, especially under this section and such an ordinance is reasonable. State v. Cainan, 94 N. C. 880, 883; State v. McNinch, 87 N. C. 567; State v. Merritt, 83 N. C. 677. State v. Earnhardt, 107 N. C. 789, 790, 12 S. E. 426.

Storage of Gasoline.—See Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838.

Liability for Failure to Abate.—A municipal corporation is not civilly liable for the failure to pass ordinances to preserve the public health or otherwise promote the public good nor for any omission to enforce the ordinances enacted under the legislative powers granted in its charter, or to see that they are properly observed by its citizens, or those who may be resident within the corporate limits. Harrington v. Greenville, 159 N. C. 632, 635, 75 S. E. 849; Hull v. Roxboro, 142 N. C. 453, 55 S. E. 351, 12 L. R. A. (N. S.) 638; Bunch v. Edenton, 90 N. C. 431.

But a city is liable in damages for failure to abate in a reasonable time a nuisance that amounts to an obstruction in a street. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548.

Cited in State v. Austin, 114 N. C. 855, 864, 19 S. E. 919 by Avery, J., dissenting; Jones v. Greensboro, 124 N. C. 310, 311, 32 S. E. 675.

Art. 5. Municipal Taxation.

§ 160-56. Commissioners may levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes an ad valorem tax not exceeding the limitation expressed in § 160-402, and one dollar on each poll, on all persons and property within the corporation, which may be liable to taxation for state and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the general assembly; and on all dogs, and on swine, horses and cattle, running at large within the town. (Rev., s. 2924; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51; C. S. 2677.)

Cross References.—As to listing and collection of municipal taxes, see § 160-261 et seq. As to prohibition against municipality levying income and inheritance taxes, see § 105-247. As to power to license pawnbrokers, see §§ 91-2 and 105-50.

Application Where Charter Indefinite.—Since this section is applicable to all cities and towns except where their charters otherwise provide, a town whose charter provides that it shall have all the privileges and rights allowed to the most favored town in the state, will be presumed to have the power to levy taxes under this section although the charter is indefinite. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202.

Same—When Only Restrictive.—Where a town charter is not passed in accordance with Art. II, section 14 of the Constitution the charter is valid but such town cannot levy any tax under said charter, although the charter may contain restrictions on the power to tax that are valid, under Art. VII, section 4 of the Constitution. The town may for necessary expense levy taxes under this section subject to the restrictions of the charter. Cotton Mills v. Waxhaw, 130 N. C. 293, 41 S. E. 488.

When There Is No Special Statute.—When there is no provision for taxes in the charter of a town, taxes necessary to the expenses of the town may be levied under this section. If there is a provision in the charter for levying taxes, all taxes levied will be presumed to conform to the law and the constitution Art. VII, section 7. State v. Irvin, 126 N. C. 989, 35 S. E. 430.

Taxes on Traders and Professions.—Since the enactment of this section taxes laid upon trades and professions under the name of privilege taxes have been laid expressly for revenue, and such taxes are authorized by this section. State v. Irvin, 126 N. C. 989, 994, 35 S. E. 430.

The power to levy a tax on all trades includes "any employment or business embarked into for gain or profit." Lenoir Drug Co. v. Lenoir, 160 N. C. 571, 76 S. E. 480.

A municipal corporation is empowered to tax trades or professions carried on or enjoyed within the city, unless otherwise provided by law, but its classification of trades and professions for taxation must be based upon reasonable distinctions and all persons similarly situated must be treated alike. Kenny Co. v. Brevard, 217 N. C. 269, 7 S. E. (2d) 542.

Unless inconsistent with a special law or charter of a city a tax may be levied under this section, on a person engaging in any trade within the city. Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231.

A manufacturer of fertilizers maintaining its sales department in another State from which sales are exclusively made for fertilizer stored for distribution only, in a city in this State, is liable under an ordinance of the city levying a tax upon callings and professions, naming among others "fertilizer manufacturers' agents or dealers," the tax being for the protection afforded by the city in the exercise of such occupation, and the profits derived therefrom. Guano Co. v. New Bern, 158 N. C. 354, 74 S. E. 2.

Same—Classification.—The law of uniformity does not prohibit the classification by the municipality of dealers in a particular kind of merchandise separately from those whose business it is to sell other articles falling within the same generic term. Rosenbaum v. New Bern, 118 N. C. 83, 92, 24 S. E. 1.

But an ordinance requiring a license of livery men, and providing that it shall include any persons making contract for hire in town, or "any person carrying any person with a vehicle out of town for hire," is void as being unreasonable. Plymouth v. Cooper, 135 N. C. 1, 47 S. E. 129.

Money and Choses in Action Subject to Tax.—The word "property," includes moneys, credits, investments and other choses in action. Redmond v. Commissioners, 106 N. C. 122, 10 S. E. 845.

Taxes on Lottery Applied Strictly.—A city having power to levy a heavy tax on "gift enterprises" must restrict this tax to enterprises that are of a lottery nature. A dealer in trading stamps cannot be taxed, for the tax cannot be applied to a business merely because of its peculiarity. Winston v. Beeson, 135 N. C. 271, 47 S. E. 457.

Tax on Firm Outside City.—Construing the charter of a city in pari materia with this section, the city is given power to tax a firm outside the city, but which delivers

products inside the city to customers procured by its salesman, and collects for its goods upon delivery, such trade being "carried on or enjoyed within the city." Hilton v. Harris, 207 N. C. 465, 177 S. E. 411.

The charter of a city giving it certain powers in respect to the levying of franchise taxes on trades and professions, etc., and this section will be construed together in determining the legislative grant of power to the municipality to levy taxes of this class. Hilton v. Harris, 207 N. C. 465, 177 S. E. 411; State v. Bridgers, 211 N. C. 235, 189 S. E. 869.

Limitation on License Tax on Use of Motor Vehicle.—Section 20-97 expressly prohibits a municipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the state, and must be construed with and operates as an exception to, and limitation upon the general power to levy license, and privilege taxes upon businesses, trades and professions granted by charter and this section, and provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally, is void, nor may the additional municipal tax be sustained upon the theory that it is a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as used in the sections means the same thing. Cox v. Brown, 218 N. C. 350, 11 S. E. (2d) 152.

Cited in dissenting opinion of Clark, J., in Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343. The dissenting opinion was followed when this case was overruled in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029; Love v. Raleigh, 116 N. C. 296, 309, 21 S. E. 503.

§ 160-57. Uniformity of taxes.—All taxes levied by any county, city, town, or township shall be uniform as to each class of property taxed in the same, except property exempted by the constitution. (Rev., s. 2968; Const. art. VII, s. 9; C. S. 2678.)

Editor's Note.—This section is based upon what was Art. VII, § 9, of the constitution prior to its amendment in 1935.

§ 160-58. Dog tax.—If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double the tax, or may treat such dog as a nuisance, and order its destruction. (Rev., s. 2971; Code, s. 3815; R. C., c. 111, s. 24; C. S. 2683.)

Cross Reference.—As to taxation of dogs by counties, see § 67-5 et seq.

In General.—Although a dog is property, a dog tax is not directly on the dog as property but is upon the privilege of keeping a dog. If the tax is not paid the dog may be declared a nuisance and killed. Mowery v. Salisbury, 82 N. C. 175.

Art. 6. Sale of Municipal Property.

§ 160-59. Public sale by mayor and commissioners.—The mayor and commissioners of any town shall have power at all times to sell at public outcry, after thirty days notice, to the highest bidder, any property, real or personal, belonging to any such town, and apply the proceeds as they may think best. (Rev., s. 2978; Code, s. 3824; 1872-3, c. 112; C. S. 2688.)

Local Modification.—Alexander, Washington, and the Town of Lillington in Harnett County: 1941, c. 292; 1943, c. 128.

Cross References.—As to when sale at public outcry is not necessary, see § 160-2, subsection 6. As to municipality's power to sell or lease property generally, see § 160-200.

What Real Estate May Be Sold.—In Southport v. Stanly, 125 N. C. 464, 34 S. E. 641, the Supreme Court, construing this section says: "The reasonable construction of the statute must be that the town or city authorities can sell any personal property, or sell or lease any real estate which belongs to a town or city, as the surplus of the original acreage ceded for the town or city cite, or such land as may have been subsequently acquired or purchased. But in no case can the power be extended to the sale or lease of any real estate which . . . is to be held in trust for the use of the town, or any real estate . . . which is devoted to the purpose of government. To enable the town to sell such real estate there must be a special act of the General Assembly authorizing such sale or lease." Brockenbrough v. Board, 134 N. C. 1, 22, 46 S. E. 28.

In Moose v. Carson, 104 N. C. 431, 10 S. E. 689 it was held that when a city conveys land bounded by an established street, and the grantee enters upon and improves the land, a subsequent conveyance by the corporation of the land covered by the street, whereby the easement of the appurtenant owner is interfered with, is void. But where there have been no improvements made on a dedicated street and the dedicated land has never been used as a street, a city by an act of the Legislature conferring authority may sell and convey the land so dedicated to it for street purposes. Church v. Dula, 148 N. C. 262, 61 S. E. 639.

A contract for removal of sludge from citys' sewerage disposal plant was held to relate to a service and not a sale of city property within the meaning of this section, requiring sale of city property to be made by auction. Plant Food Co. v. Charlotte, 214 N. C. 518, 199 S. E. 712.

Real Estate Agent May Be Employed.—As incidental to the power of a municipal corporation to sell at public auction parcels of land acquired by it by foreclosure of tax and street assessment liens, the municipality has the authority, in the exercise of its discretion in determining the means for accomplishing this purpose, to employ a real estate agent upon commission to obtain a responsible bidder at the sale to bid a sum sufficient to protect the municipality's interest. Cody Realty, etc., Co. v. Winston-Salem, 216 N. C. 726, 6 S. E. (2d) 501.

Cited in Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328.

§ 160-60. Sale by county commissioners.—In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section. (Rev., s. 2979; Code, s. 3825; 1872-3, c. 112, s. 2; C. S. 2689.)

§ 160-61. Title made by mayor.—The mayor of any town, or the chairman of any board of commissioners of any town or county, is fully authorized to make title to the purchaser of any property sold under this chapter. (Rev., s. 2980; Code, s. 3826; 1872-3, c. 112, s. 3; C. S. 2690.)

Art. 7. General Municipal Debts.

§ 160-62. Popular vote required, except for necessary expense.—No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officer of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein. (Rev., s. 2974; Const. Art. VII, s. 7; C. S. 2691.)

Cross References.—As to purposes for which bonds may be issued, see § 160-378. As to necessity of approval of bond issue by Local Government Commission, see § 159-7. As to election on bond issue, see § 160-387. As to restrictions upon power of municipality to borrow or spend, see § 160-399.

Editor's Note.—For cases under this section, see Article VII, section 7 of the Constitution, as it is the same as this section. See also Article 2, section 14, in general.

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271.

§ 160-63. Debts paid out of tax funds.—Debts contracted by a municipal corporation in pursuance of authority vested in it shall not be levied out of any property belonging to such corporation and used by it in the discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such

debts shall be paid alone by taxation upon subjects properly taxable by such corporation: Provided, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debt. (Rev., s. 2975; Code, s. 3821; 1870-1, c. 90; C. S. 2692.)

Applied in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029.

§ 160-64. Debts limited to ten per cent of assessed values.—It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect. (Rev., s. 2977; 1889, c. 486; C. S. 2693.)

Constitutional.—This section is constitutional, not being in conflict with Art. VII, sec. 7 of the Constitution. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043.

May Be Repealed in Part or in Toto.—This limitation is statutory and not a constitutional one; therefore, the legislature may repeal it in toto or only in its application to certain cities and towns. The fact that a bond issue was in excess of the limitation will not invalidate it if it is later ratified by state legislature. Wharton v. Greensboro, 149 N. C. 62, 62 S. E. 740.

Only Applicable to Special Purposes.—This section does not apply to indebtedness for necessary expenses nor to bonds to pay debts contracted for necessary expenses, but applies to "special purposes" which are construed to mean enterprises not necessary to the city government. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043; Underwood v. Asheville, 152 N. C. 641, 68 S. E. 147; Charlotte v. Trust Co., 159 N. C. 388, 74 S. E. 1054.

Art. 8. Public Libraries.

§ 160-65. Libraries established upon petition and popular vote.—The governing body of any incorporated city or county, upon the petition of ten per cent of the registered voters thereof, shall submit the question of the establishment and/or support of a free public library to the voters at the next municipal election, the next general election, or at a special election. If a majority of the qualified voters within the municipality vote in the affirmative, the board of aldermen or town commissioners or board of county commissioners shall establish the library or reading room and levy and cause to be collected as other general taxes are collected a special tax of not more than ten cents or not less than three cents on the hundred dollars of the assessed value of the taxable property of such city, town or county. The fund so derived shall constitute the library fund, and shall be kept separate from the other funds of the city, town or county to be expended exclusively upon such library. When such library has been established as above provided, it may be abolished only by a vote of the people. (1911, c. 83, s. 1; 1927, c. 31, s. 1; 1933, c. 365, s. 1; C. S. 2694.)

Cross Reference.—As to power of counties to appropriate money for libraries, see § 153-9, subsection 37.

Editor's Note.—Public Laws 1933, c. 365, repealed the former section and enacted the above in lieu thereof.

§ 160-66. Library trustees appointed.—For the government of such library there shall be a board of six trustees appointed by the governing body of the city or town or county, chosen from the citizens at large with reference to their fitness for such office; and not more than one member of the board of aldermen or town commissioners shall be at any one time a member of said board. Such trustees shall hold their office for six years from their appointment, and until their successors are appointed and qualified: Provided, that upon their first appointment under this article two members shall be appointed for two years, two for four years, and two for six years, and at all subsequent appointments, made every two years, two members shall be appointed for six years. All vacancies shall be immediately reported by the trustees to the governing body and be filled by appointment in like manner, and, if in an unexpired term, for the residue of the term only. The governing body may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. No compensation shall be allowed any trustee. (1911, c. 83, s. 2; 1927, c. 31, s. 2; 1927, c. 172; C. S. 2695.)

§ 160-67. Powers and duties of trustees.—Immediately after appointment, such board of trustees shall organize by electing one of its members as president and one as secretary-treasurer, and such other officers as it may deem necessary. The secretary-treasurer before entering upon his duties shall give bond to the municipality in an amount fixed by the board of trustees, conditioned for the faithful discharge of his official duties. The board shall adopt such by-laws, rules and regulations for its own guidance and for the government of the library as may be expedient and conformable to law. It shall have exclusive control of the expenditure of all moneys collected for or placed to the credit of the library fund, and of the supervision, care, and custody of the rooms or buildings constructed, leased, or set apart for library purposes. But all money received for such library shall be paid into the city treasury or county treasury, be credited to the library fund, be kept separate from other moneys, and be paid out to the secretary-treasurer upon the authenticated requisition of the board of trustees through its proper officers. With the consent of the governing body of the city or town or county, it may lease and occupy, or purchase, or erect upon ground secured through gift or purchase, an appropriate building: Provided, that of the income for any one year not more than one-half may be employed for the purpose of making such lease or purchase or for erecting such building. It may appoint a librarian, assistants, and other employees, and prescribe rules for their conduct, and fix their compensation, and shall also have power to remove such appointees. Provided, that after May 4, 1933, no vacancies existing or occurring in the position of head librarian in such libraries shall be filled by appointment or designation of any person who is not in possession of a library certificate issued under the authority of this article. It may also extend the privileges and use of such library to nonresidents upon such terms and conditions as it may prescribe. (1911, c. 83, s. 3; 1927, c. 31, s. 3; 1933, c. 365, s. 2; C. S. 2696.)

Editor's Note.—Public Laws 1933, c. 365, inserted the proviso in the next to the last sentence of this section.

§ 160-68. Library certification board.—The secretary of the North Carolina library commission, the librarian of the University of North Carolina, the president of the North Carolina library association and one librarian appointed by the executive board of the North Carolina library association shall constitute a library certification board who shall serve without pay and who shall issue librarian's certificates under reasonable rules and regulations to be promulgated by the board and a complete record of the transactions of said board shall be kept at all times. (1933, c. 365, s. 3.)

§ 160-69. Librarians now acting—temporary certificates.—The provisions of this article shall not be construed to affect any librarian in his or her position on May 4, 1933. Such librarians as were then acting shall be entitled to receive a certificate in accordance with positions then held.

Upon the submission of satisfactory evidence that no qualified librarian is available for appointment, a temporary certificate, valid for one year, may be issued upon written application of the library board. Such certificate shall not be renewed or extended and shall not be valid beyond the date for which it is issued. (1933, c. 365, s. 3.)

§ 160-70. Annual report of trustees.—The board of trustees shall make an annual report to the governing body of the city, town or county, stating the condition of their trust, the various sums of money received from the library fund and all other sources, and how much money has been expended; the number of books and periodicals on hand, the number added during the year, the number lost or missing, the number of books loaned out, and the general character of such books, the number of registered users of such library, with such other statistics, information and suggestions as it may deem of general interest. (1911, c. 83, s. 7; 1927, c. 31, s. 4; 1933, c. 365, s. 4; C. S. 2697.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 160-71. Power to take property by gift or devise.—With the consent of the governing body of the city or town or county, expressed by ordinance or resolution, and within the limitations of this article as to the rate of taxation, the library board may accept any gift, grant, devise, or bequest made or offered by any person for library purposes, and may carry out the conditions of such donations. And the city or town or county in all such cases is authorized to acquire a site, levy a tax, and pledge itself by ordinance or resolution to a perpetual compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1911, c. 83, s. 5; 1927, c. 31, s. 5; C. S. 2698.)

§ 160-72. Title to property vested in the city, town or county.—All property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any city, town or county for a library shall vest in and be held in the name of such city, town or county and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been made directly to such city, town or county. (1911, c. 83, s. 4; 1927, c. 31, s. 6; 1933, c. 365, s. 5; C. S. 2699.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 160-73. Library free.—Every library established under this article shall be forever free to the use of the inhabitants of the city or town, subject to such reasonable regulations as the board of trustees may adopt. (1911, c. 83, s. 6; C. S. 2700.)

§ 160-74. Ordinances for protection of library.—The governing body of such city or town or county shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or the grounds or other property thereof, or for any injury to or for failure to return any book, plate, picture, engraving, map, magazine, pamphlet, or manuscript belonging to such library. (1911, c. 83, s. 8; 1927, c. 31, s. 7; C. S. 2701.)

§ 160-75. Contract with existing libraries.—The governing body of any city, town or county, when deemed best for the interest of the city, town or county, may in lieu of supporting and maintaining a public library, enter into a contract with and make annual appropriations of money to such library, associations or corporations as shall maintain a library or libraries, whose books shall be available without charge to the residents of such city, town or county, under such rules and regulations of said library, associations or corporations, as shall be approved by the governing body of such city, town or county. All money paid to such society or corporation under such contract shall be expended solely for the maintenance of such library, and for no other purpose. For the governing body of such library when contract has been made between city and county, the trustees shall be appointed proportionately to the funds provided for its support.

Nothing in this section shall be construed to abolish or abridge any power or duty conferred upon any public library established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. (1911, c. 83, ss. 9, 10; 1917, c. 215; 1927, c. 31, s. 8; 1933, c. 365, s. 6; C. S. 2702.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 160-76. Detention of library property after notice.—Whoever willfully or maliciously fails to return any book, newspaper, magazine, pamphlet or manuscript belonging to any public library to such library for fifteen days after mailing or delivery in person of notice in writing from the librarian of such library, given after the expiration of the time, which by regulation of such library such book, newspaper, magazine, pamphlet or manuscript may be kept, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars or imprisonment for not more than thirty days: Provided, that the notice required by this section shall bear upon its face a copy of this

section. (1921, c. 118; 1925, c. 39, s. 1; C. S. 2702(a).)

Editor's Note.—Prior to the 1925 amendment, the violation of this section was punishable within the discretion of the court.

§ 160-77. Combined counties.—Where found to be more practicable, two or more adjacent counties may join for the purpose of establishing and maintaining a free public library under the terms and provisions herein above set forth for the establishment and maintenance of a free county library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county under the provisions of this article. The board of county commissioners of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as herein provided for the commissioners of a single county. Should any county at any time desire to withdraw from such combination, the said county shall be entitled to such proportion of the property as may have been agreed upon in the terms of combination at the time such joint action was taken. (1933, c. 365, s. 7.)

Cross Reference.— As to power of county to appropriate funds for library service, see § 153-9, subsection 37.

Art. 9. Local Improvements.

§ 160-78. Explanation of terms.—In this article the term "municipality" means any city or town in the state of North Carolina now or hereafter incorporated.

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing and remacadamizing of public streets and alleys, and the construction, reconstruction and altering of curbs, gutters and drains in public streets and alleys.

"Sidewalk improvement" includes the grading, construction, reconstruction and altering of sidewalks in public streets or alleys, and may include curbing and gutters.

"Local improvement" means any work undertaken under the provisions of this article, the cost of which is to be specially assessed, in whole or in part, upon property abutting directly on the work.

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement. (1915, c. 56, s. 1; C. S. 2703.)

Ownership of Street Prerequisite to Levy Assessment for Improvement.—The ownership by the city of a street is a prerequisite to the power of the city to levy an assessment for street improvements against abutting owners thereon. Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632.

Cited in Atlantic, etc., R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653; Jones v. Durham, 197 N. C. 127, 147 S. E. 824; Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264; Farmville v. Paylor, 208 N. C. 106, 107, 179 S. E. 459.

§ 160-79. Application and effect.—This article shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings under any special or local law for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided. (1915, c. 56, s. 2; C. S. 2704.)

Cross References.—As to the effect of the Act of 1917 on this article, see § 160-193. As to street and sidewalk improvement and repair, see also §§ 160-54 and 160-222 et seq. As to improvements generally, see § 160-206 et seq.

Laws Construed Separately.—The general statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and independent of special or local laws, and where the latter required the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private act, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under the general law, upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

In case a special or local law is invalid, this article may be followed in making local improvements. But its provisions must be complied with. Cottrell v. Lenoir, 173 N. C. 138, 91 S. E. 827.

Special Act Prevails.—When a special or local law is passed that is inconsistent with this article the special or local law will prevail, although there is no reference to this section, or repealing clause. Bramham v. Durham, 171 N. C. 196, 88 S. E. 347.

Cited in Wake Forest v. Holding, 206 N. C. 524, 426, 174 S. E. 296.

§ 160-80. Publication of resolution or notice.—Every resolution passed pursuant to this article shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this article to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution or notice shall be posted in three public places in the municipality for at least five days. (1915, c. 56, s. 3; C. S. 2705.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824.

§ 160-81. When petition required.—Every municipality shall have power, by resolution of its governing body, upon petition made as provided in § 160-82, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition. (1915, c. 56, s. 4; C. S. 2706.)

Cross Reference.—As to resolution without petition and hearing to determine advisability of improvements, see § 160-207.

Absence of Petition Cured by Legislation.—When improvements are made under an assessment, and there has been no petition as required by this section the assessments are invalid. However this defect may be cured by a validating act of the Legislature although the act is retrospective. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326; Gallimore v. Thomasville, 191 N. C. 648, 650, 132 S. E. 657.

Validation of Proceedings for Improvements Made without Petition.—The General Assembly having the power to confer upon the authorities of a municipal corporation power

to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, as indicated by this section, has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. Crutchfield v. Thomasville, 205 N. C. 709, 715, 172 S. E. 366.

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824.

§ 160-82. What petition shall contain.—The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition) abutting upon the street or streets or part of a street or streets proposed to be improved. The petition shall cite this article and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof whereon the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1915, c. 56, s. 5; C. S. 2707.)

Applicable When City Owns Part of Abutting Land.—A town is subject to assessment on its abutting property, and the rule of a majority of lineal feet and number of owners will apply just the same when a city owns a part of the abutting land as any other time. And if the city fails to sign when its signature is necessary to have a majority of lineal feet, the assessment is a nullity. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81.

Actual Contact with Abutting Property Not Necessary.—An objection by the owner of land abutting on the street to an assessment by the front foot rule for special benefit, upon the ground that his property does not come in actual contact with the part of the street for which the city has paid as a general benefit, is untenable under this section. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262.

Petition Necessary.—Under this section an assessment for widening a street under contract with the Highway Commission without petition of a majority of the owners is invalid. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212.

Sufficiency of Petition.—In Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81, the Supreme Court held that where it appears upon the face of the petition, as a matter of law, that the signers of the petition do not represent a majority of the lineal feet of the total frontage on the street, proposed to be improved, the determination of the governing body as to the sufficiency of the petition is not final or conclusive. In so far as the sufficiency of the petition, authorized to be filed under this section, involves only questions of fact, the determination of the governing body, in the absence of fraud, and when acting in good faith, is final and conclusive. Gallimore v. Town of Thomasville, 191 N. C. 648, 650, 132 S. E. 657.

Approval of Petition Final.—Where the municipal authorities have approved the petition of owners of land abutting upon a street proposed to be improved in accordance with the provisions of statute, their approval and order for the improvements to be made is final, except where it appears from the face of the petition, as a matter of law, that the signers do not represent a majority of the owners or of the lineal feet required by statute. Jones v. Durham, 197 N. C. 127, 147 S. E. 824.

Where levies are made without a petition the assessments are invalid but not void, and the Legislature has the power to validate the assessments by subsequent legislative act, the Legislature having the power to authorize the assessments in the first instance. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366.

Procedure Must Fulfill Essential Requirements.—While a slight informality of procedure under this section or a failure to observe a provision which is merely directory, will not generally affect the validity of an assessment, it is nevertheless true that any substantial and material departure from the essential requirements of the law under which the improvement is made will render an assessment therefor invalid. Tarboro v. Forbes, 185 N. C. 59, 65, 116 S. E. 81.

Lineal Feet of Frontage—Signing by Railroad Company.—The right of way of a railroad company abutting on a street proposed to be improved by a city is properly included in the lineal feet in the petition for improvement under the provisions of this section. Jones v. City of Durham, 197 N. C. 127, 147 S. E. 824, 826.

Abutting Owners.—See note under § 160-85.

Improvement of Only One Side of Street.—Under this section, an assessment levied for street improvements on abutting property owner, is not void on the ground that the assessment was for improving only one side of a street. Waxhaw v. S. A. L. Ry. Co., 195 N. C. 550, 142 S. E. 761.

Signatures as Evidence of Agency.—Where the wife owned the locus in quo, and the petition for public improvements was signed by the husband and by the wife, the signature of the wife as the owner of the property along with the signature of the husband is sufficient evidence to be submitted to the jury on the issue of whether the wife constituted her husband her agent to subsequently act for her in the premises, rendering the listing of the property in his name on the assessment roll, and the special assessment book, and the giving of the statutory notices to him, sufficient, thus rendering the lien against the property valid and enforceable as against her and as against her subsequent grantee. Wadesboro v. Coxe, 218 N. C. 729, 12 S. E. (2d) 223.

Resolution as Evidence.—In an action by a municipality to enforce a lien for public improvements, objection that plaintiff failed to introduce in evidence the petition for improvements signed by the owners of a majority of the lineal feet frontage abutting the improvements was held untenable where the original resolution of the city introduced in evidence recited a proper petition and that it was duly certified by the clerk, as required by this section, since if such finding was erroneous, the remedy for correction was by appeal. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105.

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318.

§ 160-83. What resolution shall contain:

1. Designate improvements. The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution shall designate by a general description the improvement to be made, and the street or streets or part or parts thereof whereon the work is to be effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment.

2. Sidewalk improvements. If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made.

3. Affecting railroads. If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement, with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improve-

ment shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: Provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this section, except in so far as may be consistent with the provisions of such franchise or contract.

4. Water, gas, and sewer connections. If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made. (1915, c. 56, s. 6; C. S. 2708.)

Construction of Former Franchise to a Railroad.—A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its road," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the streets. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40.

Extent of Railroad's Liability.—This section specifying that the burden imposed upon a street railway company in assessing its property for street improvements shall not exceed "the space between the tracks, the rails of the track, and eighteen inches in width outside of the tracks," is not violated if including the length of the cross-ties, the statutory limitation of the width had not been exceeded. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40.

Railroad Property.—A town, to widen its streets, agreed with a railroad company to condemn land and give it to the company if it would remove its tracks thereto at its own expense. After this arrangement had been carried out, the town assessed the lands of the railroad company for street paving, under a resolution which contains no requirement that the company should improve the land occupied by its tracks as specified by subsection 3 of this section. It was held that the railroad was not liable for the assessment as the property being a part of the street was not "adjoining" within the provisions of this article. Lenoir v. Carolina, etc., Ry. Co., 194 N. C. 710, 140 S. E. 618.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-84. Character of work and material.—The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: Provided, that for the purposes of securing uniformity in the work the governing body shall always have the power to have all street paving done by the forces of the municipality or by contract under the provisions of this article. (1915, c. 56, s. 7; C. S. 2709.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824.

§ 160-85. Assessments levied:

1. One-half on abutting property. One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, specified in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large; but no assessment for streets and sidewalks shall be made against abutting property on any such street or sidewalk until said street or sidewalk has been definitely laid out and the boundaries of the same definitely fixed.

2. Upon railroads. The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company.

3. For sidewalks. The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage.

4. Water, gas and sewer connections. The entire cost of each water, gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment. (1915, c. 56, s. 8; 1919, c. 86; C. S. 2710.)

In General.—The clear interpretation of this section means what its language says—that one-half of the total cost of the street improvements shall be assessed upon the parcel of land abutting directly on the improvement, according to the extent of the respective frontage thereon. Carpenter v. Maiden, 204 N. C. 114, 116, 167 S. E. 490.

Abutting Property.—The power to impose assessments upon owners whose lands abut upon the streets of a city to be improved, comes within the sovereign right of taxation, and no license, permit, or franchise from the Legislature or a municipal board will be construed to establish an exemption from the proper exercise of this power, or in derogation of it, unless these bodies are acting clearly within their authority, and the grant itself is in terms so clear and explicit as to be free from substantial doubt. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40.

In Anderson v. Albemarle, 182 N. C. 434, 436, 109 S. E. 262, it was said: "The words 'abutting on the improvement' mean abutting on the street that is improved, and that this does not require that the pavement shall extend the entire width of the street when this would be an unnecessary cost, and would greatly enhance the burden of which the plaintiff in this case complains. By the term 'abutting property' is meant that between which and the improvement there is no intervening land."

Where the municipality owns the fee in land located between the street and the property assessed, the assessment is void. Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328.

Abutting property cannot exist in the street itself, but, in the nature of things, must be property outside of the street, touching or bordering upon the street or improvement. So a railroad is not an abutting owner by virtue of the fact that its tracks are laid in a public street. Town of Lenoir v. Carolina & N. W. Ry. Co., 194 N. C. 710, 140 S. E. 618, 619.

Same—Public Parks.—In the absence of constitutional or statutory provision to the contrary, the public property of a municipality, such as parks, etc., is subject to assessment for local improvements of its streets, and when there is no provision exempting them, a public park of a city is included within the intent and meaning of Laws 1915, ch. 56, providing that lands abutting on a street to be paved or improved should be assessed for such improvements to the extent of the respective frontage of the lots thereon, in a certain proportionate part of the cost, by the "front foot" rule. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81.

Same—Interference by Courts.—Where an act allows assessments to be made by a city on property abutting on a street for pavements or improvements thereon, the legislative declaration on the subject is conclusive as to the necessity and benefit of the proposed improvements, and in applying the principle and estimating the amount as against the owners, individual or corporate, the court may interfere only in case of palpable and gross abuse. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

Subsection 2—Railroads.—Where railroad property in a city lies along an unimproved street, but abuts upon an improved street that runs through the unimproved one, the owner is ordinarily liable to an assessment of one-half of the costs of the improvement on the abutting and improved street, and the exception in the statute as to street intersections is inapplicable. Mount Olive v. Atlantic, etc., R. Co., 188 N. C. 332, 335, 124 S. E. 559.

Same—Assessed as Private Owners. — The property of railroad companies abutting upon the streets of a city is liable to assessments for the paving and improvements thereon to the same extent as that of private owners, in proper instances, and where proper legislative authority is therefor shown. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

Street Railroad Treated as Abutting Owner.—The property and franchise of street railways laid along a given street or designated locality within the effects and benefits of the proposed improvements, may lawfully be considered abutting owners. Durham v. Durham, Pub. Service Co., 182 N. C. 333, 109 S. E. 40.

A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its road," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the street. Durham v. Durham Pub. Service Co., 182 N. C. 333, 109 S. E. 40.

Same—How Estimate Made.—In making an assessment on the property of a street railway company as an abutting owner on the street improved, not only the value of its tangible property, such as tracks, etc., should be considered, but, also, the estimated value of the company's franchise under which it is operating, and which by fair apportionment should be included in the estimate. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40.

Section Additional to Local Laws.—These general statutes are additional and independent of special or local laws, and where the latter require the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private act, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under the general law, this section, upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

Where a city or town has proceeded under private acts to issue bonds and assess the lands of abutting owners for street paving and improvements and for insufficiency of funds thus expended find it necessary to assess the lands of a railroad company abutting on streets so improved under this section, a later act ratifying the private acts, evidently for the purpose of curing apprehended defects and to make the bonds a more safe and desirable investment, cannot affect the validity of the proceedings under the general laws. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 745.

Subsection 4—Assessment for Drains.—For constructing drains it is not necessary that the assessments be the same, for cost will be different because of difference in location and slope of the several lots. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657.

Where Charges for Water and Gas Connections Did Not Constitute a Preferred Claim.—Charges for water and gas connections, incurred during the lifetime of a life tenant and unpaid at his death, do not constitute a preferred claim against his estate as taxes assessed on the estate prior to his death, since in no event would such charges stand upon a higher plane than assessments for permanent improvements. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-86. Amount of assessment ascertained.—Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to the provisions of this article and incident to the improvement and assessment therefor. The governing body must thereupon make an assessment of such total cost pursuant to the provisions of the preceding section, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed. (1915, c. 56, s. 9; C. S. 2711.)

In General.—Where a city or town has regularly and sufficiently proceeded to assess the lands of abutting property owners under the provisions of this statute, and have published the notice thereof as sec. 160-87 requires, and such owners have been afforded ample opportunity to be heard by the commissioners of the municipality, sec. 160-88, their failure to appear and resist the assessment thus laid on their property under the proceedings prescribed will bar their right to impeach the ordinance. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593.

Insufficiency of Description of Land.—The assessments made upon the lands of an owner adjoining a street improved by the authorities of a city or town, will not be declared invalid on the ground of the insufficiency of description in the assessment roll at the suit of such property owners, when in substantial compliance with this and the next section. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593.

Map Sufficient Description.—A map made by the city engineer duly approved by the city commissioners is sufficient compliance with the requirements of this statute. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326.

Applied in High Point v. Clark, 211 N. C. 607, 191 S. 318.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-87. Assessment roll filed; notice of hearing.—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of

said notice. Any number of assessment rolls may be included in one notice. (1915, c. 56, s. 9; C. S. 2712.)

This section gives notice that the assessment roll has been filed and is open to inspection. Wake Forest v. Holding, 206 N. C. 425, 428, 174 S. E. 296.

It Does Not Confer Power to Condemn Property.—The governing body of a town has no jurisdiction in proceeding under this section and § 160-88, to condemn land for street purposes, under the power of eminent domain. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264.

Notice of First Hearing.—Where notice of hearing on the confirmation of an assessment roll was not published, but on the date set for the hearing the municipal board met and adopted the required resolution in amplified form, fixed the time and place for hearing of objections, and notice of the hearing on the second date set was duly published, which hearing was duly had on that date, necessary corrections made, and the assessment roll as corrected duly approved and confirmed, it was held that the fact that notice of hearing on the first date set was not published, as required by this and the following section, was rendered immaterial. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-88. Hearing and confirmation; assessment lien.—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes. (1915, c. 56, s. 9; C. S. 2713.)

Lien. — Assessments made upon the property of the owner for street and side-walk improvements by a town, and in all respects under the authority conferred on the municipality by statute, extending in partial payments over a designated period of time, are to be regarded in the nature of a statutory mortgage when due and payable, and constitute liens on the property within the warranty clause against encumbrances contained in a deed, and are recoverable in the grantee's action against the grantor to the extent he has been required to pay them. Coble v. Dick, 194 N. C. 732, 140 S. E. 745.

The lien against property for street improvements is a lien in rem against the land itself, but it is not strictly a tax lien and is based upon the theory of special benefit to the property itself, and a lien for street assessments, while superior to the liens of mortgages or deeds of trust, by this section, is subject to the lien of the city and county for taxes for general revenue. Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298.

The lien is an incumbrance within the meaning of the warranty clause against incumbrances. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424, 427, citing Coble v. Dick, 194 N. C. 732, 140 S. E. 745.

When Lien Attaches.—By provision of this section the lien for street assessments does not attach to land until confirmation of the assessments, and where such assessments are not confirmed by the governing body of the town until after the execution of a deed to the property, the subsequently attaching lien for the assessments does not violate the warranty and covenant in the deed, in the usual language, against encumbrances. Oliver v. Hecht, 207 N. C. 481, 177 S. E. 399.

Sufficiency of Compliance.—Where the property owner signs the petition and has notice that improvements are to be made, and notice that the assessment roll giving the amount of the assessment against his property, has been filed in the office of the city clerk, as required by § 160-87, and accepts the benefits and pays installments of the assessments without objection, as provided by § 160-89, he ratifies same and this section is sufficiently complied with. Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296.

Priority of Lien.—The amount of an assessment on the owner of land lying along a street for street improvements, is, by this statute creating a lien, superior to all other liens and encumbrances and continues, until paid, against the title of successive owners thereof. Merchants Bank, etc., Co. v. Watson, 187 N. C. 107, 121 S. E. 181.

The provision of this section in regard to liens does not exclusively refer to subsequent liens; and the reference to the date of confirmation is only to fix the time when the lien is conclusively established, and when so established it takes precedence over all liens then existent or otherwise. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

An assessment made upon adjoining land for a street improvement by a town is a charge upon the land constituting a lien superior to all others and not enforceable against the personalty or other lands of the owner, and when the owner of land has been thus assessed, payable in installments, and he subsequently dies, it is not a debt of the deceased payable by his personal representative, but a charge against the land itself. The provisions of § 28-105, as to the order of payment of debts of the deceased, has no application. Carawan v. Barnett, 197 N. C. 511, 149 S. E. 740. See also High Point v. Brown, 206 N. C. 664, 666, 175 S. E. 169. See Winston-Salem v. Powell Paving Co., 7 F. Supp. 424.

Statute of Limitations.—The assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances under this section, and the ten-year statute of limitation is applicable thereto and not the three-year statute. High Point v. Clinard, 204 N. C. 149, 167 S. E. 690.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824; Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15; Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845.

§ 160-89. Appeal to the superior court.—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal, but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1915, c. 56, s. 9; C. S. 2714.)

Constitutionality.—The right of appeal to the courts being provided in case of dissatisfaction by an owner of land abutting on a street assessed by the governing body of a municipality for street improvement, the objection that the owner's property is taken for a public use in contravention of the due process clause of the Constitution is untenable. Lake v. Wadesboro, 186 N. C. 683, 121 S. E. 12.

Jurisdiction of Court Is Derivative.—The jurisdiction of the Superior Court upon appeal from a levy of assessments for street improvements by the governing body of a town as provided by this section, is entirely derivative, and where a town has no jurisdiction to condemn land the Superior Court on appeal likewise has no jurisdiction to do so. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264.

No Other Remedy.—The owner of land abutting on a street the municipality proposes to improve has his remedy in objecting to the local assessment on his property because of the insufficiency of the petition, and he may not enjoin the issuance of bonds for this necessary expense on that ground, when he has failed to pursue his statutory remedy. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41.

In an action to enforce a lien for public improvements, a defendant who had notice and ample opportunity to be heard and to appeal from the order confirming the assessment roll, cannot impeach the validity of the ordinance or of the assessment for any alleged irregularities which are not jurisdictional. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105.

While a petition is a prerequisite it is not jurisdictional,

and if the finding by the municipal board is erroneous it should be corrected by appeal under this section. Id.

Injunctive Relief.—The remedy of abutting owners assessed for street improvements is given by this section providing the right of appeal and when no appeal has been taken and the work has been completed, injunctive relief against the collection of the assessments by the city will not lie. Jones v. Durham, 197 N. C. 127, 147 S. E. 824.

Estoppel to Assert Errors in Assessments.—Where the property owner failed to object and avail himself of the specific remedy for review and correction of the assessment, but made payments on the assessment, he is estopped to show error in the assessment. Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845.

Existence of Street May Be the Issue.—Under the provisions of this statute, it is necessary that there be an existing street in order for a valid assessment for improvements to be laid on the property of abutting owners, and this may be made an issue in an appeal under this section, and the adjoining owner may introduce his evidence to show to the contrary. Atlantic Coast Line R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653.

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495; Efird v. Winston-Salem, 199 N. C. 33, 37, 153 S. E. 632; Wake Forest v. Holding, 206 N. C. 425, 427, 174 S. E. 296; Crutchfield v. Thomasville, 205 N. C. 709, 713, 172 S. E. 366; High Point v. Clark, 211 N. C. 607, 191 S. E. 318; Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845.

§ 160-90. Power to adjust assessments.—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement. The proceeding shall be in all respects as in case of local assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C. S. 2715.)

Section Not Applicable.—Where in accordance with the provisions of § 160-85, subsection 1, the board of aldermen grant a petition for street improvements requesting the assessment of a larger proportion of the cost of the improvements against the lots of land abutting directly thereon than is otherwise required by statute, after the confirmation of the assessment roll a subsequent board of aldermen is without power to grant a petition of the abutting landowners for a reduction of the assessment upon the ground alone that the amount of the assessments exceeded that which they had originally anticipated, and a suit by other taxpayers of the town to enjoin the granting of such petition is proper. This section and § 160-246, have no application. McClester v. China Grove, 196 N. C. 301, 145 S. E. 562.

Cited in Gallimore v. Thomasville, 191 N. C. 648, 652, 132 S. E. 657; Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-91. Payment of assessment in cash or by installments.—The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for the improvements hereinbefore provided for in cash, or if they should so elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in next succeeding section, they shall have the option and privilege of paying the assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Such installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property and franchises shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date. (1915, c. 56, s. 10; C. S. 2716.)

See notes to the following section.

Right to Declare All Installments Due.—The provision of this section, that upon failure to pay any installment when due, all installments remaining unpaid should at once become due and payable, gives the municipality the optional right to declare all installments due and payable upon default, and in the absence of its declaration to invoke the acceleration provision the statute of limitations will not begin to run against unpaid installments not then due. Farmville v. Paylor, 208 N. C. 106, 179 S. E. 459.

Cited in Coble v. Dick, 194 N. C. 732, 733, 140 S. E. 745; Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15; High Point v. Brown, 206 N. C. 664, 667, 175 S. E. 169; Saluda v. Polk County, 207 N. C. 180, 184, 176 S. E. 298.

§ 160-92. Payment of assessment enforced.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent per annum from the date of the computation and ascertainment by the governing body of the total cost of the local improvement after its completion: Provided, that this shall not apply to improvements made under an ordinance prior to February 26, 1923. The assessment shall be due and payable on the date on which taxes are payable. Provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1915, c. 56, s. 11; 1923, c. 87; 1929, c. 331, s. 1; C. S. 2717.)

Editor's Note.—By the amendment of 1923 the date when interest begins to run was changed from the time of the "confirmation of the assessment roll" to "after the com-

pletion of the local improvement." But it was not retroactive.

The Act of 1929 added the last sentence to this section.

The lien given under this section, when properly established, amounts to a statutory mortgage, having preference over any and all liens and encumbrances, existent or otherwise, and to be enforced by decree of sale of the property and franchise. Saluda v. Polk County, 207 N. C. 180, 183, 176 S. E. 298.

Lien Superior to All Others.—The lien created by this section is superior to all other liens and encumbrances, and may be enforced by decree of sale. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645.

Judgments for Installments.—Where the abutting owner of land on the streets has refused to pay the assessments lawfully made on him for street improvements, a judgment allowing him to pay by installments may be entered. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40.

Interest Rate Is Prescribed.—The interest rate on street assessments is fixed by statute, and the courts are without authority at law or in equity to prescribe a lesser interest rate. Zebulon v. Dawson, 216 N. C. 520, 5 S. E. (2d) 535.

Cited in Coble v. Dick, 194 N. C. 732, 140 S. E. 745.

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.—No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, whether for paving or other benefits, and whether such assessment is made under this chapter or under other general or specific acts, save from and after ten years from default in the payment thereof, or if payable in installments, ten years from the default in the payment of any installments. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff. This section shall apply to all special assessments heretofore or hereafter levied, but shall not apply to any special assessment for the collection of which an action or proceeding has been instituted prior to March 19, 1929. (1929, c. 331, s. 1.)

Local Modification.—Durham: 1935, c. 224; Mecklenburg, City of Charlotte: 1943, c. 181; Sampson, Town of Clinton: 1939, c. 148.

Limitation of Actions.—In a suit under § 105-414 to foreclose a statutory lien on abutting property, given a city for street improvements, all installments of the amounts assessed therefor which are ten years overdue when action is brought are barred by this section, and no part of the proceeds of sale can be applied to the payment of such installments. Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573.

In this section the municipalities are expressly named in the statute of limitations. Therefore, an action to enforce the lien for public improvements, even though instituted under § 105-414, is barred after ten years from default in the payment of the assessments, or, if the assessments are payable in installments, each installment is barred after ten years from default in payment of the same unless the time of payment has been extended as provided by law. Charlotte v. Kavanaugh, 221 N. C. 259, 20 S. E. (2d) 97.

§ 160-94. Extension of time for payment of special assessments.—At any time or times prior to February the first, one thousand nine hundred and forty-five, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any instalment or instalments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such instalment or instalments, interest and costs into a new series of ten equal instalments so that one of said instalments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said instalments on the first Monday in October of each year thereafter. Accrued interest on any instalment or instalments of any special assessment extended under the provisions of this section shall be computed to the first Monday in October following the adoption of the aforesaid resolution: Provided, however, that such extension shall not prevent the payment of any assessment or interest at any time: Provided further, no such extension shall in any way discriminate in favor of or against any property assessed by virtue of said assessment roll: Provided further, that any instalment or instalments, together with accrued interest and costs extended in accordance with the provisions of this section shall bear interest at the rate of six per centum per annum from the first Monday in October following the adoption of the aforesaid resolution. (1931, c. 249; 1933, cc. 252, 410; 1935, c. 126; 1937, c. 172; 1939, c. 198; 1941, c. 160; 1943, c. 4.)

Local Modification.—Orange, Town of Carrboro: 1937, c. 195.

Editor's Note.—The 1937 amendment extended the time to 1938 and the 1939 amendment extended it to 1940. The 1941 amendment extended the time to 1942.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 526.

The 1943 amendment changed the date at the beginning of this section from "July the first, one thousand nine hundred and forty two" to "February the first, one thousand nine hundred and forty-five."

§ 160-95. Assessments in case of tenant for life or years.—Whenever any real estate is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property by any city, town, county, township, municipal district, or the state, to cover the cost of permanent improvements ordered put thereon by the law or the ordinances of such city or town, township, or municipal district, such as paving streets and sidewalks, laying sewer and water lines, draining lowlands, and permanent improvements of a like character, which constitute a lien upon such property, the amount so assessed for such purposes shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate. (1911, c. 7, s. 1; C. S. 2718.)

Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since by this section a life tenant is not liable for the whole assessment, being entitled to have it proportioned under § 160-97, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate under the third class of priority. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24. See § 28-105 and note.

§ 160-96. Interests of parties ascertained.—The respective interests of a tenant for life and

the remainderman in fee shall be calculated as provided in § 37-13. (1911, c. 7, s. 2; C. S. 2719.)

§ 160-97. Lien of party making payment.—If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the city, town, township, municipal district, county, or the state, to a lien on such property for the same. (1911, c. 7, s. 3; C. S. 2720.)

§ 160-98. Lien in favor of co-tenant or joint owner paying special assessments.—Any one of several tenants in common, or joint tenants, or co-partners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his co-tenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office. (1935, c. 174.)

§ 160-99. Money borrowed to be paid out of assessment.—At any time before the cost of any local improvement shall be computed and ascertained as provided in this article, the municipality may from time to time by resolution authorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon in accordance with the provisions of the Local Government Act. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not more than six months from the date thereof, and bearing interest not exceeding six per centum per annum. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy. (1915, c. 56, s. 12; C. S. 2721.)

Cross Reference.—As to the Local Government Act, see chapter 159.

§ 160-100. Assessment books prepared.—After the governing body of the municipality has levied the assessment against the property abutting upon the street or streets, the city clerk or person designated shall prepare from such assessment roll and deliver to the tax collector or person designated a well bound book styled Special Assessment Book, which shall be so ruled as to conveniently show:

1. Name of owner of such property.
2. The number of lot or part of lot and the plan thereof if there be a plan.
3. The frontage of said lot.
4. The amount that has been assessed against such lot.
5. The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the names of the owners of the property, and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality. (1915, c. 56, s. 13; C. S. 2722.)

Necessity of Special Book.—As between the abutting landowners upon the street improved by a city or town and the proper municipal authorities acting thereon, the failure of the latter to keep the special assessment book is not fatal to the validity of the assessments, if the original assessment roll or book is accessible, sufficient to give all necessary information of the property assessed, and available upon the statutory notice given. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593.

§ 160-101. Apportionment of assessments.—In any case where one or more special assessments shall have been made against any property for any improvement or improvements authorized by this chapter, and said property has been or is about to be subdivided and it is therefore desirable that said assessment or assessments be apportioned among the subdivisions of such property, the governing body may, with the consent of the owner or owners of said property, apportion said assessment or assessments, or the total thereof, fairly among said subdivisions, as same are benefited by the improvement and release such subdivisions, if any, as in the opinion of the governing body are not benefited by the improvement. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment or assessments except the part thereof apportioned to said subdivision, and the part of said original assessment or assessments apportioned to any such subdivision shall be of the same force and effect as the original assessment or assessments. At the time of making such apportionments, the governing body shall cause to be entered upon its minutes an entry to the effect that such apportionment is made with the consent of the owner or owners of the property affected, and such entry shall be conclusive of the truth thereof in the absence of fraud. Such re-assessments may include past due installments of principal, interest and penalty, if any, as well as assessments not then due, and the remaining installments shall fall due at the same dates as they did under the original assessment. (1929, c. 331, s. 1; 1935, c. 125.)

Editor's Note.—Prior to the amendment of 1935 the last sentence of this section prohibited reassessment before payment of past due installments.

§ 160-102. Local improvement bonds issued.—Whenever an assessment for any local improvement has been confirmed, the governing body

may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "local improvement bonds." Such bonds shall be issued as provided in the Municipal Finance Act. (1915, c. 56, s. 14; C. S. 2723.)

Cross Reference.—As to Municipal Finance Act, see § 160-377 et seq.

§ 160-103. Assessment bonds issued.—Whenever an assessment for any local improvement has been confirmed, and twenty days have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which has been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this section, and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds. (1915, c. 56, s. 15; C. S. 2724.)

§ 160-104. Improvements on streets abutting railroads.—Municipalities desiring to make street and sidewalk improvements on property owned and/or leased by railroad companies, are hereby authorized to make such improvements on any such street used as a public street, subject to the rights of any such railroad company to use and occupy the same for railroad purposes: Provided, however, that the petition or petitions contemplated and required by the provisions of this article, need not be signed by such railroad company or companies, nor shall any part of the railroad right of way be considered as abutting property, but the said petition shall be signed by at least a majority in number of the owners of property other than the railroad right of way, who must represent at least a majority of all the lineal feet frontage of the lands, other than said railroad right of way (a majority in interest of owners of undivided interest in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon such street or streets proposed to be improved: Provided, further, that not more than one-half of the total cost of the street or sidewalk improvement made by such municipality, exclusive of so much of the cost as is incurred at street intersections, shall be specially assessed upon the lots or parcels of land abutting directly on the improvement, other than the property included in the railroad right of way, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage. (1931, c. 222, s. 1.)

Editor's Note.—Since a municipality may proceed to make street improvements without petition of the owners of abutting property (Shute v. Monroe, 187 N. C. 676, 123 S. E. 71), it is clear that where a railroad, owning half of the abutting property, could hold up the improvement by refusal to sign the petition, that the state may authorize the municipality to proceed without the railroad's consent. 9 N. C. Law Rev. 362.

§ 160-105. Railroad rights of way and contracts as to streets unaffected.—Nothing contained in § 160-104 shall be construed so as to deprive any railroad company of any right which it may now or hereafter possess by reason of its ownership of any right of way.

Any additional expense which the railroad may incur in removing or altering any pavement or other improvements made under and by virtue of the provisions of § 160-104, which interfere with the railroad's use of its right of way, shall be borne by the municipality affected: Provided, such section shall not affect in any way existing contracts between municipalities and railroads for rights of way through streets, and shall not affect existing contracts between municipalities and railroads for upkeep and improvements of streets. (1931, c. 222, s. 1½.)

Art. 10. Inspection of Meters.

§ 160-106. Inspectors appointed.—In every city or town in the state of North Carolina where is furnished, for pay, electricity, gas or water by meter measure, the governing body of the city or town may appoint some competent person to act as inspector of meters, whose duty it shall be to inspect and test such meters and to carry out the provisions of this article as herein provided. (1909, c. 150, s. 1; C. S. 2729.)

§ 160-107. Time of appointment; oath, bond, and compensation. — Such appointment, if made, shall be made at the first meeting in May of each year of such governing body, subject to the power of such city or town authorities to remove such appointee in the manner provided for the removal of its other appointees and to fill the vacancy caused by such removal. The compensation of such inspector shall be fixed and shall be paid by the city or town so appointing him, and such inspector shall upon his appointment take oath before the mayor of said city or town that he will faithfully perform the duties herein imposed upon him, and the governing body of the city or town may require the inspector to give bond in such sum as they may fix for the faithful discharge of his duties. (1909, c. 150, s. 2; C. S. 2730.)

§ 160-108. Apparatus for testing meters provided.—Every person, firm, corporation or municipality furnishing for pay electricity, gas or water by meter measure in any city or town having appointed an inspector of meters, as aforesaid, shall provide and keep a suitable and proper apparatus for testing and proving the accuracy of the meters to be so furnished for use, by which apparatus all such meters shall be tested at their rated capacity. (1909, c. 150, s. 3; C. S. 2731.)

§ 160-109. Meters tested before installed.—No person, firm, or corporation or municipality fur-

nishing for pay electricity, gas or water by meter measure shall hereafter furnish, install and put in use any such meter in any city or town having appointed an inspector of meters, as aforesaid, until such meter shall first have been inspected and found correct by such inspector, and it shall be the duty of such inspector to test the same upon the written request of such proposed furnisher. No meter now in service shall be required to be taken out for test, except where there is doubt as to its accuracy and upon the written request of the consumer, as herein provided (1909, c. 150, s. 4; C. S. 2732.)

§ 160-110. Inspection made upon complaint.—When any consumer, by meter, of electricity, gas or water in any city or town having appointed an inspector of meters, as aforesaid, doubts the accuracy of such meter and desires to have the same tested, such consumer may file with the inspector of meters a written complaint of the meter and request that the same be tested, and shall at the same time deposit with the furnisher the sum of one dollar to cover the expense of taking out and replacing such meter, and thereupon it shall be the duty of such inspector as soon as practicable to accurately test said meter in the presence of and jointly with the authorized agent of the furnisher, and also in the presence of the complainant, if he so desires, and shall give to both the complainant and to the furnisher a written report of such test and the result thereof. (1909, c. 150, s. 5; C. S. 2733.)

§ 160-111. Repayment of deposit.—If upon such test the meter is found to be incorrect, in that it registers more than two and one-half per cent too fast—that is, more than two and one-half per cent more electricity, gas or water than it should, then and in that event the furnisher shall return to the complainant the one dollar deposit and shall promptly properly adjust and repair the meter or furnish a correctly adjusted meter; but if upon such test the meter shall not register more than two and one-half per cent too fast—that is, more than two and one-half per cent more than it ought to—the one dollar deposit shall be retained by the furnisher to cover the expense of taking out and replacing the meter. (1909, c. 150, s. 6; C. S. 2734.)

§ 160-112. Adjustment of charges.—If upon such test the meter shall register more than two and one-half per cent too fast, as above defined, the furnisher shall reimburse the complainant at the rate at which the meter registers too fast for a period of one month back; but if upon such test the meter shall be found to be incorrect, in that it registers more than two and one-half per cent too slow—that is, more than two and one-half per cent less electricity, gas or water than it should—then and in that event the complainant shall, in addition to the amount already charged him, pay at once to the furnisher at the rate at which the meter is too slow for a period of one month back, and the furnisher shall have the same rights for collecting such additional sum as is provided for the collecting of the past due and unpaid bills for electricity, gas or water, as the case may be. (1909, c. 150, s. 7; C. S. 2735.)

§ 160-113. Standard of accuracy.—Any such meter having been tested and found to be not more than two and one-half per cent too slow nor more than two and one-half per cent too fast, as above defined, shall be considered correct, and such inspector shall so mark or stamp such meter and report the same to the governing body of the city or town. (1909, c. 150, s. 8; C. S. 2736.)

§ 160-114. Free access to meters.—Nothing in this article shall be so construed as to prevent any furnisher of electricity, gas or water from having free access to the meters. (1909, c. 150, s. 9; C. S. 2737.)

Art. 11. Regulation of Buildings.

§ 160-115. Chief of fire department.—There is hereby created in the incorporated cities and towns of the state, where not already established by their charters, the office of chief of fire department. (Rev., s. 4815; 1901, c. 677, s. 1; C. S. 2738.)

Cross Reference.—As to fire protection, see §§ 160-235 through 160-238.

§ 160-116. Election and compensation.—The governing body of every incorporated city and town, when no provision is made in their charters for such office, shall elect a chief of fire department, fix his term of office, prescribe his duties and obligations, and see that he is reasonably remunerated by the city or town for the services required of him by law. They may change his duties and compensation from time to time, not inconsistent with the duties prescribed in this article. Where the governing body fails or neglects to perform such duty, the insurance commissioner shall call it to their attention and if necessary bring the matter before the proper court. Nothing herein may prevent any person elected hereunder from holding some other position in the government of the city or town. (Rev., ss. 2981, 4816; 1901, c. 677, s. 2; 1905, c. 506, s. 4; 1915, c. 192, s. 1; C. S. 2739.)

Power Governmental.—The power to regulate and prevent fire is governmental, and a failure to exercise this power does not subject a city to action for negligence which causes loss by fire. Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849.

§ 160-117. Duties of chief of fire department.—The chief of the fire department shall perform the duties required of him by this article; where such duties are not prescribed by the charters or governing body of incorporated cities and towns, it shall be his duty to preserve and care for the fire apparatus, have charge of the fighting and putting out of all fires, make annual reports to the city municipal governments, seek out and have corrected all places and conditions dangerous to the safety of the municipality from fire, look after buildings being erected with a view to their safety from fires, and do and perform the other duties prescribed by the governing boards of the several municipalities. (Rev., ss. 4815, 4817; 1901, c. 677, ss. 1, 3; C. S. 2740.)

§ 160-118. Local inspector of buildings.—The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and

shall make all reports required by the insurance commissioner, and shall make all inspections and perform such duties as may be required by the state law or city or town ordinance or by the said insurance commissioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed. (Rev., s. 2982; 1905, c. 506, s. 6; 1915, c. 192, s. 2; C. S. 2741.)

§ 160-119. Town aldermen failing to appoint inspectors. — If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a misdemeanor. This section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings. (Rev., s. 3607; 1905, c. 506, s. 4; C. S. 2742.)

§ 160-120. Town officers; inspection of buildings. —If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. (Rev., s. 3610; 1905, c. 506, s. 5; 1915, c. 192, s. 17; C. S. 2743.)

§ 160-121. Electrical inspectors.—The governing body of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties. (Rev., s. 2983; 1905, c. 506, s. 33; C. S. 2744.)

§ 160-122. County electrical inspectors.—The county commissioners of each county may in their discretion designate and appoint one or more electrical inspectors whose duty it shall be to inspect the installation of all wiring and other electrical installations in buildings located in any town of one thousand population or less and/or those buildings located outside of the corporate limits of all cities and towns and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected. (1937, c. 57; 1941, c. 105.)

Editor's Note.—Prior to the 1941 amendment this section provided for only one inspector.

§ 160-123. Deputy inspectors.—All duties imposed by this article upon the building inspector may be performed by a deputy appointed by such inspector. (Rev., s. 2984; 1905, c. 506, s. 32; C. S. 2745.)

§ 160-124. Fire limits established.—The governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns. (Rev., s. 2985; 1905, c. 506, s. 7; C. S. 2746.)

Power Discretionary.—The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the Legislature, at least where the limits established appear to be reasonable, and without palpable oppression or injustice done. State v. Lawing, 164 N. C. 492, 80 S. E. 69.

Reasonableness of Ordinances.—While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute as ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property, and where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious, and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. Lewisville v. Webster, 108 Ill. 414; State v. Johnson, 114 N. C. 846, 849, 19 S. E. 599.

Cited in 5 N. C. Law Rev. 241.

§ 160-125. Punishment for failing to establish fire limits.—If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings. (Rev., s. 3608; 1905, c. 506, s. 7; C. S. 2747.)

§ 160-126. Building permits.—Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building, giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the insurance commissioner every per-

son neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action. (Rev., s. 2986; 1905, c. 506, s. 26; 1915, c. 192, s. 3; C. S. 2748.)

Cross References.—As to the North Carolina building code, see § 143-136 et seq. As to regulations as to issue of building permits, see § 87-14.

Contrary Ordinance Void.—By this section a permit from the inspector is required before an owner may repair his buildings, and an ordinance requiring that the permit be gotten from the board of aldermen is contrary to this statute and void. State v. Eubanks, 154 N. C. 628, 70 S. E. 466.

Rule Must Be Uniform.—The ordinance of a city providing that no person shall erect within the city limits any house or building of any kind, or add to, improve or change any building without having first obtained permission from the Board of Aldermen, is void, for the reason that it does not prescribe a uniform rule of action for governing the exercises of the discretion of the Aldermen, but on the contrary, leaves the rights of property subject to their arbitrary discretion. State v. Tenant, 110 N. C. 609, 14 S. E. 387.

Permit by Mandamus.—Where a city, under an ordinance, with legislative authority in such matters, has issued a permit to build an additional room to a residence, and thereafter has recalled the permit pending the settlement of a dispute as to whether it would be situate upon an alley claimed to have been widened, and upon the finding by the jury that the alley had not been widened and that the room would not be thereon, a mandamus is the proper remedy, though the form of the issue was incorrect. Clinard v. Winston-Salem, 173 N. C. 356, 91 S. E. 1039.

§ 160-127. Material used in construction of walls.—The walls of all buildings in cities or towns where this article applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated. (Rev., s. 2987; 1905, c. 506, s. 9; 1915, c. 192, s. 4; C. S. 2749.)

§ 160-128. Frame buildings within fire limits.—Within the fire limits of cities and towns where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired, or moved except upon the permit of the building inspector, approved by the insurance commissioner. (Rev., s. 2988; 1905, c. 506, s. 8; 1915, c. 192, s. 5; C. S. 2750.)

Cited in 5 N. C. Law Rev. 241.

§ 160-129. Thickness of walls.—The walls of warehouses, stores, factories, liverystables, hotels or other brick or stone buildings for business purposes in cities or towns where this article applies, except fireproof buildings where the framework is of steel, shall conform to the following schedules:

Height of Building	Minimum Thickness in Inches of Wall				
	1st	2d	3d	4th	5th
One-story building	13	..	..	..	..
Two-story building	17	13	..	..	..
Three-story building	17	17	13	..	..
Four-story building	22	17	17	13	..
Five-story building	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra-cotta, stone, cast-iron or cement. Upon written application approved by the building inspector the insurance commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roofs of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fireproof roofing. (Rev., s. 2989; 1905, c. 506, s. 10; 1915, c. 192, s. 6; C. S. 2751.)

Local Modification.—Durham: 1933, c. 254.

§ 160-130. Foundation of walls; openings and doors protected.—In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbeted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector. (Rev., s. 2990; 1905, c. 506, s. 11; C. S. 2752.)

§ 160-131. Metallic stand-pipes required.—All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic stand-pipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The building inspector may, with the approval of the insurance commissioner, allow two or more stand-pipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large stand-pipes required. All hose coupling shall conform to the size and pattern adopted by the fire department. (Rev., s. 2991; 1905, c. 506, s. 12; 1915, c. 192, s. 7; C. S. 2753.)

§ 160-132. Construction of joists.—The ends of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking

of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists. (Rev., s. 2992; 1905, c. 506, s. 13; C. S. 2754.)

§ 160-133. Chimneys and flues.—All fireplaces and chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast. (Rev., s. 2993; 1905, c. 506, s. 14; C. S. 2755.)

§ 160-134. Chimneys not built on wood.—No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue. (Rev., s. 2994; 1905, c. 506, s. 16; C. S. 2756.)

§ 160-135. Construction of flues.—All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra-cotta, stone, cast-iron or cement. In all buildings hereafter erected the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges, and laundry stoves, and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire-clay lining or cast iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler-houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast-iron or fire-clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down. (Rev., s. 2995; 1905, c. 506, s. 17; C. S. 2757.)

§ 160-136. Hanging flues.—Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast-iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside. (Rev., s. 2996; 1905, c. 506, s. 18; 1915, c. 192, s. 8; C. S. 2758.)

§ 160-137. Flues cleaned on completion of building.—The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building. (Rev., s. 2997; 1905, c. 506, s. 19; C. S. 2759.)

§ 160-138. Construction of stovepipes.—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at lease twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected. (Rev., s. 2998; 1905, c. 506, s. 20; 1915, c. 192, s. 9; C. S. 2760.)

§ 160-139. Height of foundry chimneys.—Iron cupola or other chimneys of foundries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney. (Rev., s. 9999; 1905, c. 506, s. 22; C. S. 2761.)

§ 160-140. Steam pipes, how placed.—No steam pipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steam pipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incom-

bustible material. (Rev., s. 3000; 1905, c. 506, s. 21; C. S. 2762.)

§ 160-141. Electric wiring of houses.—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection. (Rev., s. 3001; 1905, c. 506, s. 23; C. S. 2763.)

Local Modification.—Alamance, City of Burlington: 1931, c. 133; Moore: 1931, c. 49.

Cross Reference.—As to power of the municipality to license electricians, see § 160-266.

Great Care Required.—There is nothing by which the user of an electrical appliance can detect the presence of an unusual high voltage or deadliness of current before touching the wire or coming in contact with it, and the greatest degree of care is required of those furnishing this deadly instrumentality to guard against the danger of its ordinary use as the circumstances may require. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92.

Liability for Injuries.—Where the furnisher of electricity for a building was, under its contract with the owner, required to furnish a low voltage of electricity for lighting and various domestic uses, and there is evidence tending to show that in attempting to iron clothes within the building with an electric iron the plaintiff touched the ironer and received a severe shock of electricity, to her injury, which should not and would not ordinarily have occurred by such use had the defendant supplied the current it had contracted to do, the doctrine of res ipsa loquitur applies, and the issue of actionable negligence should be submitted to the jury, denying defendant's motion as of nonsuit thereon. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92.

§ 160-142. Quarterly inspection of buildings.—Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the insurance commissioner and shall report to the insurance commissioner all defects found by him in any building upon a blank furnished him by the insurance commissioner. The building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time. (Rev., s. 3002; 1905, c. 506, s. 25; 1915, c. 192, s. 10; C. S. 2764.)

Cited in McAllister v. Pryor, 187 N. C. 832, 836, 123 S. E. 92.

§ 160-143. Annual inspection of buildings.—At least once in each year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this article are complied with, and the local inspector alone or with the insurance commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from any one. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected. (Rev., s. 3003; 1905, c. 506, s. 29; 1915, c. 192, s. 11; C. S. 2765.)

Cited in McAllister v. Pryor, 187 N. C. 832, 836, 123 S. E. 92.

§ 160-144. Record of inspections.—The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued. (Rev., s. 3004; 1905, c. 506, s. 30; C. S. 2766.)

Cited in McAllister v. Pryor, 187 N. C. 832, 836, 123 S. E. 92.

§ 160-145. Reports of local inspectors.—The local inspector shall report before the fifteenth of February of each year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the insurance commissioner, and furnish such other information and make such other reports as shall be called for by the insurance commissioner. (Rev., s. 3005; 1905, c. 506, s. 31; 1915, c. 192, s. 12; C. S. 2767.)

§ 160-146. Fees of inspector.—For the inspection of every new building, or old building repaired or altered, the local inspector shall charge and collect an inspection fee before issuing the building certificate, as follows: Two dollars for each one-story mercantile store-room, livery-stable or building for manufacturing, and fifty cents for each additional story, and for other buildings twenty-five cents per room; but the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for the quarterly and annual inspection of buildings as provided for in this article, and also for the duties under this section where the fees are collected and paid into the treasury of the municipality. (Rev., s. 3006; 1905, c. 506, s. 27; 1915, c. 192, s. 13; C. S. 2768.)

Local Modification.—Alamance, City of Burlington: 1931, c. 133; Lenoir: 1933, c. 294; Moore: 1931, c. 49.

§ 160-147. Care of ashes, waste, etc.—Ashes shall be removed in metal vessels and unless moved by city drays shall be stowed in brick, stone or metal receptacles or removed by owner to a place not less than fifteen feet from any

wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslaked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box. (Rev., s. 3007; 1905, c. 506, s. 24; C. S. 2769.)

§ 160-148. Ordinances to enforce the law.—No provision of this article shall be held to repeal the power of any incorporated city or town to make and enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this article. (Rev., s. 3008; 1905, c. 506, s. 34; C. S. 2770.)

§ 160-149. Defects in buildings corrected.—Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of the building of the defects or the failure to comply with this law, and the owner or builder shall immediately remedy the defect and make the building comply with the law. The owner or builder may appeal from the decision of the local inspector to the insurance commissioner. (Rev., s. 3009; 1905, c. 506, s. 28; 1915, c. 192, s. 14; C. S. 2771.)

§ 160-150. Owner of building failing to comply with law.—If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is willfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. (Rev., s. 3798; 1905, c. 506, s. 28; 1915, c. 192, s. 18; C. S. 2772.)

§ 160-151. Unsafe buildings condemned.—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law. (Rev., s. 3010; 1905, c. 506, s. 15; 1915, c. 192, s. 15; 1929, c. 199, s. 1; C. S. 2773.)

Cross Reference.—As to repair, closing, and demolition of unfit dwellings, see § 160-182 et seq. and § 160-200, subsection 28.

Editor's Note.—The Act of 1929 added the words "to life" in the third line of this section.

Cited in State v. Eubanks, 154 N. C. 628, 70 S. E. 466; Bonapart v. Nissen, 198 N. C. 180, 181, 151 S. E. 94.

§ 160-152. Punishment for allowing unsafe building to stand.—If the owner of any building which has been condemned as unsafe and dangerous to life by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. (Rev., s. 3802; 1905, c. 506, s. 15; 1915, c. 192, s. 19; 1929, c. 199, s. 2; C. S. 2774.)

Editor's Note.—The Act of 1929 added the words "to life" in line four of this section.

Cited in Bonapart v. Nissen, 198 N. C. 180, 181, 151 S. E. 94.

§ 160-153. Removing notice from condemned buildings.—If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense. (Rev., s. 3799; 1905, c. 506, s. 15; C. S. 2775.)

Cited in Bonapart v. Nissen, 198 N. C. 180, 181, 151 S. E. 94.

§ 160-154. To what towns applied.—This article shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the state as shall by a vote of their board of aldermen or governing body adopt this article. (Rev., s. 3011; 1905, c. 506, s. 35; 1915, c. 192, s. 16; C. S. 2776.)

Art. 12. Recreation Systems and Playgrounds.

§ 160-155. Application of article; "municipality" defined.—This article shall apply to cities, to towns, to townships, to school districts and to counties. The term "municipality" as used in this article includes any city, town, township, school district, and any county. (1923, c. 83, s. 1; C. S. 2776(a).)

Editor's Note.—This article is summarized in 1 N. C. Law Rev. 271.

§ 160-156. Power to dedicate property already owned; power to acquire property.—The city council or governing body of any city or town, or the county commissioners or governing body of any county, or the board of trustees or governing body of any school district may dedicate and set apart for use as playgrounds, recreation centers and for other recreational purposes, any lands or buildings, or both, owned or leased by such municipality and not dedicated or devoted to another and inconsistent public use; and such municipality may, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes, acquire or lease lands or buildings, or both, for said recreational purposes; or if there be no law authorizing such acquisition or leasing of such lands or buildings, the governing body of any such municipality is empowered to acquire

lands or buildings, or both, for such purposes by gift, purchase, condemnation or lease. (1923, c. 83, s. 2; C. S. 2776(b).)

Cross Reference.—See also § 160-200, subsection 12.

Issuance of Bonds.—Municipal corporations are given authority by this section and §§ 160-229 and 160-200, subsection 12, to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants, and an ordinance of a populous industrial city which provides for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was held a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330.

§ 160-157. System of supervised recreation; appropriation; delegation of powers.—The governing body of any municipality as defined in § 160-155 shall have the power to provide, establish, maintain and conduct a system of supervised recreation, including playgrounds, recreation centers, and other recreational activities and facilities, and may appropriate funds for the same; and the authority to provide, establish, maintain and conduct such supervised recreation system and facilities may be vested by the said governing body in the school board, park board or recreation commission, as the governing body of such municipality may determine. Any such board, body or commission in which shall be vested by appropriate action of the said governing body the authority aforesaid may for the purpose of carrying out the provisions of this article employ play leaders, playground directors, supervisors, recreation superintendents, or such other officers or employees as they deem proper. (1923, c. 83, s. 3; C. S. 2776(c).)

Local Modification.—Scotland: 1939, c. 359, s. 2.

§ 160-158. Powers; components of recreation board; terms of office; compensation; vacancies.—If the governing body of any municipality shall determine that the power to provide, establish, conduct and maintain a supervised recreation system and facilities, and to acquire by gift, purchase, eminent domain or lease, lands and buildings for such purposes, shall be exercised by a recreation board or commission or the school board, or park board, such governing body shall by resolution or ordinance vest such powers in such body, and the body to which such powers and duties shall be thus delegated shall have the same powers which the said governing body would have had to effectually carry out the purposes of this article: Provided, however, that if there is not a recreation board or commission in existence and it is the desire of the governing body to vest the said powers, duties and responsibilities in a recreation board or commission, then the said governing body shall have the power to create such board or commission, which shall consist of five persons, at least two of whom may be members of the school board, to be appointed by the mayor or presiding officer of such governing body, to serve for terms of five years or until their successors are appointed, except that the members of such board or commission first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. The members of such board or commission shall serve without pay. Vacancies in such board or commission occuring otherwise than by expiration of term shall be filled only for the unexpired term and such appointment shall be filled by the mayor or presiding officer of the governing body. (1923, c. 83, s. 4; C. S. 2776(d).)

§ 160-159. Co-operation.—Any two or more municipalities may jointly provide, establish, maintain and conduct a supervised recreation system and acquire property for and establish and maintain playgrounds, recreation centers, and other recreational facilities and activities. (1923, c. 83, s. 5; C. S. 2776(e).)

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

§ 160-160. Gifts; deposits of funds; payments from funds.—A recreation board or commission or other authority in which this article vests the power to provide, establish, maintain and conduct such supervised recreation system may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use, for playgrounds or recreation purposes, but if the acceptance thereof for such purpose will subject the municipality to additional expense for improvement, maintenance, or renewal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of such municipality. Money received for such purpose, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of the municipality to the account of the recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out in the same manner as money appropriated for recreation purposes. (1923, c. 83, s. 6; C. S. 2776(f).)

§ 160-161. Bond issues.—The governing body of any municipality may, pursuant to law, provide that the bonds of such municipality may be issued in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for playgrounds, recreation centers and other recreational purposes, and for the equipment thereof. (1923, c. 83, s. 7; C. S. 2776(g).)

§ 160-162. Petition for establishment of system and levy of tax; election.—Whenever a petition signed by at least twenty-five per cent of the qualified and registered voters in any municipality shall be filed in the office of the clerk of such municipality, requesting the governing body of such municipality to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax for the conduct and maintenance thereof of not less than.....mills nor more than.....mills on each dollar of assessed valuation of all taxable property within the corporate limits of such municipality, said petition setting forth definitely the maximum and minimum rate of said proposed tax, it shall be the duty of the governing body of such municipality to cause the question of the establishment, maintenance and conduct of such supervised recreation system as in the judgment of the governing body it may be advisable and practicable to provide, conduct and maintain out of the tax funds thus provided, to be submitted to the voters at a special election to be held as now provided by law

for special elections for municipal corporations. Except the board ordering said election may fix the date thereof: Provided, the petition shall have been filed at least thirty days prior to the date of such election: Provided further, there shall be no new registration under this article. (1923, c. 83, s. 8; C. S. 2776(h).)

§ 160-163. Resolution for establishment, maintenance, and conduct of system; appointment of recreation commission.—Upon the adoption of the proposition provided for in the preceding section at the election therein provided for the governing body of the municipality shall by appropriate resolution provide for the establishment, maintenance and conduct of such supervised recreation system as they may deem advisable and practicable to provide and maintain out of the tax money thus voted. And the said governing body may designate, by appropriate resolution or ordinance, the body or commission to be vested with the powers, duties and obligations necessary for the establishment, maintenance and conduct of such recreation system as provided in this article. (1923, c. 83, s. 9; C. S. 2776(i).)

§ 160-164. Playground and recreation tax.—The governing body of any municipality adopting the provisions of this article at an election shall thereafter annually levy and collect a tax of not less than the minimum nor more than the maximum amount set out in the said petition for such election, which tax shall be designated as the "playground and recreation tax" and shall be levied and collected in like manner as the general tax of the municipality, but the same shall be in addition to and exclusive of all other taxes such municipality may levy or collect, nor shall such tax be scaled down under any existing law. (1923, c. 83, s. 10; C. S. 2776(j).)

§ 160-165. Advice and counsel of state director of physical education.—The state board of education may, upon request of such municipality, give to any municipality adopting or considering the adoption of, the provisions of this article the benefit of the expert advice and counsel of the state director of physical education provided for in § 115-25 and may from time to time make and issue for the benefit of municipalities general suggestions furthering the purposes of this article. (1923, c. 83, s. 11; C. S. 2776(k).)

§ 160-166. Laws not repealed or impaired.—This article does not repeal nor impair any power now vested by law in any municipality or park or recreation board or commission. (1923, c. 83, s. 12; C. S. 2776(l).)

Art. 13. Market Houses.

§ 160-167. Municipalities and counties authorized to act jointly; location of house, etc.—The governing body of any city or town of over five thousand inhabitants and the county commissioners of the county in which such city or town is situated shall have the right, and they are fully authorized and empowered to jointly establish, own, maintain and operate a market house or market houses within the corporate limits of such city or town. For the purposes aforesaid such city or town and county may lase, purchase or otherwise acquire, and own and hold as tenants in common of equal interest, land necessary as a site for such market house or houses, and build and erect thereon such market house or houses, the cost thereof to be borne and paid equally by such city or town and county: Provided, however, that the cost of any such building or buildings shall not be less than two thousand five hundred dollars ($2,500.00) nor more than one hundred thousand dollars ($100,000.00). In connection with and as a part of such market house or houses, the governing body of such city or town and the commissioners of such county may also provide, establish, maintain and operate open-air market places, slaughter places or abattoirs, a cold storage plant and a canning plant for the purpose of preserving and canning such fruits, vegetables and other produce as may be left unsold from day to day or may be in excess of present market requirements, or which may be bought, and they are authorized to establish, maintain and operate places, scales, and equipment for the weighing, measuring and grading of corn, grain, fodder, vegetables, fruits and other like farm products, and for such purposes to appoint an official weigher, fix his fees and make reasonable rules, regulations and charges covering such services. (1923, c. 158, s. 1; C. S. 2776(m).)

Cross Reference.—As to power of municipalities acting alone to establish markets, see §§ 160-53, 160-200, subsection 20, and 160-228.

Editor's Note.—This act is summarized in 1 N. C. Law Rev. 272.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

§ 160-168. Control and management; regulations; leasing space; inspection; keeper.—Such market house or houses and appurtenances shall be under the joint control and management of such city or town and such county, and they shall make all necessary rules and regulations covering the maintenance and operation thereof not inconsistent with this article; they may provide for the leasing or letting of stalls or space therein to persons, firms or corporations, and fix the rental thereof, and may prescribe the time, place and manner of sale of fish, meats, fruits, vegetables and other produce therein, and provide for the inspection of all foodstuffs offered for sale therein and the condemnation of such as may be unfit for sale and consumption; they may elect or employ a keeper of such market house or houses and fix his compensation: Provided, the term of office of such keeper shall not exceed two years. (1923, c. 158, s. 2; C. S. 2776(n).)

§ 160-169. Directors; organization of board; powers; accounts.—The entire direct management and operation of such market house or houses established under this article shall be vested in a board of directors to consist of six members, and the mayor of the city and the chairman of the commissioners of the county in which such market house or houses are located shall be ex officio members of said board; of the other four members of said board, two, one of whom shall be a man and one a woman, shall be elected and appointed by the governing body of the city immediately following the time of the regular biennial May election of city officials, by

said governing body, and the other two members, one of whom shall be a man and one a woman, shall be elected and appointed by the county commissioners at their regular meeting in May of the same year, and the four members so elected shall serve for terms of two years, and until their successors shall have been elected and qualified: Provided, that the first board of directors may be elected at any time after establishment of such market house or houses, to serve until the time of the next regular municipal election. The said board shall organize and elect a chairman, secretary and treasurer from among its membership, may adopt by-laws for its own government and exercise the usual powers inherent in such bodies; they shall keep accurate minutes of their transactions and meetings, and keep or have kept accurate accounts of all moneys and property coming into their hands. Said board shall make and promulgate such rules and regulations for the operation, management and use of such market house or houses as it may deem advisable, not inconsistent with this article and not inconsistent with such rules and regulations as may be adopted from time to time by the governing bodies of such city or town and county, and employ such help as may be necessary in the operation thereof. (1923, c. 158, s. 3; C. S. 2776(o).)

§ 160-170. Special tax; specific appropriation.—To assist in and provide funds for the carrying out of the provisions and purposes of this article, the county commissioners of the county and the governing body of the city in which any market house or houses may be established under this article may each levy annually, as a part of their general levy for general purposes and not as a specially authorized tax, a tax of not exceeding two cents on each one hundred dollars ($100.00) value of real and personal property within their respective jurisdictions, which shall be collected as other taxes, kept in a separate fund and be used exclusively for the purposes contemplated and set forth in this article: Provided, however, that nothing in this section contained shall be held or construed to authorize or allow any city, town or county to levy any tax in excess of the amount now or hereafter limited by any general law or special charter. (1923, c. 158, s. 4; C. S. 2776(p).)

§ 160-171. Repeal of inconsistent laws; effect.—This article shall in no way affect any laws now in force in reference to market house or houses now in existence or the establishment or maintenance of market house or houses in towns of less than five thousand inhabitants under the laws now in force. (1923, c. 158, s. 5; C. S. 2776(q).)

Art. 14. Zoning Regulations.

§ 160-172. Grant of power.—For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. (1923, c. 250, s. 1; C. S. 2776(r).)

Cross References.—As to provision that housing authorities are subject to zoning laws of municipality, see § 157-13. As to power of municipality to abate nuisances, see § 160-55.

Editor's Note.—For an article on the constitutionality of zoning laws, see 5 N. C. L. Rev. 241.

Purpose of Article.—This article is comprehensive; it contains a grant of powers not contained in other acts. For the purpose of promoting health, safety, morals, and the general welfare, the General Assembly delegated the powers prescribed to the legislative body of cities and towns. Harden v. Raleigh, 192 N. C. 395, 396, 135 S. E. 151.

Origin and Necessity.—"Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall." Euclid v. Ambler Realty Co., 272 U. S. 365, 386, 47 S. Ct. 114, 71 L. Ed. 303.

"A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities." Euclid v. Ambler Realty Co., 272 U. S. 365, 387, 47 S. Ct. 114, 71 L. Ed. 303.

Validity of Ordinance.—An ordinance passed under this statute following its provisions and carrying it into effect in the city passing it, prescribing uniform regulations for each zone or district and giving an inspector certain judicial functions with respect to the kind or class of buildings under a board of adjustment and review, and providing for certiorari is a valid exercise of power and not repugnant to the organic law prohibiting discriminations. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151.

A zoning ordinance limiting the uses of property solely on the basis of race is beyond the scope of police power, since the reserved police power of the state must stop when it encroaches on the protection afforded the citizen by the federal Constitution. Clinard v. Winston-Salem, 217 N. C. 119, 6 S. E. (2d) 867, 126 A. L. R. 634.

Storage of Gasoline.—A municipal ordinance prohibiting storage of gasoline within the fire district of the city in tanks with a capacity greater than 4,400 gallons bears sufficient relationship to the public safety to come within the police power of the municipality, at least for the purpose of sustaining a finding to that effect upon the hearing of an order to show cause why a temporary order restraining the violation of the ordinance should not be continued to the hearing. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. 838.

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674; Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585; Ornoff v. Durham, 221 N. C. 457, 20 S. E. (2d) 380.

§ 160-173. Districts.—For any or all said purposes it may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of

this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. Provided, however, that when at any intersection of streets in the corporate limits of any city or town the said legislative body of the said city or town promulgates any certain regulations and/or restrictions for the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land on two or more of said corners at said intersection, it shall be the duty of such legislative body upon written application from the owner of the other corners of said intersection to redistrict, restrict and regulate the remaining said corners of said intersecting streets in the same manner as is prescribed for the erection, construction, reconstruction, alteration, repair or use of buildings, structure or land of the other said corners for a distance not to exceed one hundred and fifty feet from the property line of said intersecting additional corners. (1923, c. 250, s. 2; 1931, c. 176, s. 1; 1933, c. 7; C. S. 2776(s).)

Local Modification.—Cleveland, Durham, Forsyth, Guilford, Perquimans, Rockingham, Rowan, Wayne: 1931, c. 176, s. 1; Pasquotank: 1933, c. 263.

Editor's Note.—The Act of 1931 added all of this section beginning with the first proviso.

Nature of Uniformity of Law.—In one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance, and in another part it may not be; at one place it may menace the public safety and at another it may not. Conditions and probable results must be taken into account. This is the principle on which the board of adjustment has acted; it passes on individual cases, of course; but each case is determined in the contemplation of the statute and the ordinance by a uniform rule. Harden v. Raleigh, 192 N. C. 395, 397, 135 S. E. 151.

Application Where Ordinance Invalid.—Under the provisions of this Statute, the regulations prescribed shall be uniform for each class or kind of building throughout each district, and the regulations of one district may differ from those of the others, and can have no application to the question of the rights of the governmental body of the city refusing to issue a permit for a gasoline filling station, in denial of the right of an applicant for such license under an invalid ordinance. Bizzell v. Board, 192 N. C. 364, 135 S. E. 58.

§ 160-174. Purposes in view.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. (1923, c. 250, s. 3; C. S. 2776(t).)

§ 160-175. Method of procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in such municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. (1923, c. 250, s. 4; 1927, c. 90; C. S. 2776(u).)

Editor's Note.—The 1927 amendment revised the last sentence of this section. Prior thereto the sentence read, "at least fifteen days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality."

§ 160-176. Changes.—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (1923, c. 250, s. 5; C. S. 2776(v).)

This section prevails over a municipal ordinance providing that a change in zoning regulations could be approved by a majority of the city commissioners. Eldridge v. Mangum, 216 N. C. 532, 5 S. E. (2d) 721.

§ 160-177. Zoning commission.—In order to avail itself of the powers conferred by this article, such legislative body shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission. (1923, c. 250, s. 6; C. S. 2776(w).)

§ 160-178. Board of adjustment.—Such legislative body may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that such legislative body in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. Such board of adjustment shall

hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. (1923, c. 250, s. 7; 1929, c. 94, s. 1; C. S. 2776(x).)

Editor's Note.—The provisions of this section relating to the stay of proceedings thereon seem to be patterned after the general law of appeals. See sec. 1-294 where many constructions of the language here used will be found in the annotations.

The Act of 1929 added the proviso in the first sentence of this section.

Nature of Power.—The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power, it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. These are not mere ministerial duties. Harden v. Raleigh, 192 N. C. 395, 397, 135 S. E. 151.

Within the class of quasi-judicial acts fall the board's conclusions as to whether the proposed building would be noxious or offensive or detrimental to the public safety or welfare by reason of its situation or the surrounding conditions; also in this class is the legal discretion to be exercised by the board upon the conclusions reached. Harden v. Raleigh, 192 N. C. 395, 397, 135 S. E. 151.

Same—Extent to Which Reviewable.—Quasi-judicial functions, when exercised, not arbitrarily, but in subordination to a uniform rule prescribed by statute, ordinarily are not subject to judicial control. It is only in extreme cases, those which are arbitrary, oppressive, or attended with manifest abuse, that the courts will interfere. In Rosenthal v. Goldsboro, 149 N. C. 128, 62 S. E. 905, it is said: "It may now be considered as established with us, that our courts will always be most reluctant to interfere with these municipal governments in the exercise of discretionary powers, conferred upon them for the public weal, and will never do so unless their action should be so clearly unreasonable as to amount to an oppressive and manifest abuse of their discretion. This position is, we think, supported by the better reason, and is in accord with the decided weight of authority." Harden v. Raleigh, 192 N. C. 395, 397, 135 S. E. 151.

Where Action of Board Does Not Constitute Res Judicata upon Second Application.—The approval by the Board of Adjustment of a denial of a permit to erect a filling station on certain land does not constitute res judicata upon a second application made therefor three years after the first application upon substantial change of the traffic conditions. In re Application of Broughton Estate, 210 N. C. 62, 185 S. E. 434.

Review of Questions of Fact.—The writ of certiorari, as permitted by this section, is a writ to bring the matter before the court, upon the evidence presented by the record itself, for review of alleged errors of law. It does not lie to review questions of fact to be determined by evidence outside the record. In re Pine Hill Cemeteries, 219 N. C. 735, 15 S. E. (2d) 1.

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674.

§ 160-179. Remedies.—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. (1923, c. 250, s. 8; C. S. 2776(y).)

Editor's Note.—See 13 N. C. Law Rev. 235.

This section confers jurisdiction upon the courts beyond the scope of the ordinary equity jurisdiction in enjoining the creation of a nuisance and provides a statutory injunction to prevent the violation of municipal ordinances enacted in the exercise of the police power. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838. For note on this case, see 18 N. C. Law Rev. 255.

§ 160-180. Conflict with other laws.—Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the

provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern. (1923, c. 250, s. 9; C. S. 2776(z).)

§ 160-181. Other statutes not repealed.—This article shall not have the effect of repealing any zoning act or city planning act, local or general, now in force, except as to such provisions thereof as are repugnant to or inconsistent herewith; but it shall be construed to be in enlargement of the duties, powers and authority contained in such statutes and all other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the state of North Carolina. (1923, c. 250, s. 11; C. S. 2776(aa).)

Art. 15. Repair, Closing and Demolition of Unfit Dwellings.

§ 160-182. Exercise of police power authorized.—It is hereby found and declared that the existence and occupation of dwellings in municipalities of this state which are unfit for human habitation are inimical to the welfare, and dangerous and injurious to the health, safety and morals of the people of this state, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any municipality of this State finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to exercise its police powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. (1939, c. 287, s. 1.)

Cross References.—See also, § 160-200, subsection 28. As to condemnation of buildings dangerous to life in case of fire, see § 160-151.

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 367.

§ 160-183. Definitions.—The following terms whenever used or referred to in this article shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

(a) "Municipality" shall mean any city or town having a population of five thousand or more, according to the federal census of the year one thousand nine hundred and forty.

(b) "Governing body" shall mean the council, board of commissioners, board of aldermen, or other legislative body, charged with governing a municipality.

(c) "Public officer" shall mean the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinance and by this article.

(d) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or state relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(e) "Owner" shall mean the holder of the title in fee simple and every mortgagee of record.

(f) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(g) "Dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1939, c. 287, s. 2; 1941, c. 140.)

Editor's Note.—Prior to the 1941 amendment, the population required of a "municipality" was 25,000.

§ 160-184. Ordinance authorized as to repair, closing and demolition; order of public officer. — Upon the adoption of an ordinance finding that dwelling conditions of the character described in section 160-182 exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances shall include the following provisions:

(a) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(b) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located therein fixed not less than ten days nor more than thirty days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(c) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order, (1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose),

requiring the owner, within the time specified, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or (2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(d) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(e) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished: Provided, however, that the duties of the public officer set forth in subsections (d) and (e) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance.

(f) That, the amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwellings and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court: Provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, s. 3.)

§ 160-185. Standards.—An ordinance adopted by a municipality under this article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality; such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident, or other calamities, lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4.)

§ 160-186. Service of complaints and orders.—Complaints or orders issued by a public officer pursuant to an ordinance adopted under this article shall be served upon persons either personally or by registered mail; but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law. (1939, c. 287, s. 5.)

§ 160-187. Remedies.—Any person affected by an order issued by the public officer may petition to the superior court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall present such petition to the court. Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. Provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section. (1939, c. 287, s. 6; 1939, c. 386.)

§ 160-188. Compensation to owners of condemned property.—Nothing in this article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of this state, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the state. (1939, c. 386; 1943, c. 196.)

Editor's Note.—The 1943 amendment rewrote this section and added the reference to police power.

§ 160-189. Additional powers of public officer.—An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted: (a) To investigate the dwelling conditions in the

municipality in order to determine which dwellings therein are unfit for human habitations; (b) to administer oaths, affirmations, examine witnesses and receive evidence; (c) to enter upon premises for the purpose of making examinations: Provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession; (d) to appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and (e) to delegate any of his functions and powers under the ordinance to such officers and agents as he may designate. (1939, c. 287, s. 7.)

§ 160-190. Administration of ordinance.—The governing body of any municipality adopting an ordinance under this article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwelling in such municipality for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this article; and any such municipality is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances. (1939, c. 287, s. 8.)

§ 160-191. Supplemental nature of article.—Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Art. 16. Operation of Subchapter.

§ 160-192. Explanation of terms.—The following words and phrases as used in this subchapter shall, unless a contrary intention clearly appears, have the following meanings, respectively: The phrase "regular municipal election" shall mean the biennial election of municipal officers for which provision is made in this subchapter. The phrase "qualified voter" shall mean any registered qualified voter. The words "officer" and "officers," when used without further qualification or description, shall mean any person or persons holding any office in the city or in charge of any department or division of the city. The said words when used in contrast with a board or members of a board, or with division heads, shall mean any of the persons in sole charge of a department of the city. The word "ordinance" shall mean an order of the governing body entitled "ordinance," and designed for the regulation of any matter within the jurisdiction of the governing body as laid down in this subchapter. The word "city" shall mean any city, town, or incorporated village. (1917, c. 136, sub-ch. 15, s. 1; C. S. 2777.)

Cited by Clark, C. J. dissenting in Kornegay v. Goldsboro, 180 N. C. 441, 456, 105 S. E. 187.

§ 160-193. Effect upon prior laws.—Nothing in this subchapter shall operate to repeal any local or special act of the general assembly of North Carolina relating to cities, towns, and incorporated villages, but all such acts shall continue in full force and effect and in concurrence herewith, unless hereafter repealed or amended in manner provided for in this subchapter. The provisions of this subchapter shall not be construed to repeal the provisions as to cities and towns contained in Subchapter I of this chapter, except in case they are inconsistent with this subchapter. The provisions of this subchapter, so far as they are the same as those of existing general laws, are intended as a continuation of said laws and not as new enactments, and so far as they give general powers to cities are supplementary to and additional to the special charters of cities which have not such powers, unless inconsistent with or repugnant thereto, and a repetition of such powers if already possessed by cities by virtue of special charters. The provisions of this subchapter shall not affect any act heretofore done, liability incurred, or right accrued or vested, or affect any suit or prosecution now pending or to be instituted to enforce any right or penalty or punish any offense. Subject to the foregoing provisions hereof, all laws or parts of laws in conflict with this subchapter are hereby to the extent of such conflict repealed. (1917, c. 136, sub-ch. 1, s. 1; C. S. 2778.)

Effect upon Existing Charters.—In case of a conflict between this act and a city charter the charter must prevail as this article is intended only to add to already existing powers, and not to repeal them. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776; Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15.

§ 160-194. Not to repeal Municipal Finance Act.—Nothing in this subchapter contained shall be construed to amend or repeal any provisions of the "Municipal Finance Act," and wherever this subchapter and the "Municipal Finance Act" conflict, the "Municipal Finance Act" shall control. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S. 2916.)

Art. 17. Organization under the Subchapter.

§ 160-195. Municipal board of control; changing name of municipality.—The municipal board of control shall be composed of the secretary of state, the attorney general, and the chairman of the utilities commission. The attorney general shall be chairman and the secretary of state shall be secretary of such board. The said municipal board of control shall have the power and privilege of changing the name of any said town or municipal corporation within the bounds of the State of North Carolina; and the procedure for changing the name of any municipal corporation shall be the same as prescribed by §§ 160-197 and 160-198. (1917, c. 136, sub-ch. 2, s. 4; 1935, c. 440; 1941, c. 97; C. S. 2779.)

Editor's Note.—The amendment of 1935 substituted the "public utilities commissioner" for the "chairman of the corporation commission." It also added the last sentence relative to changing the name of a municipality.

§ 160-196. Number of persons and area included.—Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth. (1917, c. 136, sub-ch. 2, s. 1; C. S. 2780.)

An act of the legislature expressly validating and confirming a municipality as established cures all objections under this section. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649.

§ 160-197. Petition filed.—1. What petition must show. A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the secretary of state of North Carolina, accurately describing such territory, with map attached, containing the names of all qualified voters therein, the assessed valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

2. Order and notice for hearing. The secretary of state shall thereupon make an order prescribing the time and place for the hearing of said petition before the municipal board of control. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town. (1917, c. 136, sub-ch. 2, s. 2; C. S. 2781.)

§ 160-198. Hearing of petition and order made: 1. Manner of hearing. Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the municipal board of control, and no formal answer to the petition need be filed. The board may adjourn the hearing from time to time, in its discretion.

2. Order creating corporation. The municipal board of control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this article have been substantially complied with, and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public, the board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

3. Election of officers provided for. The board of control shall provide for the place of holding the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter.

4. Filing papers; fees. All the papers in reference to the organization of any town under this article shall be filed and recorded in the office of the secretary of state, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

5. When organization complete. Upon the approval of the board of control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in subchapter I of this chapter and as in this subchapter set forth. (1917, c. 136, sub-ch. 2, s. 3; C. S. 2782.)

Art. 18. Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-199. Powers applicable to all cities and towns.—All the provisions of this article, conferring powers upon cities and towns, shall apply to all cities and towns, whether they have adopted a plan of government under this subchapter or not. And the powers herein granted are in addition to and not in substitution for existing powers of cities and towns. (1919, c. 296; C. S. 2786.)

Cited in Hailey v. Winston-Salem, 196 N. C. 17, 23, 144 S. E. 377.

§ 160-200. Corporate powers.—In addition to and coördinate with the power granted to cities in subchapter I of this chapter, and any acts affecting such cities, all cities shall have the following powers:

1. To acquire property in fee simple or a lesser interest or estate therein by purchase, gift, devise, bequest, appropriation, lease, or lease with privilege to purchase.

2. To sell, lease, hold, manage, and control such property and make all rules and regulations by ordinance or resolution which may be required to carry out fully the provisions of any conveyance, deed, or will in relation to any gift or bequest, or the provisions of any lease by which the city may acquire property.

3. To purchase, conduct, own, lease, and acquire public utilities.

Cross Reference.—See also, § 160-282 et seq.

4. To appropriate the money of the city for all lawful purposes.

5. To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements.

6. To supervise, regulate, or suppress, in the interest of public morals, public recreations, amusements and entertainments, and to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof.

7. To pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

8. To provide for the destruction of noxious weeds, and for payment of the expense thereof by assessment or otherwise.

9. To regulate the erection of fences, billboards, signs, and other structures, and provide for the removal or repair of insecure billboards, signs, and other structures.

10. To make and enforce local police, sanitary, and other regulations.

11. To open new streets, change, widen, extend, and close any street or alley that is now or may hereafter be opened, to purchase any land that may be necessary for the closing of such street or alley, and adopt such ordinances for the regulation and use of the streets, squares, and parks, and other public property belonging to the city, as it may deem best for the public welfare of the citizens of the city.

12. To acquire, lay out, establish, and regulate parks within or without the corporate limits of the city for the use of the inhabitants of the same.

Cross Reference.—See also, § 160-155 et seq.

13. To erect, repair, and alter all public buildings.

14. To regulate, restrain, and prohibit the running or going at large of horses, mules, cattle, sheep, swine, goats, chickens, and all other animals and fowl of whatsoever description, and to authorize the distraining and impounding and sale of the same for the costs of the proceedings and the penalty incurred and to order their destruction when they cannot be sold, and to impose penalties on the owners or keepers thereof for the violation of any ordinance or regulation of said governing body, and to prevent, regulate, and control the driving of cattle, horses, and all other animals into or through the streets of the city.

15. To regulate and control plumbers and plumbing work, and to enforce efficiency in the same by examination of such plumbers and inspection of such plumbing work.

16. To regulate, control, and prohibit the keeping and management of houses or any building for the storage of gunpowder and other combustible, explosive, or dangerous materials within the city, and to regulate the keeping and conveying of the same, and to authorize and regulate the laying of pipes and the location and construction of houses, tanks, reservoirs, and pumping stations for the storage of oil and gas.

17. To regulate, control, restrict, and prohibit the use and explosion of dynamite, firecrackers, or other explosives or fireworks of any and every kind, whether included in the above enumeration or not, and the sale of same, and all noises, amusements, or other practices or performances tending to annoy or frighten persons or teams, and the collection of persons on the streets or sidewalks or other public places in the city, whether for purposes of amusement, business, curiosity, or otherwise.

18. To direct, control, and prohibit the laying of railroad and street railway tracks, turnouts, and switches in the streets, avenues, and alleys of the city unless the same shall have been authorized by ordinance, and to require that all railroads, street railways, turnouts and switches shall be so constructed as not to interfere with the drainage of the city and with the ordinary travel and use of the streets, avenues, and alleys in the city, and to construct and keep in repair suitable crossings at the intersection of streets, avenues, and alleys and ditches, sewer and culverts, where the governing body shall deem it necessary, and to direct the use and regulate the speed of locomotive engines, trains, and cars within the city.

19. To make all suitable and proper regulations in regard to the use of the streets for street cars, and to regulate the speed, running, and operation of the same so as to prevent injury or inconvenience to the public.

20. To make such rules and regulations in relation to butchers as may be necessary and proper; to establish and erect market houses, and designate, control, and regulate market places and privileges.

Cross Reference.—As to power of municipalities to establish and maintain meat inspection, see § 106-161.

21. To prohibit and punish the abuse of animals.

22. To acquire, establish, and maintain cemeteries and to regulate the burial of the dead and the registration of deaths, marriages, and births.

Cross References.—As to registration of marriages by the register of deeds, see § 51-18. As to registration of births and deaths generally, see § 130-69 et seq.

23. To prohibit prize-fighting, cock and dog fighting.

24. To regulate, restrict, and prohibit theaters, carnivals, circuses, shows, parades, exhibitions of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, musical and hypnotic exhibitions and performances.

25. To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief. Also, to insure policemen, firemen, or any class of city employees against death or disability, or both, during the term of their employment under

forms of insurance known as group insurance; the amount of benefit on the life of any one person not to exceed the sum of two thousand dollars, and the premiums on such insurance to be payable out of the current funds of the municipality.

Cross References.—As to retirement system for counties, cities, and towns, see § 128-21 et seq. As to the firemen's relief fund of North Carolina, see § 118-12 et seq.

26. To prevent and abate nuisances, whether on public or private property.

27. To regulate and prohibit the carrying on of any business which may be dangerous or detrimental to health.

28. To condemn and remove any and all buildings in the city limits, or cause them to be removed, at the expense of the owner or owners, when dangerous to life, health, or other property, under such just rules and regulations as it may by ordinance establish; and likewise to suppress any and all other nuisances maintained in the city.

Cross References.—See also, § 160-182 et seq. As to zoning regulations, see § 160-172 et seq.

29. To provide for all inspections which may be expedient, proper, or necessary for the welfare, safety, and health of the city and its citizens, and regulate the fees for such inspection.

Cross Reference.—As to power of municipality to establish and maintain meat inspection, see § 106-161.

30. To require any or all articles of commerce or traffic to be gauged, inspected, measured, weighed, or metered, and to require every merchant, retail trader or dealer in merchandise of property of any description which is sold by weight or measure to have such weights and measures sealed and to be subject to inspection.

31. To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact ordinances providing for a system of parking meters designed to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation. The proceeds derived from the use of such parking meters shall be used exclusively for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns; provided this paragraph shall not apply to cities or towns in North Carolina having populations of twenty thousand or less as determined by the last Federal census. Nothing contained in Chapter two, Section twenty-nine, of the Public Laws of one thousand nine hundred and twenty-one, or in section sixty-one of Chapter four hundred and seven of the Public Laws of one thousand nine hundred and thirty-seven shall be construed as in any way affecting the validity of these parking meters or the fees required in the use thereof.

The governing authorities of all cities and towns of North Carolina shall have the power to own, establish, regulate, operate and control municipal parking lots for parking of motor vehicles within the corporate limits of cities and towns. Cities and towns are likewise hereby authorized, in their discretion, to make a charge for the use of such parking lots.

32. To regulate the emission of smoke within the city.

33. To license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such licenses.

34. To regulate and control electricians and electrical work and to enforce efficiency in the same by examination of such electricians and inspection of such electrical work.

35. To license and regulate all vehicles operated for hire in the city. To require that the operator of every jitney bus or taxicab and of every other motor vehicle, (other than jitney buses and taxicabs, operated under the jurisdiction of the utilities commission of North Carolina), engaged in the business of transporting passengers for hire over the public streets of such city or town shall furnish and keep in effect for each such jitney bus, taxicab or other such motor vehicle so operated a policy of insurance or surety bond with sureties whose solvency shall at all times be subject to the approval of the governing body of such city or town, said policy of insurance or surety bond to be in such amount as may be fixed by the governing body of such city or town, not to exceed the sum of ten thousand dollars ($10,000.00), and to be conditioned on such operator responding in damages for any liability incurred on account of any injury to persons or damage to property resulting from the operation of any such jitney bus, taxicab or other such motor vehicle, and to be filed with the governing body of such city or town as a condition precedent to the operation of any such jitney bus, taxicab or other such motor vehicle over the streets of such city or town.

36. To acquire property in fee simple and to use the lands now owned in fee simple or otherwise for the purpose of establishing and maintaining new cemeteries. To abandon any cemetery which has not been used for interment purposes within ten years, and to remove or consolidate such cemetery, so abandoned, and the monuments, tombstones, fences, walls and enclosures, and the contents of any graves therein, or any part of either, at its own expense, to or with any established cemetery maintained for interment purposes; to take possession of, convey or utilize the lands in such abandoned cemetery, or any part thereof, as may best subserve the interests of the city or town.

Cross References.—See also, § 160-2, subsection 3. As to the care of cemeteries, see §§ 160-258, 160-259 and 160-260.

36a. To require that drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets of any city or town, make application to and receive from the governing board of any such city or

town a driver's or operator's permit before operating or driving any such vehicle. The governing board may refuse to issue such permit to any person who has been convicted of: a felony; a violation of any federal or state statute relating to the use, possession, or sale of intoxicating liquors; any federal or state statute relating to prostitution; any federal or state statute relating to the use, possession, or sale of narcotic drugs; or to any person who is not a citizen of the United States; or to any person who is a habitual user of intoxicating liquors or narcotic drugs; or to a person who has been a habitual violator of traffic laws or ordinances.

The governing body may revoke any such driver's or operator's permit if the person holding such permit is convicted of: a felony; or violation of any federal or state statute relating to the possession or sale of intoxicating liquors; or violation of any federal or state statute relating to prostitution; or any federal or state statute relating to the use, possession or sale of narcotic drugs; or repeated violations of traffic laws or ordinances; or becomes a habitual user of intoxicating liquors or narcotic drugs.

The governing body may also require operators and drivers of taxicabs to prominently post and display in each taxicab, so as to be visible to the passengers therein, permit, rates and/or fares, fingerprints, photographs, and such other identification matter as deemed proper and advisable.

37. In cities or towns having a population of not less than twenty thousand inhabitants, the governing bodies may, in their discretion, create and establish a civil service with reference to any and all of the employees of such municipalities, and prescribe rules and regulations for the conduct and government of such civil service.

Cross Reference.—As to merit system for certain departments and agencies of city, district, county, and state, see § 126-1 et seq.

38. Every incorporated city or town in the state, in addition to the other powers granted unto it by this chapter, shall have the following enumerated powers:

Whenever there shall be in any incorporated city or town a lot or lots owned by one or more persons, upon which water shall collect, either by falling upon the said lot or lots or collected thereon by drainage or otherwise from adjacent lots, no adequate drainage from which is provided by natural means, the governing body of any such city or town, upon being advised by the health officer of the said city or town, or the health officer of the county in which the town is located, that the conditions so existing are, or are liable to become, a nuisance and a menace to health in such city or town, is authorized to abate the nuisance, and to that end may proceed to abate it in the following manner:

Such city or town shall cause a survey to be made by a competent engineer to ascertain the means and methods and costs of providing an adequate drainage from such lot or lots and such engineer shall prepare plans and specifications to provide such drainage, with the estimated cost thereof and in making such survey he shall include therein the area of adjoining and adjacent lots which will be drained by such system of drainage. He shall also include in such survey the area of all adjoining and adjacent lots from which water flows and is gathered upon the lot or lots which are to be drained. The city or town shall thereupon cause notice to be published once in a newspaper published in the municipality, or if no newspaper is published in the municipality, then in a newspaper published in the county and of general circulation in the municipality, or if no newspaper is published in the county, said notice shall be posted in three public places in the municipality, which notice shall state in general and briefly the fact that a nuisance has been created and so declared, and that it is the purpose of the city or town to abate the same by causing a system of drainage to be put in, and that the cost thereof is to be paid or assessed in one of the ways hereinafter provided, that the report of the engineer is on file and subject to inspection, and that on a date to be named in the notice a hearing will be had before the board as to whether the plan shall be adopted and the assessment made, at which hearing the persons affected may be present and present such objections as they may have to the adoption of the report of the engineer and the doing of the work. Said notice shall also contain the names of the owners of the property affected in so far as the same can be ascertained on reasonable inquiry. Said notice shall be published or posted at least ten days before the hearing.

At the hearing provided for, if the governing body of the city or town shall determine that the work shall be done, and that the plans and specifications of the engineer are proper, it may adopt the said plans and specifications, and have the work done, either by letting a contract therefor or otherwise, and in the event a contract is let, it shall be advertised as is provided for in other cases of municipal work.

At the hearing above provided for, the governing body shall also determine the manner in which the cost of said work shall be paid or assessed, which shall be in either of the following ways: (a) Each and every lot affected by the plan or system shall be assessed with the cost thereof upon the following basis: that is to say, such proportion of the total cost of the survey and construction as the area of said lot bears to the total area as shown by the plans of the engineer when adopted by the governing body, which sum shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest; (b) The cost of the survey and the construction of the main drains shall be borne by the municipality, and the cost of the construction of tributary drains assessed against the lots on which such tributary drains are constructed so that each lot shall bear the expense of tributary drains constructed on it. Said assessments shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest.

The area which shall be included within and drained by the plans and specifications as herein provided for is hereby declared to be a "special improvement district."

The full faith and credit of such city or town shall be pledged for the payment of the said notes and interest when due.

The powers herein contained and hereby conferred are additional to any other powers conferred by any other law or laws, and are not affected by any limitations imposed by any other law.

The assessments, when made, shall be a lien upon the property benefited, and shall be collectible by the same means and methods as are other assessments for local or special improvements as is provided for in article nine of this chapter.

All acts or proceedings done or taken under this subdivision of this section prior to February 17, 1923, shall be valid.

Cross Reference.—As to letting of contract by municipality, county, etc., see § 143-129 et seq.

39. The governing authorities of all cities and towns of North Carolina shall have the power to pass, alter, amend and repeal ordinances regulating the opening and closing hours of barber shops. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; Ex. Sess. 1920, c. 3, s. 10; 1921, c. 8, s. 3; Ex. Sess. 1921, c. 21; 1923, cc. 20, 102; 1925, c. 200; 1935, c. 279, s. 1; 1939, c. 164; 1941, c. 153, ss. 1, 2; 1941, c. 272; 1943, c. 639, s. 1; C. S. 2787.)

Local Modification. — Buncombe: 1939, c. 302; Cumberland and Guilford and cities therein: 1941, c. 153, s. 2(a); Orange and cities therein: 1941, c. 319.

Cross References.—As to power to pass ordinances prior to the passage of this act, see § 160-52 et seq. As to power to appropriate money for local development, see § 158-1. As to power to avail itself of provisions of the bankruptcy law, see § 23-48. As to authority to aid and co-operate with the federal government and housing authorities in the planning, construction and operation of housing projects, see § 157-40 et seq.

Editor's Note.—By Public Laws, Ex. Sess. 1921, subsection 38 was added. By the amendment of 1923 notice to owners as provided was changed from notice by service to notice by publication; an alternative was given as to how charges were to be assessed, the original act of 1921 providing only for the proportionate assessment on the total cost. The alternative was for the city to pay for the main drain if so determined by its governing body. Provision was made for a tax assessment in case the city bore the expense of the main drain, see 1 N. C. Law Rev. 274.

By Public Laws of 1925, c. 200, subsection 11 was amended so as to apply to alleys, and provision was also made for purchase of land necessary for closing the streets or alleys.

Chapter 20, Public Laws, 1923, amends subs. 25, by adding thereto authority in the municipality to take out group insurance for policemen, firemen, or any class of city employees, such insurance to be either against death or disability or both, and the amount for the life of any one person not to exceed $2000. See 1 N. C. Law Rev. 277.

The amendment of 1935 adds all of subsection 35 except the first sentence thereof.

The 1939 amendment added subsection 39.

The 1941 amendments added that part of subsection 31 which appears after the word "city" in line 4 thereof.

The 1943 amendment inserted subsection 36a.

Sale of Coca-Cola on Sunday.—As ordinance regulating the sale of merchandise, drinks, etc., on Sunday is a valid exercise of the police powers of an incorporated city or town; and while the service of meals within the town at restaurants, etc., is a necessity, permitting the sale of coffee, tea, etc., the sale of coca-cola as a part of the meals is not included, and a sale thereof as a part of the meal may be prohibited by ordinance. Sec. 160-200, subsections (6), (10), (27). State v. Weddington, 188 N. C. 643, 125 S. E. 257.

Regulation of Streets.—A city ordinance in pursuance of subsec. 11 of this section requiring a license to be issued by the municipal authorities to beg upon the city streets or to solicit contributions for charitable or religious purposes, in accordance with whether the person or purpose is ascertained by such authorities as worthy or whether the moneys solicited will be properly applied, is a valid and undiscriminating exercise of a police power, and not unlawful as an interference with the religious liberties of our people, or an obstruction to the lawful pursuit of their business. State v. Hundley, 195 N. C. 377, 142 S. E. 330.

An abutting owner may not recover from a city damages resulting to his property by reason of the fact that the abutting sidewalk has been narrowed in order to widen the street under orders of the city commissioners, the width of the street and sidewalk being within the sound discretion of the commissioners. See also § 160-78. Ham v. Durham, 205 N. C. 107, 170 S. E. 137.

Defendant town, in co-operation with the federal and state authorities in procuring the construction of an underpass and the elimination of two grade crossings, closed two of its streets at the railroad crossings. This action was instituted by property holders adjacent to the railroad tracks and along one of the closed streets, alleging that the order closing the streets was ultra vires and resulted in the creation of a nuisance causing injury to plaintiffs' property. Held: Defendant town had authority, under express provision of its charter, chapter 424 of Private Laws of 1907, and under this section to close the said streets at the crossings in the interest of public welfare, and therefore the closing of the streets was in the exercise of a discretionary governmental power with which the courts can interfere only in instances of fraud or oppression constituting a manifest abuse of discretion, and did not constitute a nuisance, and, in the absence of an allegation of abuse of discretion, defendant town's demurrer to the complaint was properly sustained. Sanders v. Atlantic Coast Line R. Co., 216 N. C. 312, 4 S. E. (2d) 902.

Regulation of Parking of Vehicles. — A city ordinance prohibiting parking of automobiles on one side of a street on certain blocks where, because of the narrowness of the street, there is insufficient room for cars to pass between parked cars and a street-car track in the street, is valid in the light of this section, subsec. (31). State v. Carter, 205 N. C. 761, 172 S. E. 415.

This section, prior to the 1941 amendment, did not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389.

The installation and maintenance of traffic lights by a municipality under authority of subsections 11 and 31, is in the interest of the public safety in the exercise of the police power, and is a discretionary governmental function. Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889.

Ordinance Requiring Taxicab Operators to Secure Liability Insurance Does Not Violate Constitution.—An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and expressly authorized by this section and does not violate the Fourteenth Amendment of the Federal Constitution, the operation of vehicles for gain being a special and extraordinary use of the city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification. Watkins v. Iseley, 209 N. C. 256, 183 S. E. 365, citing Packard v. Banton, 264 U. S. 140, 44 S. Ct. 257, 68 L. Ed. 596.

Coverage of Indemnity Bond.—An indemnity bond for a taxi corporation did not cover liability for injuries inflicted prior to the execution of the bond. Manheim v. Virginia Surety Co., 215 N. C. 693, 3 S. E. (2d) 16.

Regulation of Dance Halls. — Cities have power, among other things, to license, prohibit, and regulate dance halls, by express provisions of this section, and in the interest of public morals provide for the revocation of such licenses, as valid exercise of the State's inherent police power, made applicable to cities and towns generally.

An ordinance requiring the consent of the board of directors of the city before keeping a dance hall therein is not objectionable as an arbitrary exercise of power, or as being at the pleasure of the board, but comes within its limited legal discretion, which the courts will not permit it to abuse, but will not disturb in the absence of its abusive use. State v. Vanhook, 182 N. C. 831, 109 S. E. 65.

Power to Acquire Parks.—Under the provision of our general statutes, a city or town is given authority to acquire and maintain parks for the use of its citizens beyond its corporate limits, and to provide suitable streets or ways of access thereto for the purpose. Berry v. Durham, 186 N. C. 421, 119 S. E. 748.

Power to Regulate Markets.—A city in the exercise of statutory authority may enact a valid penal ordinance as affecting the health of its citizens, and under its police power, require that meats, fish, oysters and perishable matter be sold at a sanitary market building containing refrigeration and other sanitary methods, under proper inspection, where adequate accommodation may be obtained at a rea-

sonable rental, not for profit, and may exclude such business within a prescribed territory therefrom, the location of the market-house being reasonably suitable to the business or trades specified. Angelo v. Winston-Salem, 193 N. C. 207, 136 S. E. 489.

A city has authority under this section to lease an auditorium in its municipal building which was equipped at the time the building was erected with a ticket booth and a moving picture projecting equipment, it appearing that the lease does not involve property held in trust for the use of the city, or property devoted to governmental purposes, although administrative offices of the city are located elsewhere in the building. Cline v. Hickory, 207 N. C. 125, 176 S. E. 250.

License Tax on Automobiles.—Section 2612(a) of the consolidated statutes, which has been superseded by § 20-97 of the General Statutes, provides for a city automobile license of one dollar, and a license for more than that amount is invalid, if levied on ownership alone, for this section is not contrary to that one and they must be construed together. State v. Jones, 191 N. C. 371, 131 S. E. 734.

Forbidding Lumber Yards in Certain Sections.—In Turner v. New Bern, 187 N. C. 541, 122 S. E. 469, the principle was laid down: "Under the provision of this section and under the provision of its charter authorizing a city to pass needful ordinances for its government not inconsistent with the law to secure the health, quiet, safety—general welfare clause—within its limits, etc., it is within the valid discretionary exercise of the police powers of the municipality to pass an ordinance forbidding the erection of lumber yards within a long established, exclusively residential portion, and when this discretionary power has not been abused the courts will not interfere." Angelo v. Winston-Salem, 193 N. C. 207, 215, 136 S. E. 489.

Ordinances against Keeping Cows.—An ordinance forbidding the keeping of cows within a certain portion of the city is valid. State v. Stowe, 190 N. C. 79, 128 S. E. 481.

Clarkson, J. dissented, saying: "But section two of the city ordinance prohibits absolutely the keeping of a cow in the zigzag district. There is no authority in the Constitution or law of this land, in my opinion, for such unreasonable, arbitrary, discriminatory, and autocratic power, and the ordinance, section 2, is unconstitutional and void. In this age drifting towards 'nervous particularity' we are forgetting the fundamental rights of a citizen. The evidence in the record is that one man drew the ordinance. All the evidence is that defendant kept his place clean. His neighbors testified that he kept the stables clean, and there was no complaint; nothing offensive. The health officer had no complaint; nothing offensive."

Recovery of Excess Tax.—In order to recover money paid a municipality as a license tax in excess of the amount the town was lawfully authorized to collect, and in the absence of statutory regulations, or under the common law, it is necessary that the one so paying should have done so under protest at the time or under circumstances of duress or such as would endanger his person or property; and where the payment has been voluntarily made, the action may not be successfully maintained. Blackwell v. Gastonia, 181 N. C. 378, 107 S. E. 218.

Disposition of Garbage.—An incinerator operated by a city for the burning of its garbage comes within the authority conferred upon it by statute and, its operation being a purely governmental function, exercised as a local agency of State government, the city is not liable for an injury caused by defect therein to an employee, in the absence of statutory provision to the contrary. Scales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543.

Cited in regard to city's control over grade crossings in 2 N. C. Law Rev. 102. Cited also in Mewborn v. Kinston, 199 N. C. 72, 81, 154 S. E. 76; Williamson v. High Point, 213 N. C. 96, 195 S. E. 90; Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585; Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889; Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1; McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (dissenting opinion); Petty v. Lemmons, 217 N. C. 492, 8 S. E. (2d) 616; Sanders v. Smithfield, 221 N. C. 166, 19 S. E. (2d) 630.

§ 160-201. Salary of mayor and other officers.—The governing body of any city may by ordinance fix the salary of the mayor of such city or heads of departments or other officers. (1917, c. 136, sub-ch. 5, s. 6; C. S. 2788.)

Cross References.—As to provisions as to salary of mayor and other officers under Plan A, see § 160-311; under Plan B, see § 160-320; under Plan C, see § 160-337; and under Plan D, see § 160-346.

§ 160-202. Enumeration of powers not exclusive.—The enumeration of particular powers by this subchapter shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein, or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the constitution and laws of North Carolina now are or hereafter may be granted to cities. Powers proper to be exercised, and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this subchapter; or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the governing body. (1917, c. 136, sub-ch. 5, s. 3; C. S. 2789.)

Cited in Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389.

§ 160-203. Police power extended to outside territory.—All ordinances, rules, and regulations of the city now in force, or that may hereafter be enacted by the governing body in the exercise of the police powers given to it for sanitary purposes, or for the protection of the property of the city, unless otherwise provided by the governing body, shall, in addition to applying to the territory within the city limits, apply with equal force to the territory outside of the city limits within one mile in all directions of same, and to the rights of way of all water, sewer, and electric light lines of the city without the corporate limits, and to the rights of way without the city limits, of any street railway company, or extension thereof, operating under a franchise granted by the city, and upon all property and rights of way of the city outside the corporate limits and the above mentioned territorial limits, wheresoever the same may be located. (1917, c. 136, sub-ch. 5, s. 2; C. S. 2790.)

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.—When in the opinion of the governing body of any city, or other board, commission, or department of the government of such city having and exercising or desiring to have and exercise the management and control of the streets, water, electric light, power, gas, sewerage or drainage systems, or other public utilities, parks, playgrounds, cemeteries, wharves, or markets, open-air or enclosed, which are or may by law be owned and operated or hereafter acquired by such city or by a separate association, corporation, or other organization on behalf and for the benefit of such city, any land, right of way, water right, privilege, or easement, either within or outside the city, shall be necessary for the purpose of opening, establishing, building, widening, extending, enlarging, maintaining, or operating any such streets, parks, playgrounds, cemetery, water, electric light, power, gas, sewerage or drainage systems, wharves, or other public utility so owned, operated, and maintained by or on behalf of any such city, such governing body, board, commission, or department of government of such city may purchase such land, right of way, water right, privilege, or easement from the owner or owners thereof and pay such compen-

sation therefor as may be agreed upon. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S. 2791.)

Cross Reference.—As to power to purchase real estate generally, see § 160-2, subsection 2.

Editor's Note.—"The peculiar feature of this proceeding is the combination of a condemnation under eminent domain and special assessments for improvements in assessment districts. It is not intended to supplant any powers given in special charters, but gives an alternative method of procedure. Another plan for making such improvements is contained in the local improvement statutes, §§ 160-78 et seq., in which the assessment plan is used but only for part of the expense, and the amount of the assessments are determined through the governing body instead of by a special proceeding in court; and the condemnation of property would be a separate proceeding under the law of eminent domain." 1 N. C. Law Rev. 275.

Power Discretionary.—See note to § 160-205. Where it appears that the governing authorities of a town have taken lands to widen a street intersecting with other streets so as to lessen the danger to traffic thereon, and it is made to appear that doing so was a reasonable exercise of the discretion vested in them, the findings that such course was unnecessary is not binding on the Supreme Court, the question being, primarily, whether the administrative authorities of the town have so grossly and manifestly abused the exercise of their discretionary powers as to render their action ineffectual. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51.

The power to construct power lines and plants outside corporate limits is limited by the provisions of the Revenue Bond Act of 1935, since the act expressly repeals inconsistent provisions of any prior general or special law, and under the provisions of the Revenue Bond Act a municipality may construct such lines and plants only in consonance with the policy of the act and the authority therein given municipalities to provide such conveniences for the health, safety, and benefit of the citizens of the municipality. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90.

Parks out of City.—The general statutes giving power to cities and towns to acquire parks for its citizens outside of the corporate limits, and provide access for the public thereto, prevail whenever and to the extent there is no irreconcilable repugnancy with special charter provisions on the same subject. Berry v. Durham, 186 N. C. 421, 119 S. E. 748.

Section Authorizes Paving of Dedicated Streets Outside City Limits.—This section gives a city the right to acquire streets "within or outside the city," and to "exercise the management and control of the streets," etc. The language is broad enough to give a city authority to pave streets outside the city that were dedicated to the city, there being no necessity to purchase same. High Point v. Clark, 211 N. C. 607, 612, 191 S. E. 318.

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207.

Cited in Durham v. Sou. R. Co., 185 N. C. 240, 243, 117 S. E. 17; Winston-Salem v. Ashley, 194 N. C. 388, 139 S. E. 764; McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (dissenting opinion); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1; Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328.

§ 160-205. By condemnation.—If such governing body, board, commission or department of the government of such city are unable to agree with the owners thereof for the purchase of such land, right of way, privilege, or easement, for the purposes mentioned in the preceding section, or for a site for city hall purposes, condemnation of the same for such public use may be made in the same manner and under the same procedure as is provided in chapter Eminent Domain, article 2; and the determination of the governing body, board, commission, or department of government of such city of the land necessary for such purposes shall be conclusive. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; 1923, c. 181; C. S. 2792.)

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

Editor's Note.—C. 181, Public Laws 1923, amends § 160-205, by empowering municipalities to condemn land for a site for a city hall, as well as for the various purposes mentioned in § 160-204. 1 N. C. Law Rev. 277.

Constitutionality.—The acquisition of land to be used to connect a railroad in which the State and counties own an interest with the city's public wharves and docks for water commerce, and necessary to continue or develop the industries of its citizens, is for a public use, and not subject to the exception that the city, in taking the right of way by condemnation from the owner, according to the provisions of its charter and the general statutes, was acting in violation of the Constitution in taking private property for a public use; and the private statutes specifically authorizing the proceedings are constitutional and valid. Hartsfield v. New Bern, 186 N. C. 136, 119 S. E. 15.

Construed with Section 160-204.—Under the provision of this section before a city may take lands by condemnation to widen its streets it is necessary for it to allege and prove that it has first attempted to acquire them by purchase as provided by section 160-204. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764.

City Charter Inconsistent with Section.—The right of eminent domain of a municipality can be exercised only in the mode pointed out in the statute conferring it; and where the method prescribed for the city or town in its charter is inconsistent with or repugnant to this section by the express terms the proceedings given under the municipal charter will have to be followed in condemnation of lands for the use of its streets. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776.

Improvements No Bar to Condemnation.—The governing authorities of a town are not estopped to condemn land for the widening or improving of its streets by reason of an owner having put extensive improvements on his land a long time prior to the time it was condemned for that purpose, the power of condemnation, in cases of this character, being a continuing one to be exercised when and to the extent that the public good may require it. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51.

Condemnation to Widen State Highway within City.—A petition by a municipality to condemn land upon allegations that the land sought to be condemned was necessary to widen a part of a state highway within the city limits, which project had been approved by an ordinance for the acquisition of such land under an agreement with the state highway commission providing that the city should secure and dedicate the right of way and the highway commission should perform the construction work, was held to state a cause of action, since the city is given express authority by this and the following section to condemn land for such purpose. Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207.

County Highway May Not Be Condemned.—This section does not imply legislative authority upon a municipality to condemn portions of county highways in the construction of a hydroelectric generating system. Yadkin County v. High Point, 217 N. C. 462, 8 S. E. (2d) 470.

Property of Persons under Disability.—Under this section an attempt by a city to acquire lands of owners before proceeding to condemn the lands is a preliminary jurisdictional fact. But the statute does not contemplate the useless formality of attempting to acquire the property of persons under disability, such as minors. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764.

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90.

§ 160-206. Powers in addition and supplementary to powers in charters.—It is the intention of §§ 160-206 to 160-221 that the powers herein granted to cities for the purpose of improving their streets and improving their drainage and sewer conditions shall be in addition and supplementary to those powers granted in their charters, and in any case in which the provisions of these sections are in conflict with the provisions of any local statute or charter, then the governing body of any such municipality may in its discretion proceed in accordance with the provisions of such local statute or charter, or, as an alternative method of procedure, in accordance with the provisions of these sections. (1923, c. 220, s. 1; C. S. 2792(a).)

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207.

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495.

§ 160-207. Order for condemnation of land; assessment districts; maps and surveys; hearing.—When it is proposed by any municipal corporation to condemn any land, rights, privileges or easements for the purpose of opening, extending, widening, altering or improving any street or alley, or changing or improving the channel of any branch or watercourse, for the purpose of improving the drainage conditions, or the laying and construction of sanitary, storm or trunk sewer lines in such municipality, an order or resolution of the governing body of the municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement for which the land is required, and shall lay out, constitute and create an assessment district extending in every direction to the limits of the area or zone of damage or special benefits to property resulting from said improvement, in the best judgment of said governing body. Said governing body shall cause such maps and surveys to be made showing the area of such assessment district and improvements proposed to be made, and of all the lands located in said assessment district, as it may deem necessary. The governing body shall appoint a time and place for its final determination thereof, and cause notice of such time and a brief description of such proposed improvement to be published in some newspaper published in said municipality for not less than ten days prior to said meeting. At said time and place said governing body shall hear such reasons as shall be given for or against the making of such proposed improvement, and it may adjourn such hearing to a subsequent time: Provided, however, that no district shall be declared as an assessment district by the governing body of any municipality, where the purpose of the proposed improvements contemplates the opening of a new or the widening of an existing street and the destruction or removal of buildings abutting thereon and where as much or more than fifty per cent of the costs of such proposed improvement is to be charged against the property within such district, unless and until a petition therefor signed by the owners of a majority of the street frontage to be assessed within said district shall be filed with the governing body of the municipality: Provided, further, that for the purpose of this section the word "owners" shall be considered to mean the owners of a life estate or estate by the entirety or the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders, or persons having inchoate rights of curtesy or dower, and that the owners of undivided interests in any land shall be deemed and treated as one person, and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interest: Provided, further, that the owner of a leasehold estate of ninety-nine years or longer shall be deemed to be the owner within the meaning of this section: Provided, further, that the governing bodies of municipality and the officers, trustees, or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign such petition. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1923, c. 220, s. 2; Ex. Sess. 1924, c. 107; 1927, c. 115; C. S. 2792(b).)

Acquiring Land and Assessment for Improvements in Same Action.—Under the provisions of §§ 160-206 to 160-221 a city may in the same action proceed to acquire land for a street by condemnation and to have the assessment made for street improvements on the lands of the abutting owner. Efird v. Winston-Salem, 199 N. C. 33, 34, 153 S. E. 632.

Construed with Other Sections.—This section should be construed in pari materia with the other sections relating to this subject so as to reasonably harmonize them, and when so construed it is in harmony with section 160-205. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764.

Who Must Sign Petition.—Where the abutting owners along a street of a city proposed to be widened by a municipality are to pay more than 50 per cent of its costs, the petition required by the statute to be filed with the municipality must show that it was signed by a majority of the owners along the street, including those who have the beneficial interest, and the majority of such persons must own a majority of the frontage of the lots along the street. Winston-Salem v. Coble, 192 N. C. 776, 136 S. E. 123.

Manner of Determining Equality.—The fact that the commissioners adopted a so-called "frontage rule" in fixing the value of the benefits or advantages to the different lots within the assessment district, is not sufficient to upset the apportionment made, without an additional finding that the application of such a rule resulted in hardship or injustice to the property owners in the particular case. It is only such practical equality as is reasonably attainable under the circumstances, and not absolute mathematical accuracy, that is to be expected in a matter of this kind. Durham v. Proctor, 191 N. C. 119, 121, 131 S. E. 276.

§ 160-208. Final order; petition for appointment of commissioners.—Whenever a final order shall be made by such governing body creating such assessment district and directing the laying out, opening, extending, altering, straightening or widening any street or alley, or the changing or otherwise improving any channel or watercourse for the purpose of improving the drainage conditions, or the building and construction of any sanitary, storm or trunk sewer lines in any such municipality, also its determination to condemn land, rights, privileges or easements for the purpose of making such proposed improvement, it shall determine what proportion of the estimated cost thereof, if any, shall be assessed against the city at large. After the adoption of such final order, as aforesaid, the governing body of such municipality shall file with the clerk of the superior court its petition, praying for the appointment of three commissioners to estimate and assess the expenses of the proposed improvement and to appraise and value the real property, rights, privileges or easements proposed to be taken or condemned for public use, also to appraise the value of the benefits accruing from such improvement to all property as shown and described on the maps or surveys of such assessment district. The petition shall set forth and describe the particular property, rights, privileges or easements proposed to be taken or condemned for the purposes, as aforesaid, also all other property situated and located in said assessment district, as shown on the maps or surveys of same, a copy or copies of which maps or surveys shall be filed with such petition, and such petition shall state the names and addresses of the owner or owners who have any interest in the lands therein which may be affected by the

said condemnation or the said assessment of benefits, and whether any of the said owners are minors or without guardians. (1923, c. 220, s. 3; C. S. 2792(c).)

§ 160-209. Summons; return day; conduct of proceedings.—Upon the filing of said petition the clerk of the superior court shall issue a summons to the parties interested in the lands, rights, privileges or easements sought to be taken for public use and benefits proposed to be assessed, described in such petition, requiring them to appear at his office in the courthouse of said county on a day at least ten and not more than twenty days after the service of said summons, and answer or otherwise plead to the petition, or show cause why such condemnation, improvement and assessment of benefits should not be made. The said proceeding shall be conducted in all respects as are other special proceedings, and the clerk may issue process and make publication for parties and appoint guardians in like manner as is provided by law in the case of special proceedings. (1923, c. 220, s. 4; C. S. 2792(d).)

§ 160-210. Hearing; appointment of commissioners; damages and benefits.— The clerk of the superior court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, he shall make an order appointing three disinterested competent freeholders of the county as such commissioners. The clerk shall issue a notice of their appointment to the said freeholders, to be served upon them by the sheriff of the county, and when so notified, they shall, within five days after being sworn to perform the duties which shall devolve upon them, go upon the premises and ascertain the value of the land, rights, privileges or easements to be taken for public use, determine by a majority vote the amount of damages, if any, to be paid for the same. Said commissioners shall also go upon the lots or lands described in the petition and shown on such map or survey of such assessment district, including the land condemned or any remainder thereof, and ascertain and determine by a majority vote the value of the benefits or advantages to such lots or lands accruing from the opening, extending, widening or improving said street or alley, or the changing or improving the channel of any branch or watercourse, or the building and construction of such sanitary, storm or trunk line sewers, both such benefits or advantages as are special to such lots and the benefits or advantages in common with other lots located in said assessment district: Provided, that if, in the judgment of the commissioners, any portion of the benefits accrue to the city at large, then a part of the estimated cost of such improvement, not exceeding the proportion fixed by said governing body in its final order or resolution, shall be assessed upon the city at large. Before making the reports hereinafter referred to the commissioners may take the evidence of witnesses as to the estimated cost of such improvement, the damage to such land or lands so condemned for public use, and the amount that should be paid therefor, and the benefits accruing to all other lands within such assessment district, either special or in common with others, as shown on such map or survey. In making the valuation and assessments aforesaid, the commissioners shall consider the loss or damage that may accrue to the owner or owners of the land condemned by reason of the surrender of the land or easement, and also any benefit or advantage such owner or owners may receive by reason of the making of such improvements, special to his land or in common with other lots located in said assessment district. (1923, c. 220, s. 5; C. S. 2792(e).)

§ 160-211. Written reports; land acquired on deposit of award. — The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the land, rights, privileges or easements so condemned, together with the amount to be paid each owner thereof, and upon deposit with the said clerk of the amount determined by said commissioners to be due said owners by such municipality, such land, rights, privileges or easements shall be deemed to be acquired for public use. (1923, c. 220, s. 6; C. S. 2792(f).).

§ 160-212. Report of benefits or advantages; assessment; hearing; confirmation; lien.—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the benefits or advantages so appraised against said lands located in said assessment district, if any, giving the names of the owners thereof and the amount so appraised against each, with a brief description of the lots or parcels of land so appraised. The clerk shall thereupon deliver to the said governing body of such municipality a certified copy of such appraisal of benefits, which certified copy of appraisal of benefits, upon such receipt by said governing body, shall thereupon become an assessment roll, which the governing body shall cause to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of such assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections relative to the adoption of such assessment roll, such meeting not to be earlier than ten days from the first publication of such notice, which publication shall be made in a newspaper published in such municipality. At the time appointed for the purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll and either confirm the same or may set it aside and provide for a new appraisal of benefits in such proceeding pending before the clerk of the superior court. Whenever the governing body may confirm an assessment for such improvement the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the

assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumberances. Such governing body shall have the power and authority to provide, either in proceedings already completed or in those instituted after March 9, 1927, that such assessment shall be paid in cash of not less than five nor more than ten equal annual installments. (1923, c. 220, s. 7; 1927, c. 241; C. S. 2792(g).)

§ 160-213. Appeal; correction, etc., of assessment; interest; collection.— If a person assessed is dissatisfied with the amount of the charge, he may give notice of appeal in said proceeding pending before the clerk of superior court as hereinafter provided for. The governing body may correct, cancel or remit any assessment in connection with such improvement. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes, and such assessments shall be due and payable on the date on which taxes are payable and shall be collected like other taxes. In the event the governing body authorizes the payment of any assessment by installment, such installments shall bear interest at the rate of six per centum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any person to pay any such installments when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable. (1923, c. 220, s. 8; C. S. 2792(h).)

§ 160-214. Limit of assessments; exceptions; transfer to court for trial; appeal to supreme court.—The total value of the benefits assessed against the lots or land situated and located in said assessment district shall not exceed the total net amount of damages to be paid by the municipality to the owner or owners of the land or right condemned, together with the cost of such improvement as estimated by said commissioners. If any party to the proceedings shall be dissatisfied with the report of the commissioners, or the assessment levied by the said governing body [on either benefits or damages], he may file exceptions thereto with the clerk of the superior court within ten days after the filing of said report with said clerk, or in the event the appeal be from the levying of the assessment by said governing body, within ten days after the confirmation of such assessment roll by such governing body, and the issues of fact and law raised before the clerk in the said proceedings and upon the said exceptions shall be transferred to the superior court for trial [before a jury on issues of fact relating either to damages or to benefits] in like manner as provided in the case of other special proceedings pending before the clerk; and the said issues shall be tried at the first term after they are transferred, unless for a good cause shown a trial or hearing of the matter may be continued by the court. Provided, however, that the words in brackets in the preceding sentence shall not apply to the City of Greensboro, or to any city, town or municipality in any of the following counties: Alexander, Buncombe, Cabarrus, Cleveland, Davidson, Forsyth, Halifax, Harnett, Haywood, Hertford, Lincoln, Madison, Mitchell, Moore, Nash, Pender, Pitt, Rockingham, Rutherford, Stanly, Transylvania, Wake and Watauga. From the judgment of the superior court rendered in said proceeding any of the parties may appeal to the supreme court, as in other cases pending in the superior court: Provided, that if such municipality, at the time of the appraisal, shall pay into the court the sum appraised by the commissioners as being due any person for land so condemned and taken for public use, then and in that event such municipality may enter, take possession of and hold said lands notwithstanding the pendency of any appeal, and no appeal either to the superior court or to the supreme court shall hinder or delay such municipality in proceeding with such proposed improvement. (1923, c. 220, s. 9; 1931, c. 258; C. S. 2792(i).)

Editor's Note.—Public Laws 1931, c. 258, inapplicable to accrued actions or pending litigation, amended this section by inserting the words in brackets and the proviso that it should not apply to the municipalities enumerated.

§ 160-215. Power of courts; practice and procedure.—In all cases of appraisal under §§ 160-206 to 160-221, where the mode or manner of procedure is not expressly or sufficiently provided for herein, the court before which such proceedings may be pending shall have the power to make all necessary orders and give proper directions to carry into effect the object and intent of said sections, and the practice and procedure in such cases shall conform as nearly as may be to the ordinary practice and procedure in such court. (1923, c. 220, s. 10; C. S. 2792(j).)

§ 160-216. Change of ownership or transfer of property, effect.—When any proceedings for appraisal of property or rights under §§ 160-206 to 160-221 shall have been instituted, no change of ownership or transfer of the real estate, or any interest therein, or of the subject-matter of the appraisal, or any part thereof, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made, or attempted to be made. (1923, c. 220, s. 11; C. S. 2792(k).)

§ 160-217. Proceedings to perfect title; possession by municipality; parties.—If at any time after proceedings under §§ 160-206 to 160-221 shall have been instituted it shall be found that the title to any property or right proposed to be condemned, or which has been acquired or condemned, is defective, said municipality may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of the new proceeding the court may authorize the municipality, if in possession of said property or rights, to continue in possession of the same, and if not in possession, to take possession and use such property or rights during the pendency and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the municipality on account thereof, and in every case any party interested may conduct the proceedings to a conclusion if the municipality delays or omits to prosecute the same. (1923, c. 220, s. 12; C. S. 2792(l).)

§ 160-218. Recovery by municipality if title defective; limit of recovery.—If the title to any property, rights, privileges or easements con-

demned in any proceedings instituted under §§ 160-206 to 160-221 shall prove to be defective, such municipality may by action recover of the person or persons who have received compensation for the property or rights so condemned any loss or damage the city may have sustained by reason of said defect of title, not exceeding the amount paid as compensation for the taking of said property or rights. (1923, c. 220, s. 13; C. S. 2792(m).)

§ 160-219. Notice served on nonresidents. — Where any notice is required to be given in said proceeding before the court and the person to be notified is a nonresident of the county in which said proceedings are pending, the notice may be served by the sheriff or other lawful officer of any county in which the said person may be, and if the said person is a nonresident of the state, the notice may be served by the publication thereof once a week for four weeks in a newspaper published in such municipality, and the affidavit of the publisher, proprietor or foreman of said newspaper that said notice was so published shall be sufficient prima facie evidence or proof of such publication, and the time of notice shall be counted from the last day on which the notice was inserted in said newspaper. (1923, c. 220, s. 14; C. S. 2792(n).)

§ 160-220. Registration of final judgment; evidence; certificate under seal.—A copy of the final judgment of the court, duly certified by its clerk, may be registered in the office of the register of deeds for said county, and said copy so certified, or a copy of the registry of such judgment duly certified by the register of deeds, shall be received as evidence in all courts of the state, and where the said copy is offered in evidence in any court not held in the county in which the judgment is rendered, the certificate shall have affixed the official seal of the certifying officer. (1923, c. 220, s. 15; C. S. 2792(o).)

§ 160-221. Pay of appraisal commissioners; taxation as costs.—The commissioners appointed by the clerk of the superior court to make the appraisals provided for herein shall receive compensation at the rate of five dollars ($5.00) per day each, which compensation shall be taxed in the court costs of such proceedings. (1923, c. 220, s. 16; C. S. 2792(p).)

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control. —The governing body of the city shall have power to control, grade, macadamize, cleanse, and pave and repair the streets and sidewalks of the city and make such improvements thereon as it may deem best for the public good, and may provide for and regulate the lighting of the public parks, and regulate, control, license, prohibit, and prevent digging in said streets and sidewalks, or placing therein of pipes, poles, wires, fixtures, and appliances of every kind, whether on, above, or below the surface thereof, and regulate and control the use thereof by persons, animals and vehicles; to prevent, abate, and remove obstructions, encroachments, pollution or litter therein; and shall have under its government, management, and control all parks and squares within or without the city limits established by the governing body for the use of the city except as otherwise provided. (1917, c. 136, sub-ch. 10, s. 1; C. S. 2793.)

Cross Reference.—See also, §§ 160-54, and 160-78 et seq.

Cited In Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1; Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389.

§ 160-223. Increasing width of streets.—Any incorporated city or town in North Carolina where the State Highway and Public Works Commission or governing body of any city, town or county has constructed a road or street, or any part of any road or street through such city or town in North Carolina, and the governing body of said city or town desires to increase the width of said road or street or either, or both sides of same, so as to make such road or street conform to such width as the said governing body of said city or town may determine, the governing body of such city or town may increase the width of such road or street, on either side of same, such number of feet as may be necessary and may be determined by the governing body of such city or town: Provided, however, that the expense and cost of such increase in width to such road or street shall be borne by the city or town through which such road or street may run and without any expense or obligation, in any way, to the State Highway and Public Works Commission. (1925, c. 71, s. 1.)

§ 160-224. Right of eminent domain.—Whenever the governing body of any city or town in North Carolina deems it necessary to extend the width of any road or street in such city or town, and it becomes necessary for such governing body of such city or town to exercise the right of eminent domain, such governing body of such city or town shall have the power to exercise the right of eminent domain to the extent that the same is given such city or town, or governing body of such city or town, in the charter and amendments to the charter of such city or town or under the general law pertaining to such matters. (1925, c. 71, s. 2.)

§ 160-225. Interference with highway commission.—Nothing in §§ 160-223 and 160-224 shall authorize the governing body of any city or town to interfere with the rights and privileges of the State Highway and Public Works Commission when such city or town undertakes to exercise any of the privileges by such sections granted. (1925, c. 71, s. 3.)

§ 160-226. Maps of streets and sidewalks in subdivisions within one mile of city or town limits to be approved by such city or town.— No lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, shall be subdivided and proposed streets and sidewalks laid out, until a map of said sub-division, showing the location of the lots and the proposed streets and sidewalks, shall have been submitted to the governing body of such town or city, and approved by it as to the location of the streets and sidewalks. After approval of the map as provided in this section, the map shall be placed on the records of the county in which the land is situated. (1929, c. 186, s. 1.)

§ 160-227. Effect of laying out of streets and

sidewalks without approval.—Should any lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, be subdivided and streets and sidewalks laid out, without the approval of the governing body of the town and city as provided in § 160-226, upon the incorporation of such sub-division into the limits of such town and city, the said town or city shall have the right to extend its streets and sidewalks into and through said sub-division in conformity with the general plan of the town or city; and there shall be no damage recovered against the said town or city for so extending its streets and sidewalks except for purchase or condemnation value of lands so taken without regard to improvements or betterments placed thereon in contravention of this section and § 160-226: Provided, that this section and § 160-226 shall not apply to any sub-divisions which have been laid out or are on March 16, 1929, in the process of being laid out. (1929, c. 186, s. 2.)

Part 4. Markets.

§ 160-228. Establish and control markets.—The governing body of the city shall have power to provide for the establishment, maintenance, and regulation of open-air or enclosed markets and slaughter places; may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale. (1917, c. 136, sub-ch. 12, s. 1; C. S. 2794.)

Cross References.—See also, § 160-53. As to establishment and maintenance of market house in coöperation with county, see § 160-167 et seq.

Part 5. Protection of Public Health.

§ 160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.—The governing body of cities is hereby given, within the city limits, all the power and authority that is now or may hereafter be given by law to the county health officer or county physician, and such further powers and authority as will best preserve the health of the citizens. The governing body is hereby given power to make such rules and regulations, not inconsistent with the constitution and laws of the state, for the preservation of the health of the inhabitants of the city, as to them may seem right and proper.

The governing body of any city or town, when deemed for the best interest of the city or town, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions within or without the city or town for the medical treatment and hospitalization of the sick and afflicted poor of the city or town upon such terms and conditions as may be agreed, provided that the annual payments required under such contract shall not be in excess of ten thousand dollars ($10,000.00). The full faith and credit of each city or town shall be deemed to be pledged for the payment of the amounts due under said contracts. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses within the meaning of the Constitution of North Carolina and shall be valid and binding without a vote of the majority of the qualified voters of each city and town and are hereby expressly exempted from any limitation, restriction or provisions contained in the County Fiscal Control Act and acts amendatory thereof as it may be applicable to cities or towns by virtue of § 160-409. No limitation, restriction or provision contained in any general, special, private or public-local law or charter of any city or town relating to the execution of contracts and the appropriation of money and levying of taxes therefor shall apply to the contracts authorized and executed under this paragraph: Provided, that the town of Lincolnton shall not enter into any such contract except after a public hearing at the county court house in Lincoln county, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The provisions of this paragraph shall not apply to the municipalities of Salisbury, Spencer, East Spencer, Rocky Mount, Leaksville, Madison, Asheville, Charlotte, Edenton, Gibsonville, Greensboro, Hamlet, High Point, Jamestown, Rockingham, Tarboro and Wilmington. This paragraph shall not apply to the city of High Point in Guilford county; to the city of Elizabeth City in Pasquotank county; nor to the counties of Beaufort, Camden and Lee or any city or town therein; nor to any city or town in the counties of Ashe, Avery, Columbus, Davidson, Durham, Gates, Jackson, Martin and Rockingham, save and except the city of Reidsville; nor to the counties of Ashe, Alexander, Brunswick, Clay, Cumberland, Forsyth, Haywood, Henderson, Jones, Macon, Montgomery, Moore, Pasquotank, Robeson, Sampson, Transylvania, Wilkes, Catawba, Lincoln, Surry, Washington, Rowan, Warren, Vance, Johnson, Edgecombe, Halifax, Davie, Gaston, Harnett, Iredell, Pitt, Stanly, Union and Yadkin. Before this paragraph shall apply to any city or town in Catawba county it must be submitted to a vote of the people of said Catawba county. (1917, c. 136, sub-ch. 5, s. 4; 1935, c. 64; 1943, c. 215; C. S. 2795.)

Cross References.—As to duties of county health officer, see § 130-22; of county physician, see § 130-23. As to authority to act jointly with the county board of health, see § 130-30.

Editor's Note.—The amendment of 1935 added the last paragraph of this section; and the 1943 amendment made said paragraph applicable to the city of Reidsville.

Taxes under This Section for Necessary Expense.—In accordance with the provisions of the last paragraph of this section the commissioners of a city proposed to enter into a contract with a public hospital providing for the payment by the city of the sum of $10,000 a year for thirty years, in consideration of the agreement of the hospital to give medical care and hospitalization to the indigent sick and afflicted poor of the city, and to levy a tax to raise revenue sufficient to meet such payments. It was held that the proposed tax was for a necessary municipal expense, and the approval of the qualified voters of the city was not a prerequisite to the validity of the tax. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786.

§ 160-230. Establish hospitals, pesthouses, quarantine, etc.—The governing body may acquire, establish, and maintain a hospital or hospitals, or pesthouses, slaughter-houses, rendering plants, incinerators and crematories in the city limits or within three miles thereof; may stop, detain, ex-

amine, or keep in a pesthouse or house of detention persons having or suspected of having any infectious, contagious, or other communicable disease; may quarantine the city or any part thereof; may cause all persons in the city limits to be vaccinated; may, without incurring liabilities to the owner, remove, fumigate, or destroy furniture, bedding, clothing, or other property which may be found to be tainted or infected with any contagious or infectious disease, and may do all other proper and reasonable things to prevent or stamp out any contagious or infectious disease, and to preserve better the health of the citizens. All expenses incurred by the city in disinfecting or caring for any person or persons, by authority of this section, may be recovered by it from the person, persons, or property cared for; and when expense is incurred in caring for property, the same shall become a lien on such property. Any person who shall attempt by force, or by threat of violence, to prevent his removal or that of any other persons to the pesthouse, house of detention, or hospital, or who shall in any way interfere with any officer while performing any of the duties allowed by this article, shall be guilty of a misdemeanor. The governing body of any municipality, in order to provide for the management of a municipally owned hospital may lease such a hospital to a local, non-stock, non-profit corporation or association chartered to maintain and operate a community-type hospital upon such terms as the governing bodies of the municipality and of the hospital, corporation or association may agree, for a term of years, with or without consideration, and in the sound discretion of the governing body of said municipality. (1917, c. 136, sub-ch. 5, s. 4; Ex. Sess. 1938, c. 2, s. 13; C. S. 2796.)

Cross Reference.—As to joint county and municipal tuberculosis hospitals, see § 131-46 et seq.

Editor's Note.—The 1938 amendment added the last sentence.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

§ 160-231. Elect health officer.—The governing body of any city may elect a health officer and create such other offices and employments as to them may seem right and proper, and fill the same and fix their compensation. (1917, c. 136, sub-ch. 5, s. 4; C. S. 2797.)

Cross Reference.—As to election of municipal health officer and his duties, see §§ 130-31 and 130-32.

§ 160-232. Regulate the management of hospitals.—The governing body is hereby empowered to make rules and regulations for the management and conduct of all hospitals and sanatoriums which may have for treatment any patient afflicted with any infectious, contagious, or other communicable disease, and prescribe penalties for any violation of same. Any person violating any rule or regulation of the governing body shall be guilty of a misdemeanor, and upon conviction, except as herein otherwise provided, shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1917, c. 136, sub-ch. 5, s. 5; C. S. 2798.)

§ 160-233. Provide for removal of garbage.—The governing body may by ordinance provide for the removal, by wagon or carts, of all garbage, slops, and trash from the city; and when the same is not removed by the private individual in obedience to such ordinance, may require the wagons or carts to visit the houses used as residences, stores, and other places of habitation in the city, and also may require all owners or occupants of such houses who fail to remove such garbage or trash from their premises to have the garbage, slops, and trash ready and in convenient places and receptacles, and may charge for such removal the actual expense thereof. (1917, c. 136, sub-ch. 7, s. 3; C. S. 2799.)

Liability Growing from Power.—A city in exercising the governmental duty passed in accordance with this section is not liable in a civil action to one injured by the negligence of its drivers of the carts or wagons when so engaged, there being no provision of law conferring such right.

The fact that the city is permitted to charge the cost of such service does not change its act from a governmental function to a business for profit, or affect its liability for the negligent acts of its agents or employees therein. James v. Charlotte, 183 N. C. 630, 112 S. E. 423.

§ 160-234. Abate or remedy menaces to health.—The governing body, or officer or officers who may be designated for this purpose by the governing body, shall have power summarily to remove, abate, or remedy, or cause to be removed, abated, or remedied, everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes. (1917, c. 136, sub-ch. 7, s. 4; C. S. 2800.)

Cross References.—As to power to abate nuisances, see § 160-55. As to power of county physician or county health officer to abate nuisances, see §§ 130-25 et seq.

Part 6. Fire Protection.

§ 160-235. Establish and maintain fire department.—The governing body shall have power to provide for the organization, equipment, maintenance and government of fire companies and a fire department; and, in its discretion, may provide for a paid fire department, and for this purpose may create any offices and employments and fix their compensation as to the governing body may seem right and proper. (1917, c. 136, sub-ch. 8, s. 1; C. S. 2801.)

Cross References.—As to power to provide for the relief of indigent and helpless members of the fire department, see § 160-200, subsection 25. As to election, compensation, duties, etc., of chief of fire department, see § 160-115 et seq. As to control of fire department under Plan C, see § 160-330, subsection 2.

Liability for Failure to Furnish.—The maintenance of a fire department for extinguishing fire without cost to the property owner is a governmental function, and there is no liability for failure to provide adequate pressure or service in extinguishing a fire. Howland v. Ashville, 174 N. C. 749, 94 S. E. 524.

Liability for Injuries to Firemen.—A city is not liable to firemen for injuries sustained in the performance of their duties, although the appliances used were defective, and known to be defective, by the city, for the maintenance of a fine department is a governmental function. Peterson v. Wilmington, 130 N. C. 76, 40 S. E. 853.

§ 160-236. Establish fire limits.—The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter, and repair wooden buildings or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other

regulations as may be deemed best for the prevention and extinguishment of fires. (1917, c. 136, sub-ch. 8, s. 2; C. S. 2802.)

Cross Reference.—As to punishment for failure to establish fire limits, see § 160-125.

§ 160-237. Regulate buildings.—The governing body may make rules and regulations governing the erection and construction of buildings in the city so as to make them as safe as possible from fire. (1917, c. 136, sub-ch. 8, s. 3; C. S. 2803.)

Cross Reference.—See also, § 160-126 et seq.

§ 160-238. Fire protection for property outside city limits.—The governing body may provide, install, and maintain water mains, pipes, hydrants, and buildings and equipment, either inside or outside of the city limits, for protection against fire of property outside of the city limits, and within such area as the governing body may determine, not exceeding a boundary of two miles from the city limits, under such terms and conditions as the governing body may prescribe. Such governing body is hereby authorized to agree to furnish and to furnish protection against fire of property within an area of not more than twelve miles from the city limits upon such terms as such governing body may determine. (1919, c. 244; 1941, c. 188; C. S. 2804.)

Editor's Note.—The 1941 amendment added the second sentence of this section.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 498.

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.—The governing body shall have power to acquire, provide, construct, establish, maintain and operate a system of sewerage for the city, and protect and regulate the same by adequate rules and regulations; and if it shall be necessary in obtaining proper outlets to such system to extend the same beyond the corporate limits, the governing body may condemn a right of way or rights of way to and for such outlets, and the proceedings for such condemnation shall be as herein provided for opening new streets and other purposes. It is the intention of this subchapter that the powers herein granted to municipalities shall not repeal any special or local law or affect any proceedings under any special or local law relative to providing, constructing, establishing, maintaining or operating any system of sewerage in any municipality, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and supplementary to those powers granted municipalities in their charters. In any case in which the provisions of this subchapter are in conflict with the provision of any local statute or charter, then the governing body of any such municipality may, in its discretion, proceed in accordance with the provisions of such local statute or charter, or as an alternative method of procedure in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 7, s. 1; 1923, c. 166, s. 1; C. S. 2805.)

Cross References.—As to condemnation proceedings, see § 160-205. As to control of sewerage system under Plan C, see § 160-330, subsection 5.

Editor's Note.—All of this section except the first sentence was added by Public Laws of 1923.

"These sections provide in a general way for the construction of a sewerage system in cities and towns, and the amending statute adds an alternative method of procedure to this general law and to any similar provision in special charters. The plan devised in the amending statute is for ascertaining the actual expense of constructing a sewerage system and assessing the same against the abutting property according to the front-foot rule.

"The method of procedure is given in detail, as to the ordinance or resolution by the governing body, publication of notice, assessment against property and a hearing thereon with right of appeal, and how the assessments are to be collected. The plan is somewhat similar to that contained in the local improvements statutes, secs. 160-78 et seq., except that this contemplates the payment of the whole expense by assessments instead of only a part thereof, as in case of local improvements. The plan is only alternative and supplementary, and is not intended to change any other method now provided for in general laws or special charters." 1 N. C. Law Rev. 274.

Effect on Prior Rights.—The fact that the General Assembly has authorized an alternative method of financing an installation of sewerage does not in any wise militate against the plan the town may adopt. This section, while giving towns the privilege of adopting a different system, does not deprive them of the power to proceed in the manner which its authorities see fit to adopt. Indeed, the act is careful to provide that it shall not repeal any other method or proceeding that has been authorized or adopted for providing sewerage. McNeill v. Whiteville, 186 N. C. 163, 164, 119 S. E. 6.

Liable for Maintenance of Nuisance.—In one case it was held that the maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by the sewer which emptied into it. Metz v. Asheville, 150 N. C. 748, 64 S. E. 881, 22 L. R. A., N. S., 940, cited in note in 47 L. R. A., N. S., 138.

But this case seems to be contrary to the weight of authority both in North Carolina and elsewhere, and the rule sustained by the greater number of cases is that a municipal corporation, empowered to construct and maintain a sewerage system, may not exercise its power in such a way as to create a private nuisance without making compensation for the injury inflicted or being liable in damages therefor or to equitable restraint in a proper case, and it is a nuisance to pollute a stream by emptying sewerage therein. Moser v. Burlington, 162 N. C. 141, 78 S. E. 74, cited in note in 47 L. R. A., N. S., 138. It should be observed, however, that this case is concerned with damage to property whereas the Metz case was concerned with injury to health.

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686; Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

§ 160-240. Require connections to be made.—The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect with such sewerage all water-closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections. (1917, c. 136, sub-ch. 7, s. 2; C. S. 2806.)

§ 160-241. Order for construction or extension of system; assessment of cost; payment of assessment.—When it is proposed by any municipality to provide, construct and establish a system of sewerage, or to provide for the extension of any such system, an order or resolution of the governing body of such municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement. In such order or resolution such governing body may provide that the actual cost of the establishment and construction of such sewerage system, or any extension thereof, shall be assessed upon the lots and parcels of land abutting directly on the lateral mains of such sewerage system, or extension thereof, ac-

cording to the extent of the respective frontage thereon, by an equal rate per foot of such frontage. Such governing body may provide in such order or resolution that the assessments to be levied in connection with such work may be paid in equal installments covering a period of not exceeding five years. Such order or resolutions shall designate by a general description the improvement to be made, and the street or streets, or part or parts thereof, whereon the work is to be affected and the cost thereof to be assessed upon all abutting property and the terms and manner of payment. Such order or resolution after its passage shall be published in a newspaper published in such municipality, or if there be no such newspaper, such order or resolution shall be posted in three public places in such municipality for at least five days. (1923, c. 166, s. 2; C. S. 2806(a).)

§ 160-242. Ascertainment of cost; assessment.—Upon the completion of the construction and establishment of any such sewerage system, or of any such extension, the governing body shall compute and ascertain the total cost thereof. The governing body shall thereupon make an assessment of such total cost, and for that purpose shall make out an assessment roll, in which must be entered the names of the persons assessed as far as can be ascertained, and the amount assessed against them respectively, with a brief description of the lots or parcels of land assessed. (1923, c. 166, s. 3; C. S. 2806(b).)

§ 160-243. Deposit for inspection; publication of completion; time for hearing objections.—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published in the same manner as the order or resolution authorizing such work, a notice of the completion of the assessment roll, setting forth a description in general terms of the improvement, and the time fixed for the meeting of the governing body for a hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. (1923, c. 166, s. 4; C. S. 2806(c).)

§ 160-244. Hearing on objections; action; entry of confirmation; lien of assessment; copy of roll to tax collector.—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll, either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for such a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector, or other officer charged with the duty of collecting taxes. (1923, c. 166, s. 5; C. S. 2806(d).)

§ 160-245. Notice of appeal; service of statement; stay of work; trial of appeal.—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal; but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1923, c. 166, s. 6; C. S. 2806(e).)

§ 160-246. Correction, etc., of assessment; interest and penalties; power to set aside assessment.—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. (1923, c. 166, s. 7; C. S. 2806(f).)

Editor's Note.—See note under § 160-90.

§ 160-247. Cash payment; installment payments; rate of interest; sale of property.—In the event such governing body of such municipality shall provide that said assessment may be paid in equal annual installments, then and in that event the property owner shall have the option and privilege of paying for the improvement as hereinbefore provided for, in cash, or if they should elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessment in not less than the number of equal annual installments as may have been determined by the governing body in the original order or resolution authorizing the improvement. Such installments shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable, and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by the payment of the principal and the interest accrued to that date. (1923, c. 166, s. 8; C. S. 2806(g).)

§ 160-248. Notice for payment of assessment; interest for nonpayment; maturity of installments; penalties.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector, or such other officer of the

municipality as the governing body may direct so to do, shall cause to be published in a newspaper, or, if there is no such newspaper, shall cause to be posted in at least three public places therein a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice, without any addition. In the event the assessment be not paid within such time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: Provided, that when an assessment is divided into installments, one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for. (1923, c. 166, s. 9; C. S. 2806(h).)

§ 160-249. Authority to fix sewerage charges; lien thereof.—The governing body of any municipality, maintaining and operating a system of sewerage, including sewerage treatment works, if any, is hereby authorized to charge for sewerage service, to determine and fix a schedule of charges to be made for such service, to fix the time and manner in which such sewerage service charges shall be due and payable and to fix a penalty for the non-payment of the same when due. In no cases shall the charges, rents or penalties be a lien upon the property served and in cases where the service is rendered to a tenant and the tenant removes from the premises, the municipality shall not charge against the owner thereof the service charges or penalties for said service: Provided, however, that for sewerage service supplied outside of the corporate limits of the city, the governing body, board or body having such sewerage system in charge may fix a different schedule of rates from that fixed for such service rendered within the corporate limits, with the same exemption from liability by city or town as is contained in § 160-255. (1933, c. 322, s. 1; 1941, c. 106.)

Local Modification.—Mecklenburg, Transylvania: 1933, c. 322, s. 1.

§ 160-250. Joint construction, operation, etc., of sewerage works by adjacent municipal corporations.—Two or more adjoining or adjacent municipal corporations shall have authority as hereinafter provided and set forth, by the adoption of resolutions to be passed by the governing body of each of said municipal corporations, to acquire, construct, improve, maintain and operate jointly, either within or without their corporate limits, sewerage works, including sewage treatment facilities, or any integral part of such works. In order to render more effectual the exercise of the authority herein granted, such municipal corporations may enter into any and all contracts which may be appropriate to that end, among or between themselves, or with other parties. (1939, c. 205, s. 1.)

§ 160-251. Power of corporations to issue bonds.—Municipal corporations so determining upon such sewerage works are hereby granted the same authority to issue bonds for the acquisition, construction and improvement of such works as is now given to any municipal corporation under the general laws of North Carolina, and particularly under the Municipal Finance Act, as amended. (1939, c. 205, s. 2.)

Cross Reference.—As to issuance of bonds under the municipal finance act, see §§ 160-377 et seq.

§ 160-252. Apportionment of cost; establishment of charges.—The cost of any such joint acquisition, construction, improvement, maintenance and operation shall be apportioned between or among the participating municipal corporations in a manner to be by them agreed upon and determined. In order to pay such cost, such adjoining or adjacent municipal corporations may, by agreement between or among themselves, fix and establish reasonable charges for the use of such sewerage works. Any person, firm or corporation or other municipal corporation not participating in such joint construction and operation, who or which are living or are located outside of the corporate limits of such municipal corporations and desire to use such sewerage works, may be charged a reasonably higher rate for the use of such said works than that charged the users of the same who are living or located within the corporate limits of said participating municipal corporations. (1939, c. 205, s. 3.)

§ 160-253. Charges declared lien upon property.—The charges made for the use of said works shall be a lien upon the property served, and if any such charge shall not be paid within fifteen days after the same becomes payable, suit may be brought therefor in the name of the municipal corporation in which the property served is located, or the property, subject to the lien thereof, may be sold by the municipal corporation under the same rules and regulations, rights of redemption and savings, as are now or may hereafter be prescribed by law for the sale of land for unpaid taxes. Such municipal corporations shall have the right to establish reasonable rules and regulations for the use of said sewerage works and the collection of charges therefor, and said municipal corporations, through their officers or agents, are hereby authorized and empowered, in accordance with such reasonable regulations, to enter upon the premises of any person, firm or corporation using said sewerage works and failing to pay the charges therefor, and to disconnect the sewer line of such person, firm, or corporation from the public sewer line or disposal plant; and any person, firm or corporation who shall connect with such public sewer line or disposal plant, or reconnect his or their property therewith, without a permit from the officer authorized to give the same, shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of any court of competent jurisdiction. (1939, c. 205, s. 4.)

§ 160-254. Law applicable to joint works initiated or completed prior to effective date.—The authority to issue bonds for the purpose of financing in whole or in part works of the type herein made provision for, and the authority to perform any other acts authorized hereunder, may be exercised in connection with sewerage works the construction of which may have been jointly ini-

tiated or completed by two or more adjoining or adjacent municipal corporations prior to March 28, 1939; and all acts done and proceedings had in relation to such joint construction of such works, and all acts, resolutions or ordinances performed prior to March 28, 1939, adopted or enacted in connection with the authorization or issuance of bonds to finance such joint construction, if such bonds are otherwise authorized or issued under and in substantial compliance with any applicable general law of North Carolina, are hereby ratified, validated and confirmed. (1939, c. 205, s. 5.)

Part 8. Water and Lights.

§ 160-255. Establish and maintain water and light plants.—The city may own and maintain its own light and waterworks system to furnish water for fire and other purposes, and light to the city and its citizens and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available, but shall in no case be liable for damages for a failure to furnish a sufficient supply of either water or light. And the governing body shall have power to acquire and hold rights of way, water rights, and other property, within and without the city limits. (1917, c. 136, sub-ch. 11, ss. 1, 2; 1929, c. 285, s. 1.)

Cross References.—As to control of light system under Plan C, see § 160-330, subsection 5. As to control of water system under Plan C, see § 160-329, subsection 4. As to report to utilities commission by municipality supplying gas or electricity, see § 62-98. As to coöperation with the board of conservation and development in locating water supplies, see § 113-20.

Editor's Note.—The act of 1929 inserted in this section the words: "And to any person, firm or corporation desiring the same outside the corporate limits, where the service is available."

See 13 N. C. Law Rev. 96; 12 N. C. Law Rev. 324.

Liability of City.—In Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169, the question of a city's liability for loss by fire arose. The plaintiff contended that the city was liable as the position of the curb which kept the trucks from the hydrant was the proximate cause of the loss and that the loss was occasioned directly by the negligence of the city in repairing the streets.

The Court says in discussing the case: It is conceded that a city, which owns a municipal light and waterworks system, and operates the same in its governmental capacity, cannot be held liable in damages for a failure to furnish a sufficient supply of either water or light. Howland v. Asheville, 174 N. C. 749, 94 S. E. 524; Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849. "It is also conceded that the defendant, in the absence of statutory provision to the contrary, is not liable for any damage occasioned by the negligence of its fire department. Mack v. City Water Works, 181 N. C. 383, 107 S. E. 244; Peterson v. Wilmington, 130 N. C. 76, 40 S. E. 853; note, 9 A. L. R. 143." "The extinguishment of fires is a function which a municipal corporation undertakes in its governmental capacity, and in connection with which, in the absence of statutory provision to the contrary, it incurs no civil liability, either for inadequacy in equipment or for the negligence of its employees. 19 R. C. L., 1116; Seales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543, and cases there cited."

In a discussion of the case in N. C. Law Rev. it is said: "The court refuses to agree with the plaintiff's theory of the case that the negligence of the street department was the proximate cause of the loss, but holds that the proximate cause of the loss was the failure of the fire department to put out the fire. The court concedes that it is the duty of the city in the exercise of proper care to keep and maintain its streets in a reasonably safe condition for public travel, but that this refers to street uses, the traffic of vehicles and pedestrians, and is not meant to include a case where the plaintiff is not using the street at all. But, granting for the sake of argument, that the negligence of the street department was the proximate cause of the plaintiff's loss, yet the court said that this was also the negligence of the city and that the statute provides that in no case shall the city be liable for failure to furnish a sufficient supply of water." 4 N. C. Law Rev. 137.

"Viewed from the practical standpoint of ordinary fairness, there is no valid reason why the municipality which has been guilty of an act for which a private corporation would be liable, should not be required to compensate the injured party. The risk of loss now falls on those least able to bear it. That there has been a tendency to broaden the scope of municipal liability is evidenced by recent decisions. But, if the old doctrines have become too strongly intrenched in our law for a change to take place through judicial legislation, the problem will have to be given over to the legislature for satisfactory solution." 4 N. C. Law Rev. 140.

In Munick v. Durham, 181 N. C. 188, 106 S. E. 665, opinion by the Chief Justice, a recovery against the city was sustained, but that was a suit growing out of the settlement of claimant's water bill, and involving only the business relations between the individual and the city as vendor of water for profit, and not a matter concerning the water supply for general fire protection. Mack v. City Water-Works, 181 N. C. 383, 385, 107 S. E. 244.

This section is valid. Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538.

Power to Sell Electricity within Three-Mile Zone.—A municipality has the power to purchase electricity for its own use and the use of its citizens, and where it is authorized by general and special statutes to purchase current from a power company and to resell and distribute it at a profit to its citizens and to those within a three-mile zone therefrom, the grant of power to do so is effective in law under the authority of the Legislature to grant municipal corporations any powers which promote the welfare of the public and the communities in which they are established unless prohibited by the organic law. Holmes v. Fayetteville, 197 N. C. 740, 741, 150 S. E. 624.

Electricity May Be Distributed beyond Corporate Limits.—A municipality has the power to purchase, generate, or distribute electricity for its own use and the use of its inhabitants, and is given legislative authority to extend its lines beyond its corporate limits for the purpose of selling electricity to nonresidents, and therefore a complaint in an action against a municipality alleging injury from negligent maintenance of power lines outside the corporate limits is not demurrable on the ground that the alleged negligence of its officers and employees was ultra vires the city. Kennerly v. Davis, 215 N. C. 532, 2 S. E. (2d) 538.

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48.

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90; Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543; Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1.

§ 160-256. Fix and enforce rates.—The governing body, or such board or body which has the management and control of the waterworks system in charge, may fix such uniform rents or rates for water or water service as will provide for the payment of the annual interest on existing bonded debt for such waterworks system, for the payment of the annual installment necessary to be raised for the amortization of the debt, and the necessary allowance for repairs, maintenance, and operation, and when the city shall own and maintain both waterworks and sewerage systems, including sewerage disposal plants, if any, the governing body shall have the right to operate such system as a combined and consolidated system, and when so operated to include in the rates adopted for the waterworks a sufficient amount to provide for the payment of the annual interest on the existing bonded debt for such sewerage system or systems, for the payment of the annual installment necessary to be raised for the amortization of such debt, and the necessary allowance for repairs, maintenance and operation. Such body shall fix the times when the water rents shall become due and payable, and in case such rent is not paid within ten days after it becomes due and payable, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of

the owner of property for which water is furnished under the rules and regulations of such body to pay the water rents when due, then the body, or its agents or employees, may cut off the water from such property; and when so cut off it shall be unlawful for any person, firm, or corporation, other than the body or its agents or employees, to turn on the water to such property, or to use the same in connection with the property, without first having paid the water rent and obtained permission to turn on the water: Provided, however, that for service supplied outside the corporate limits of the city, the governing body, board or body having such waterworks or lighting system in charge, may fix a different rate from that charged within the corporate limits, with the same exemption from liability by the city or town as is contained in § 160-255: Provided further, that where the water may be cut off under the provision of this section for the failure of the occupant of the premises to pay his water bill, and such occupant is not the owner of the premises but occupies said premises as a tenant, it shall not be lawful for the board in charge or management of the waterworks to require the payment of such delinquent bill before turning on the water at the instance of a new and different tenant or occupant of said premises. This proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same water meter. (1917, c. 136, sub-ch. 11, s. 3; 1929, c. 285, s. 2; 1933, cc. 140, 353; C. S. 2808.)

Local Modification.—Ashe, Haywood, Mecklenburg, Transylvania: 1933, c. 353; Caldwell: 1933, c. 368.

Cross Reference.—As to general supervision of utilities commission over rates charged and services rendered by persons, companies, or corporations other than municipal furnishing electricity, water, etc., see §§ 62-30 and 62-122.

Editor's Note.—The Act of 1929 added the first proviso to this section.

Prior to the amendment by Public Laws 1933, c. 353, the first sentence of this section merely provided that the governing board should fix "such uniform rates for water as is deemed best." Public Laws of 1933, c. 140 added the last proviso of the section.

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90.

§ 160-257. Separate accounts for water system.—It shall be the duty of the governing body to keep a separate statement and account of the money received by the city from the waterworks system, and it shall be the duty of the said body to give preference to the waterworks system over the other departments of the city in such funds, and to provide for the proper upkeep of the waterworks system and an amount necessary for the enlargement of the waterworks system before turning over to the other departments the money so received. (1917, c. 136, sub-ch. 11, s. 4; C. S. 2809.)

Part 9. Care of Cemeteries.

§ 160-258. Care fund established.—The governing body is authorized to create a fund to be known as the perpetual care fund for the cemeteries, for the purpose of perpetually caring for and beautifying the cemeteries, and such fund shall be kept by the city as is provided for bequests and gifts for cemetery purposes; and the governing body may make contracts with lot or space owners in the cemeteries, obligating the city to keep up and maintain said lots or spaces in perpetuity upon payment of such sum as may be fixed by the governing body; and the governing body is further authorized and empowered to accept gifts and bequests for such purposes, or upon such other trusts as the donors may prescribe; and the governing body is authorized to set aside for such perpetual care fund such portion of the proceeds of sale of cemetery lots as the governing body may deem advisable. (1917, c. 136, sub-ch. 9, s. 1; 1927, c. 254; C. S. 2810.)

Cross Reference.—As to trust funds for the care of cemeteries, see § 65-7 through § 65-12.

Editor's Note.—The amendment, Public Laws 1927, c. 254, changed the amount to be set aside from "an amount not exceeding twenty-five per cent" to "such portions as the governing body may deem advisable."

§ 160-259. Application of fund.—The principal of the funds appropriated by the governing body for caring for the cemeteries shall be held by the governing body for caring for and beautifying the cemeteries and improving the same. The income from the fund heretofore or hereafter made shall be used for the purpose of carrying out contracts with the individual or space owners for the perpetual care of individual plats and spaces. Any gifts heretofore or hereafter made to and received by the city or any of its officers shall be held and used as a sacred trust fund for the purposes and upon the conditions named in such gifts or bequests, and all such funds shall be kept and invested separately and shall not be used for any other purpose, or by the city in its affairs. (1917, c. 136, sub-ch. 9, s. 1; C. S. 2811.)

§ 160-260. Separate accounts kept. — The city treasurer shall keep a separate account of the cemetery funds, and a still further separate account of all special gifts or bequests made by persons for and in connection with the cemeteries and particular lots therein. The governing body has the power to make rules and regulations and adopt ordinances for the carrying out of the duties imposed by this and the two preceding sections in regard to the care of cemeteries. (1917, c. 136, sub-ch. 9, s. 1; C. S. 2812.)

Part 10. Municipal Taxes.

§ 160-261. Provide for listing and collecting taxes.—The governing body shall provide by an ordinance or otherwise means for the collection of taxes in the city and shall cause property to be listed for taxation which has not otherwise been listed as required by law. The governing body of cities and towns are in all respects vested with the same powers and authority as is now, or may hereafter be, vested in the board of county commissioners of the county in which such city or town is located, with respect to the allowance of discounts and charging penalties in the collection of taxes. (1917, c. 136, sub-ch. 6, s. 2; 1925, c. 183; C. S. 2813.)

Cross References.—As to taxes which may be levied by the governing body of the municipality, see § 160-56. As to assessment procedure for municipalities, see §§ 105-332 et seq.

Editor's Note.—By amendment, Public Laws 1925, the last sentence to this section was added.

§ 160-262. Unlisted taxables entered.—The officer who has charge of the collection of taxes in any city shall, after the most diligent inquiry, and by comparing his book with the county tax books, make out a list of all persons liable for poll tax,

or for taxes on property, who have failed to return a list in the manner and in the time prescribed, together with the estimated value of all the property not listed, and shall enter such persons in a separate part of his book. (1917, c. 136, sub-ch. 6, s. 4; C. S. 2814.)

§ 160-263. Power and duties of tax collector.—The officer who has charge of the collection of taxes in any city shall, in the collection of taxes, be vested with the same power and authority as is given by the state to sheriffs for like purpose, and shall be subject to the same fines and penalties on failure or neglect of duty. It shall be his duty to collect all taxes levied by the governing body, and he shall be charged with the sums appearing on the tax list as due for city taxes. He shall at no time retain in his hands over three hundred dollars for a longer time than seven days, under a penalty of ten per cent per month to be paid to the city upon all sums so unlawfully retained. (1917, c. 136, sub-ch. 6, s. 1; C. S. 2816.)

Cross Reference.—As to general duties of a tax collector, see § 105-375.

§ 160-264. Settlement with tax collector.—In settlement with the city the tax collector shall be credited with all poll taxes and taxes on personal property which the governing body shall declare to be insolvent and uncollectible, and with such amounts as may be involved in suit by appeal from the ruling of the board, and he shall be charged with and shall pay over all other sums appearing on the tax list. After the accounts of the tax collector shall be audited and settled, the same shall be reported to the governing body, and when approved by it the same shall be recorded in the minute book of such body, and shall be prima facie evidence of correctness, and impeachable only for fraud or specified error. (1917, c. 136, sub-ch. 6, s. 1; C. S. 2817.)

§ 160-265. Bond of tax collector and other officers.—The governing body of the city shall require of the tax collector of the city, and any and all officers and employees, such bonds as it may deem necessary, and may pay the expenses of providing such bonds, including the bond of the mayor. (1917, c. 136, sub-ch. 6, s. 3; C. S. 2818.)

§ 160-266. License to plumbers and electricians.—The governing body may regulate and license plumbers and those engaged in the electrical wiring of buildings for light, power, or heat, and before issuing a license may require the applicant to be examined and to give bond in such sum and upon such conditions as the governing body may determine, and with such sureties as it may approve; and such body may, for incompetency on the part of such licensees or for refusal to comply with the ordinances relating to such business, or for any other good cause, revoke any license issued hereunder. No person, firm, or corporation shall do any kind of plumbing or electrical wiring of buildings without first having obtained a license from the governing body. No license issued hereunder by the governing body shall be for more than one year, and same shall not be transferable or assignable except by the permission of the governing body. And no license shall be issued, as herein provided, before the license tax shall have been paid. (1917, c. 136, sub-ch. 6, ss. 6, 7, 8, 9; C. S. 2819.)

Art. 19. Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§ 160-267. Legislative powers, how exercised.—Except as otherwise specially provided, the legislative powers of the governing body may be exercised as provided by ordinance or rule adopted by it. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2820.)

§ 160-268. Quorum and vote required.—Every member of the governing body shall have the right to vote on any question coming before it. A majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution or ordinance. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2821.)

§ 160-269. Meetings regulated, and journal kept.—The city governing body shall from time to time establish rules for its proceedings. Regular and special meetings shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter shall be put to a vote, the result of which shall be duly recorded. The governing body shall not by executive session or otherwise consider or vote on any question in private session. A full and accurate journal of the proceedings shall be kept, and shall be open to the inspection of any qualified registered voter of the city. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2822.)

Stated in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344.

Part 2. Ordinances.

§ 160-270. How adopted.—No ordinance shall be passed finally on the date on which it is introduced, unless by two-thirds vote of those present. No ordinance making a grant, renewal, or extension, whatever its kind or nature, of any franchise or special privilege shall be passed until voted on at two regular meetings, and no such grant, renewal, or extension shall be made otherwise than by ordinance. (1917, c. 136, sub-ch. 13, s. 3; C. S. 2823.)

Cross Reference.—As to the enforcement of ordinances, see § 160-14.

Cited in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344.

§ 160-271. Ordinances amended or repealed.—No ordinance or part thereof shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 4; C. S. 2824.)

§ 160-272. How ordinance pleaded and proved.—In all judicial proceedings it shall be sufficient to plead any ordinance of any city by caption, or by number of the section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city shall be admitted in evidence in all courts, and shall have the same force and effect as would the original ordinance. (1917, c. 136, sub-ch. 13, s. 14; C. S. 2825.)

Cross References.—As to mayor certifying ordinance on appeal, see § 160-16. As to ordinance certified by mayor being prima facie evidence as to its existence, see § 8-5.

In General.—The introduction of an ordinance of a town

regulating the speed of trains backing upon the track, and properly proven, under this section, will not be regarded as error on appeal, when it is proved that upon the evidence in the case the jury has found, upon a trial without legal error, the negligence of the defendant's employees proximately caused the personal injury for which damages were sought in the action. Parker v. Seaboard, etc., Railway, 181 N. C. 95, 106 S. E. 755.

Cited in Hudson v. Gulf Oil Co., 215 N. C. 422, 2 S. E. (2d) 26.

Part 3. Officers.

§ 160-273. City clerk elected; powers and duties.—The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this subchapter shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified.

The governing body may also provide that the city clerk shall have the powers and perform the duties of city treasurer, such powers and duties to be prescribed from time to time by the governing body and to be in addition to all powers and duties as may be prescribed by law, and in such event the city clerk shall be known as the "city clerk and treasurer." The powers conferred by the next preceding sentence are in addition to and not in substitution for those conferred by any other act, whether general, special, private or local, and every municipality may proceed under the provisions of said next preceding sentence, notwithstanding any conditions, restrictions or limitations contained in any other act, whether general, special, private or local. (1917, c. 136, sub-ch. 13, s. 1; 1941, c. 103; C. S. 2826.)

Editor's Note.—The 1941 amendment directed that the last paragraph be added to this section.

§ 160-274. Vacancies filled; mayor pro tem.—If a vacancy occurs in the office of the mayor or governing body, the vacancy shall be filled by the governing body of the city. If the mayor is absent or unable from any cause temporarily to perform his duties, they shall be performed by one elected by the governing body of the city for that purpose, who shall be called "mayor pro tem.," and he shall possess the powers of mayor only in matters not admitting delay, but shall have no power to make permanent appointments. (1917, c. 136, sub-ch. 13, s. 6; C. S. 2827.)

Cross References.—As to powers of the governing body to fill vacancy in the office of mayor, see § 160-10. As to election of mayor pro tempore for a municipality under Plan A, see § 160-310; Plan B, see § 160-317; Plan D, see § 160-341.

§ 160-275. Accountant for each city and town required.—It shall be the duty of the governing body of every city and town in this State on or before the first day of June, one thousand nine hundred thirty-one, and biennially thereafter before the first day of June in each odd year, to appoint some person of honesty and ability whose experience, training and qualifications have been approved by the Commission, as accountant for the municipality (or city accountant or town accountant or municipality accountant), to hold such office, or position at the will of the governing body or until such approval has been revoked by the Commission or until the appointment of his successor. The governing body in lieu of appointing an accountant as hereinabove required may impose and confer upon any municipal officer all the powers and duties herein imposed and conferred upon the municipal accountant and may revise and adjust the salary or compensation of any such officer upon whom such duties and powers are imposed or conferred: Provided, however, that if such officer upon whom such duties and powers are imposed or conferred should be a tax collecting officer of the unit, it shall be the duty of the governing body to require all his books and accounts to be audited semi-annually by a certified public accountant or a public accountant, registered under §§ 93-1 to 93-13, and amendments thereto: Provided further, that in towns of less than one thousand inhabitants, according to the census of one thousand nine hundred thirty, such books and accounts shall not be required to be audited more often than once each year. (1931, c. 60, s. 70; 1931, c. 269; 1931, c. 296, s. 9.)

Cross Reference.—As to nature of accounting system, see § 160-290.

§ 160-276. Bond of accountant.—The municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the governing body, which bond shall be approved by the governing body and by the Commission and shall be conditioned for the faithful performance of his duties imposed by law. (1931, c. 60, s. 71.)

§ 160-277. Bonds required.—Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city. (1917, c. 136, sub-ch. 13, s. 15; C. S. 2828.)

§ 160-278. Information requested from mayor.—The governing body at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request him to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the mayor of such questions. (1917, c. 136, sub-ch. 13, s. 2; C. S. 2829.)

Part 4. Contracts Regulated.

§ 160-279. Certain contracts in writing and secured.—All contracts made by any department, board, or commission in which the amount involved is two hundred dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until signed by the officer authorized by law to sign such contract, ap-

proved by the governing body. Any contract made as aforesaid may be required to be accompanied by a bond with sureties, or by a deposit of money, certified check, or other security for the faithful performance thereof, satisfactory to the board or official having the matter in charge, and such bonds or other securities shall be deposited with the city treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department, or board making the contract, with the approval of the governing body. (1917, c. 136, sub-ch. 13, s. 8; C. S. 2831.)

Cross Reference.—As to procedure for letting a public contract, see §§ 143-129 et seq.

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686.

§ 160-280. Separate specifications for contracts; responsible contractors.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or alteration of buildings in any county or city, when the entire cost of such work shall exceed ten thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating and accessories. 2. Plumbing and gas fitting and accessories. 3. Electrical installations. 4. Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by any county, or city, or a department, board, commission, or commissioner, or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award respective work specified in the above subdivisions separately to responsible persons, firms or corporations regularly engaged in their respective line of work. (1925, c. 141, s. 1; 1929, c. 339, s. 1; 1931, c. 46; 1943, c. 387.)

Cross References.—As to separate specifications for contracts awarded by the state, see § 143-128. As to bond given by contractor on municipal building, see § 44-14.

Editor's Note.—The Act of 1929 which substituted "may" for the words "must" and "shall" was repealed by the Act of 1931.

The 1943 amendment added the words "and accessories" at the end of subdivisions 1 and 2. It also inserted subdivisions 3 and 4.

For comment on this section, see 4 N. C. Law Rev. 14.

§ 160-281. Validating certain conveyances.—All deeds made, executed, and delivered prior to August 23, 1924, for a good and valuable consideration, by incorporated cities and towns conveying lands used for park purposes, without authority to make and deliver such deed having been first granted by the General Assembly, are hereby in all respects validated, ratified, and confirmed as fully and completely as if said cities and towns had been granted authority of the General Assembly to make and deliver said deeds, and said deeds are hereby declared to be valid conveyances of the land and premises therein described. (Ex. Sess. 1924, c. 95.)

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities. — Any city shall have the right to acquire, establish, and operate waterworks, electric lighting systems, gas systems, schools, libraries, cemeteries, market houses, wharves, play or recreation grounds, athletic grounds, parks, abattoirs, slaughter-houses, sewer systems, garbage and sewage disposal plants, auditoriums or places of amusement or entertainment, and armories. The city shall have the further right to make a civic survey of the city, establish hospitals, clinics, or dispensaries for the poor, and dispense milk for babies; shall have the power to establish a system of public charities and benevolence for the aid of the poor and destitute of the city; for the welfare of visitors from the country and elsewhere, to establish rest rooms, public water-closets and urinals, open sales places for the sale of produce, places for hitching and caring for animals and parking automobiles; and all reasonable appropriations made for the purposes above mentioned shall be binding obligations upon the city, subject to the provisions of the constitution of the state. (1917, c. 136, sub-ch. 13, s. 11; C. S. 2832.)

Editor's Note.—See 12 N. C. Law Rev. 324.

Granting Exclusive Franchises.—No grant of franchise by a city is deemed exclusive unless so expressed by the grant, and by granting a franchise to a light and sewerage company the city does not deprive itself of its rights under this section, except as set out in the grant. Hill v. Elizabeth City, 291 Fed. 194, 209.

Schools.—The power given by this section to acquire, establish and operate schools applies to any city whether or not it has adopted a plan of government under this chapter. And the grant of the power is by implication the grant of such power as is necessary to exercise the power expressly granted. Hailey v. Winston-Salem, 196 N. C. 17, 23, 144 S. E. 377.

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48.

§ 160-283. How control exercised:

1. Control over departments. The waterworks department, electric or gas light system, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by any city under separate organization or as a separate corporation under the control of any city in the state, which has been heretofore under the separate management and control of separate boards or corporations, may henceforth be under the management and control of the governing body of such city in the state.

2. Departments may be abolished. In all cities except those which have adopted Plan C or Plan D, hereafter set forth, before the governing body shall have control or management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, the governing body of the city, by two-thirds vote taken at two separate regular meetings of such governing body, shall pass an ordinance to the effect that the waterworks, electric or gas light system, sewerage system, library, park or park and tree commission system, or playground system, or any other public service owned, operated,

or conducted by such city under separate organization or corporation, or either of them, shall be abolished and the control and management shall be under the governing body of the city.

3. Property vested in the city. Upon the passage by the governing body of any city of such ordinance, the waterworks, electric or gas light system, sewerage system, the library system, and the park or park and tree commission system, and any other public service owned, operated, or conducted by such city under separate organization or corporation then in existence either under separate organization or under separate management or control or under separate corporation, shall immediately become the property of the city, and all land, real estate, rights, easements, franchises, choses, and property of every kind, whether real or personal, tangible or intangible, the title of which is vested in such separate corporation or board, shall be and become vested in such city, and the boards of water commissioners, electric light commissioners, sewerage commissioners, library boards, park boards, or park and tree commission boards, or the board or commission of any other public service owned, operated, or conducted by or on behalf of such city under separate organization or corporation shall cease to exist as a corporation; and all indebtedness, bonds, or other contracts and obligations of any nature incurred by, for, or on account of the waterworks, electric or gas light system, sewerage system, library system, park or park and tree commission system, or other public utility in the name of or by such corporation, or by such city in its behalf, or by the corporation and such city jointly, shall be and become the sole obligations of such city.

4. Same procedure in other cases. There shall be the same procedure with reference to the library system, park or park and tree commission system, or playground system by the governing body of all cities which shall have adopted Plan C or Plan D before such control and title shall become vested as hereinbefore stated.

5. Popular vote required. In all cities, except those which have adopted Plan C or Plan D, hereafter set forth, before the foregoing provisions of this section shall become effective, such changes in the control and management of the waterworks, electric light, sewerage, etc., shall first be approved by a majority of the qualified voters of such municipality at any regular or special election held under the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 9; C. S. 2833.)

§ 160-284. Ordinances to regulate management. —The governing body of any city in the exercise of its control and management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or any other public service owned, operated, or conducted by such city, shall have power to make rules, regulations, and ordinances in connection with the management thereof as they may deem necessary, and shall have power to enforce such rules, regulations, and ordinances. (1917, c. 136, sub-ch. 13, s. 10; C. S. 2834.)

§ 160-285. Additional property acquired.—The governing body of any city shall have power to acquire such additional property as it may deem necessary for a better system of waterworks, electric light, sewerage, library, park or parks, or other public service owned, operated, or conducted by such city. Upon the adoption by the governing body of any city of any one of the plans of government provided for in this subchapter, the laws now in force in reference to the waterworks, electric light, sewerage, parks, libraries, or other public service owned, operated, or conducted by such city, shall not be repealed by this subchapter, but shall be construed with this subchapter and only repealed in so far as they are inconsistent with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 10; C. S. 2835.)

Part 6. Effect Upon Existing Regulations.

§ 160-286. Existing rights and obligations not affected. — All official bonds, recognizances, obligations, contracts, and all other instruments entered into or executed by or to the city before this subchapter takes effect in any city, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the city, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as is herein otherwise provided, shall continue without abatement and remain unaffected by this subchapter; and no legal act done by or in favor of the city shall be rendered invalid by its adoption of any plan of government provided for by this subchapter. (1917, c. 136, sub-ch. 13, s. 5; C. S. 2836.)

§ 160-287. Existing ordinances remain in force. —All valid ordinances and resolutions of any city in force on March 6, 1917, and not inconsistent with the provisions of this subchapter, and all rules of procedure adopted by the governing body of any city, shall be and remain in full force and effect until repealed, annulled, or amended under the provisions of this subchapter, or under the provisions of the charter of such city, and all laws relative to any city, not in conflict with the provisions of this subchapter shall be and remain in full force and effect. (1917, c. 136, sub-ch. 13, s. 5; C. S. 2837.)

§ 160-288. Existing election laws remain in force. —This subchapter shall not repeal or impair any general, special, or local election laws now in force in any city, but such general, special, or local laws shall be and continue in full force and effect except where clearly inconsistent with and repugnant to the provisions of this subchapter; and the municipal elections of such city shall continue to be held under and subject to the provisions of such special election laws except as herein otherwise provided: Provided, however, that in every case the governing body of any city shall have the right and power in its discretion and by an ordinance adopted by a two-thirds vote of the members of the entire governing body, to order a new registration of the voters of such city for any general, regular, or special municipal election held in such city for any purpose, unless excepted in this subchapter. (1917, c. 136, sub-ch. 13, s. 12; C. S. 2838.)

§ 160-289. General laws apply.—All questions arising in the administration of the government

of any city, and not provided for in this subchapter, shall be governed by the laws of the state in such cases made and provided. (1917, c. 136, sub-ch. 13, s. 13; C. S. 2839.)

Art. 20. Accounting System.

§ 160-290. Nature of accounting system.—Accounting systems shall be devised and maintained which shall exhibit the condition of the city's assets and liabilities, the value of its several properties, and state of its several funds. Such systems shall be adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government; and there shall be included distinct summaries and schedules for each public utility owned and operated by the city. In all respects, as far as the nature of the city's business permits, the accounting systems maintained shall conform to those employed by progressive business concerns and approved by the best usage. The governing body shall have power to employ accountants to assist in devising such accounting systems. (1917, c. 136, sub-ch. 14, s. 1; C. S. 2840.)

Cross References.—As to duty of governing body to appoint an accountant, see § 160-275. As to separate accounts for water system, see § 160-257. As to separate accounts for cemetery, see § 160-260.

Art. 21. Adoption of New Plan of Government.

Part 1. Effect of Adoption.

§ 160-291. Continues corporation with powers according to plan.—Any city which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this subchapter shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations provided for herein or otherwise pertaining to or incumbent upon such city as a municipal corporation. (1917, c. 136, sub-ch. 16, s. 1; C. S. 2842.)

§ 160-292. Legislative powers not restricted.—None of the legislative powers of a city shall be abridged or impaired by the provisions of this subchapter, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this subchapter. (1917, c. 136, sub-ch. 16, s. 2; C. S. 2843.)

§ 160-293. Ordinances remain in force. — All ordinances, resolutions, orders, or other regulations of a city or of any authorized body or official thereof existing at the time when such city adopts a plan of government set forth in this subchapter shall continue in full force and effect until annulled, repealed, modified, or superseded. (1917, c. 136, sub-ch. 16, s. 3; C. S. 2844.)

§ 160-294. Mayor and aldermen to hold no other offices.—The mayor or any member of the board of aldermen shall not hold any other office or position of profit, trust, or honor, or perform any other duties or functions than mayor or aldermen under the city government unless it shall be submitted to and approved by a majority of the qualified voters of the city at a regular or special election. (1917, c. 136, sub-ch. 16, s. 4; C. S. 2845.)

§ 160-295. Wards regulated.—The territory of any city adopting any one of the plans of government provided for in this subchapter shall continue to be divided into the same number of wards existing at the time of such adoption, which wards shall retain their boundaries until same shall be changed under the provisions of this subchapter: Provided, that if the plan so adopted provides for a different number and arrangement of wards from that existing at the time of such adoption, then in such event the wards of such city shall be so changed and arranged as to conform to the provisions of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 5; C. S. 2846.)

Part 2. Manner of Adoption.

§ 160-296. Petition filed.—A petition addressed to the board of elections of the county in which the city is situated, in the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition. In cities having a population of eighty thousand (80,000), as shown by the last census, in which it is proposed to adopt plan "B," the petition shall be signed by ten per cent of the qualified voters of said city. (1917, c. 136, sub-ch. 16, s. 6; 1933, c. 80, s. 5; C. S. 2847.)

Editor's Note.—Public Laws of 1933, c. 80, added the last sentence relating to cities having a population of 80,000.

§ 160-297. Form of petition.—The petition shall be in substantially the following form:

To the County Board of Elections of ....County:

We, the undersigned qualified voters of the city, respectfully petition your honorable body to cause to be submitted to a vote of the voters of the city of ..... the following question: "Shall the city of ..... adopt the form of government defined as Plan (A, B, C, or D), as it is desired by petitioners and consisting of (describe plan briefly, as government by a mayor and councilors elected at large, or government by a mayor and councilors elected partly at large and partly from wards or districts, or government by three commissioners, one of whom shall be the mayor, or government by a mayor and four councilors with a city manager), according to the provisions of the chapter, Municipal Corporations, articles 22 to 25 inclusive."

Or, in case it shall be desired by such petitioners that two of such plans shall be submitted, then the question may be stated as follows:

"Shall the city of ..... adopt the form of government defined as Plan ..... or ..... (naming two of such plans as stated

above), or remain under the present form of government?"

The petition may be in the form of separate sheets, each sheet containing at the top thereof the heading above set forth, and when attached together and offered for filing the several papers shall be deemed to constitute one petition, and there shall be endorsed thereon the name and address of the person presenting the same for filing. (1917, c. 136, sub-ch. 16, s. 7; C. S. 2848.)

§ 160-298. Election held. — Within five days after the petition has been filed with the county board of elections, if the petition shall contain twenty-five per cent of the qualified voters as before set forth, the board of elections shall call an election in accordance with such petition. The board of elections shall cause notice of such election to be given at least once a week for four weeks in some newspaper of general circulation in the county in which the election is to be held, or at the courthouse door of the county in which the city is situated or at the door of the city or town hall, and the date of such election shall be fixed by the board not later than forty days from the receipt of such petition. The notice shall be signed by the chairman of the county board of elections, and the cost of publication thereof paid by the city. The election shall be held under, and governed and controlled by, the laws in force at the time of such election governing regular elections of such city. (1917, c. 136, sub-ch. 16, s. 8; C. S. 2849.)

§ 160-299. Petitions for more than one plan.— Separate petitions for the submission of more than one of such plans may be filed in the form and manner hereinbefore provided, but if petitions for the submission of more than two of such plans shall be submitted at such election, those two plans shall be submitted at the election, petitions for which shall be first filed with the county board of elections. (1917, c. 136, sub-ch. 16, s. 9; C. S. 2850.)

§ 160-300. What the ballots shall contain.—All ballots used in elections held upon the adoption of the plans of government herein set forth shall contain the name of the plan submitted, as Plan A, B, C, or D, or any two of such plans submitted, as the case may be, with a brief description of each plan submitted, as described in the petition, and shall also contain the existing form of government under the name "present form of government." The names of the plans and forms shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of government for which he casts his vote; if there shall be only one plan submitted, the letter and description of such plan and the "present form of government" only shall appear, and the voter shall express his preference between such plan and the "present form of government." If there shall be two plans submitted, then each of the plans shall be denominated and described on the ballot as herein set forth, and the "present form of government" shall also appear upon the ballot, and the ballot shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of his first choice and the plan and form of his second choice. (1917, c. 136, sub-ch. 16, s. 10; C. S. 2851.)

§ 160-301. Form of ballots.—Except that the crosses here shown shall be omitted, the ballots shall be printed substantially as follows:

(Form of ballot when only one plan is submitted:)

Special Municipal Election

Plan ..... (with brief description). ☒
Present Form of Government. ☐

(Form of ballot when two plans are submitted:)

Special Municipal Election

To vote for any plan or form of government, make a cross in the appropriate square to the right of the name of such plan or form.

Note your first choice in the first column.

Note your second choice in the second column.

Names of plans or forms	First Choice.	Second Choice.
Plan—(with brief description).	X	
Plan—(with brief description).		X
Present Form of Government.		

(1917, c. 136, sub-ch. 16, s. 11; C. S. 2852.)

§ 160-302. Series of ballots. — The plans and forms on all ballots shall be printed in rotation as follows: The ballots shall be printed in as many series as there are plans or forms. The whole number of ballots to be printed shall be divided by number of series and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots the names of each plan or form shall be arranged in the alphabetical order of the letters of the plans submitted, followed by the "present form of government." After printing the first series, the first plan or form shall be placed last and the next series printed, and the process shall be so repeated until each plan shall have been printed first an equal number of times. The ballots so printed shall be then combined in tablets or packages so as to have the fewest possible ballots having the same order of plans or forms printed thereon together in the same tablet or package. (1917, c. 136, sub-ch. 16, s. 12; C. S. 2853.)

§ 160-303. How choice determined:

1. One plan submitted. If only one of the plans herein set forth and the "present form of government" are submitted, the plan or form of government receiving a majority of the votes cast shall be declared the plan or form selected.

2. More than one plan submitted. If two of the plans herein set forth and the "present form of government" are submitted, the plan or form receiving a majority of first choice votes equal to a majority of all the ballots cast shall be declared the plan or form selected. If no plan or form shall receive such a majority, then the second choice votes received for each plan or form shall be added to its first choice votes, and the plan or form receiving the highest total of first

and second choice votes equal to a majority of all ballots cast shall be declared the plan or form selected.

3. How ballots are counted. In counting the ballots, if two plans and the "present form of government" are submitted, the precinct officers shall enter the total number of ballots on a tally-sheet printed therefor. They shall also carefully enter on such sheet the number of first choice and second choice votes for each plan or form of government. Only one vote shall be counted for any one plan or form on any one ballot. If two votes are cast for the same plan or form, the higher choice only shall be counted. If but one choice is voted on a ballot, it shall be counted as a first choice. If more than one cross appears in the same choice column on any ballot, they shall be counted as choices with priority as between each other in the order in which they appear in the choice column. Ballots marked with more than two crosses shall be declared void. A tie between two or more plans or forms shall be decided in favor of the one having the largest number of first choice votes. (1917, c. 136, sub-ch. 16, ss. 13, 14; C. S. 2854.)

Part 3. Result of Adoption.

§ 160-304. Plan to continue for two years.— Should any one of the plans of government provided for in this subchapter be adopted, the plan shall continue in force for the period of at least two years after beginning of the term of office of the officials elected thereunder; and no petition proposing a different plan shall be filed during the period of one year and six months after such adoption. (1917, c. 136, sub-ch. 16, s. 15; C. S. 2855.)

§ 160-305. City officers to carry out plan.—It shall be the duty of the mayor, the governing body, and the city clerk and other city officials in office, and all boards of election and all election officials, when any plan of government set forth in this subchapter has been adopted by the qualified voters of any city or is proposed for adoption, to comply with all requirements of this subchapter relating to such proposed adoption and to the election of the officers specified in such plan, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the provisions of this subchapter and of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 16; C. S. 2856.)

§ 160-306. First election of officers.—The first election next succeeding the adoption of any of the plans provided for by this subchapter shall take place on Tuesday after the first Monday in May next succeeding such adoption, and thereafter the city election shall take place biennially on the Tuesday next following the first Monday in May, and the municipal year shall begin and end at ten o'clock in the morning following the day of election. (1917, c. 136, sub-ch. 16, s. 17; C. S. 2857.)

§ 160-307. Time for officers to qualify.—On Wednesday after the first Monday in May following the adoption of any of the plans herein provided for, and biennially thereafter, the mayor-elect and the councilors-elect or commissioners shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that such oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered in the presence of the city council to the mayor, or to any councilor or commissioner absent from the meeting on the first Wednesday after the first Monday in May. (1917, c. 136, sub-ch. 16, s. 18; C. S. 2858.)

Art. 22. Different Forms of Municipal Government.

Part 1. Plan "A." Mayor and City Council Elected at Large.

§ 160-308. How it becomes operative. — The method of city government herein provided for shall be known as Plan A. Upon the adoption of Plan A by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part II, Plan A, ss. 1, 2; C. S. 2859.)

§ 160-309. Mayor's election and term of office.— There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after the first Monday in May following his election and until his successor is elected and qualified. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 3; C. S. 2860.)

Cross Reference.—As to election of mayor in municipalities not operating under one of forms of government provided by the Act of 1917, see § 160-10.

§ 160-310. Number and election of city council. —The legislative powers of the city shall be vested in a city council. In cities of five thousand inhabitants and under the city council shall consist of three; in cities of five thousand to ten thousand the city council shall consist of five; in cities of ten thousand to twenty thousand inhabitants, the city council shall consist of seven; and in all over twenty thousand inhabitants the city council shall consist of nine. The councilmen shall be elected at large and from the qualified voters of the city. One of its members shall be elected by the council biennially as mayor pro tem. At the first election held in a city after its adoption of Plan A, the councilors shall be elected to serve for two years from Wednesday after the Monday in May following their election and until their successors are elected and qualified, and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. The number of inhabitants shall be determined by the last United States government census or estimate. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 4; C. S. 2861.)

§ 160-311. Salaries of mayor and councilmen.— The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits:

In cities of five thousand inhabitants and under, not less than three hundred nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred dollars nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder and shall six months prior to the time of the expiration of its term fix by ordinance the salary within the above limits of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of succeeding mayors, but such ordinance shall not be binding in case another plan shall be adopted during the term of office of such council. The council may by a two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding two hundred dollars each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136; sub-ch. 16, Part II, Plan A, s. 5; C. S. 2862.)

§ 160-312. Officers elected by city council.—All heads of departments and members of municipal boards, as their present terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 5; C. S. 2863.)

Cross Reference.—As to election of officers by governing bodies of municipalities not operating under one of forms of government provided by the Act of 1917, see § 160-9.

§ 160-313. Power of removal in mayor.—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board, other than governing board, before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 7; C. S. 2864.)

§ 160-314. Veto power of mayor.—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a two-thirds vote of all the members of the city council, it shall then be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 8; C. S. 2865.)

Part 2. Plan "B." Mayor and Council Elected by Districts and at Large.

§ 160-315. How it becomes operative. — The method of city government herein provided for shall be known as Plan B. Upon the adoption of Plan B by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part III, Plan B, ss. 1, 2; C. S. 2866.)

§ 160-316. Mayor's election and term of office.—There shall be a mayor elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified, and at each biennial city election thereafter the mayor shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 3; C. S. 2867.)

Cross Reference.—As to election of mayor in municipalities not operating under form of government provided by the Act of 1917, see § 160-10.

§ 160-317. City council, election and term of office.—The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities of over eighty thousand (80,000) population, as shown by the last census, the city council or aldermen shall consist of twelve members, one shall be elected from each ward by and from the qualified voters of that ward. On or before March 1, 1933, the governing body of each city of over eighty thousand (80,000) inhabitants shall, and it is made mandatory on them to divide the said city into twelve wards as nearly equal as possible as to population. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election thereafter the councilors elected to fill vacancies caused by the ex-

piration of the terms of councilors shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4; 1933, c. 80, s. 1; C. S. 2868.)

Cross Reference.—As to election of commissioners in municipality not operating under one of forms of government provided by the Act of 1917, see § 160-5.

Editor's Note.—Public Laws 1933, c. 80, added the third and fourth sentences relating to cities of over 80,000.

§ 160-318. Officers elected by city council.—All heads of departments and members of municipal boards, as their terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 5; C. S. 2869.)

Cross Reference.—As to election of officers by commissioners of municipality not operating under form of government provided by the Act of 1917, see § 160-9.

§ 160-319. Power of removal in mayor.—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 6; C. S. 2870.)

§ 160-320. Salaries of mayor and council.—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than five thousand dollars, and it shall be mandatory that the mayor shall give his entire time and attention to the affairs of the city. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7; 1933, c. 80, s. 2; C. S. 2871.)

Editor's Note.—Public Laws 1933, c. 80, increased the salaries in cities of over 25,000 inhabitants from $3,500 to $5,000, and made it mandatory that the mayor should devote his entire time to city affairs.

§ 160-321. Supervisory power of mayor.—All heads of departments after their election by the city council or aldermen, as provided for by § 160-318, shall be under the direction, control and supervision of the mayor during their tenure of office and until discharged by law. (1933, c. 80, s. 3.)

§ 160-322. Approval of contracts.—No contract or obligation of whatever nature shall be binding upon the city until first approved by the majority of the city council or aldermen, and approved and counter-signed by the mayor. (1933, c. 80, s. 4.)

§ 160-323. Veto power in mayor.—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a majority vote of all the members of the city council, it shall be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, or vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 8; C. S. 2872.)

Part 3. Plan "C." Commission Form of Government.

§ 160-324. How it becomes operative. — The method of city government herein provided for shall be known as Plan C. Upon the adoption of Plan C by any city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, ss. 1, 2; C. S. 2873.)

§ 160-325. Board of commissioners governing body.—The government of the city and the general management and control of all of its affairs shall be vested in a board of commissioners, which shall be elected and shall exercise its powers in the manner hereinafter set forth; and such board shall have full power and authority to enact laws and ordinances for the government and management of the city and all its departments. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, s. 3; C. S. 2874.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 567, 152 S. E. 686.

§ 160-326. Number, power and duties of commissioners.—The board of commissioners shall consist of three members, one of whom shall be mayor, and all of whom shall be elected by a

vote of the people as hereinafter provided. One of the commissioners shall be elected and known as commissioner of public works; one of the commissioners shall be elected and known as commissioner of public safety; and the mayor shall be known as commissioner of administration and finance. And the commissioners are hereby empowered to appoint, elect, employ, suspend, and discharge all other officers and employees necessary for the operation and management of the city government and its various departments and activities, and to make all necessary rules and regulations for their government; and full power and authority is hereby granted the board of commissioners to enact all laws and ordinances for the proper government of the city. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 4; C. S. 2875.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 567, 152 S. E. 686.

§ 160-327. Power and duties of mayor.—The mayor shall be the chief executive officer of the city, and subject to the supervision of the board of commissioners, shall perform all duties pertaining to such office. He shall do and perform all duties provided or prescribed by law or by the ordinances of the city not expressly delegated to any other person. He shall have general supervision and oversight over the departments and offices of the city government, and shall be the chief representative of the city, and shall report to the board any failure on the part of any of the officers of his or any other department to perform their duties, and shall preside at all meetings of the board of commissioners. He shall sign all contracts on behalf of the city unless otherwise provided by law, ordinance or resolution of the board of commissioners; he shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance or by resolution of the board of commissioners. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 5; C. S. 2876.)

§ 160-328. Commissioner of administration and finance:

1. Purchasing Agent.—The commissioner of administration and finance (who is also mayor) shall be the purchasing agent of the board of commissioners of the city, and all property, supplies, and material of every kind whatsoever shall, upon the order of the board of commissioners, be purchased by him; and when so purchased by him, the bills therefor shall be submitted to and approved by the board of commissioners before warrants are issued therefor. When such warrants are issued, they shall be signed by the commissioners and countersigned by some other person designated by the board of commissioners.

2. Collector of Taxes and Other Dues.—He shall collect all taxes, water rents, license fees, franchise taxes, rentals, and all other moneys which may be due or become due to the city; he shall issue license or permits as provided by law, ordinance, or resolution adopted by the board of commissioners; he shall report the failure on the part of any person, firm or corporation to pay money due the city; and he shall report to the board of commissioners any failure on the part of any person, firm, or corporation to make such reports as are required by law, ordinance, or order of the board of commissioners to be made, and he shall make such recommendations with reference thereto as he may deem proper.

3. Supervision of Accounts.—He shall have charge of and supervision over all accounts and records of the city, and accounts of all officers, agents, and departments required by law or by the board of commissioners to be kept or made. He shall regularly, at least once in three months, inspect or superintend inspection of all records or accounts required to be kept in any of the offices or departments of the city, and shall cause proper accounts and records to be kept, and proper reports to be made. He shall recommend to the board methods of modern bookkeeping for all departments, employees, and agents of the city, and shall, acting for the board of commissioners, audit or cause to be audited by an expert accountant, quarterly, the accounts of every officer or employee who does or may receive or disburse money, and shall publish or cause to be published quarterly statements showing the financial condition of the city. He shall examine or cause to be examined all accounts, payrolls, and claims before they are acted on or allowed, unless otherwise provided by law or by order of the board of commissioners.

4. Control of Employees.—He shall have control of all employees of his department, and of all other officers and employees not by law, ordinance, or resolution of the board of commissioners apportioned or assigned to some other department. The assessor, auditor, city clerk, city attorney, and their respective offices or departments, and all employees therein, and all bookkeepers and accountants are apportioned and assigned to the department of administration and finance, and shall be under the direction and supervision of the commissioner thereof.

5. General Duties.—In the absence or inability of any commissioner to act, he shall exercise temporary supervision over the department assigned to such commissioner, subject, however, to the power of the board to substitute some one else temporarily to perform any of such duties. He shall do and perform any and all other services ordered by the board and not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S. 2877.)

§ 160-329. Commissioner of public works:

1. Construction of Public Works.—The commissioner of public works shall have authority and charge over all the public works not herein expressly given to some other department; the construction, cleansing, sprinkling, and repair of the streets and public places, the erection of buildings for the city, the making and construction of all other improvements, paving, curbing, sidewalks, bridges, viaducts, and the repair thereof. He shall approve all estimates of the city engineer of the cost of public works, and recommend to the board of commissioners the acceptance of the work done or improvement made, when completed according to contract, and perform such other duties with reference to such other matters as may be required by law

ordinance, or order of the board of commissioners.

2. Control of Streets and Public Places.—The commissioner shall have supervision and control, and it shall be his duty to keep in good condition the streets, cemeteries, and public parks in the city or belonging to the city, subject to the supervision and control of the board of commissioners; he shall have control, management and direction of all public grounds, bridges, viaducts, subways, and buildings not otherwise assigned herein to some other department; he shall have supervision of the enforcement of the provisions of law and the ordinances relating to streets, public squares and places, cemeteries, and the control of the placing of billboards and street waste-paper receptacles.

3. Control over Public Utilities.—He shall have supervision over the public-service utilities not otherwise assigned to some other department, and all persons, firms, or corporations rendering service in the city under any franchise, contracts, or grant made by the city or state, not otherwise assigned to some other department. He shall have control of the location of street-car tracks, telephone and telegraph wires, and other things placed by public-service corporations in, along, under, or over the streets, and shall report to the board of commissioners or city officers, as may be appointed by them to receive his reports, any failure of such person or corporation to render proper service under a franchise granted by the city or state, and shall report any failure on the part of such person, firm, or corporation to observe the requirements or conditions of such franchise, contract, or grant.

4. Control of Water System.—He shall have charge of the watersheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected with or incident to the proper supply of water for the city; it shall be his duty to act for the city, subject to the control of the board of commissioners, in securing all rights of way and easements connected with and necessary to the supply of water for the city; he shall have supervision and control of all buildings, grounds, and apparatus connected therewith and incident to the furnishing of water for the city; he shall superintend the erection of water tanks and laying of water lines and the operation thereof.

5. Control of Departments.—The department of the city engineer, and all employees therein, the departments of streets, parks, cemeteries, buildings, and all employees in said departments, shall be under the supervision and control of the commissioner of public works; and he shall do and perform all other services ordered by the board, or that may be ordered by the board, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 7; C. S. 2878.)

§ 160-330. Commissioner of public safety:

1. Charge of Police Force.—The commissioner of public safety shall have charge of the police force, subject to the supervision and control of the board of commissioners, and shall have power temporarily to supplant the chief of police and take charge of the department, and shall at all times have power to give directions to the officers and all employees in the police department, and his directions shall be binding upon all such officers and employees, subject only to the control of the board of commissioners. He shall have charge of the police stations, jails, and property and apparatus connected therewith, including city ambulance and patrol wagons used in connection with his department.

2. Control of Fire Department.—He shall have the supervision and control, subject to the control of the board of commissioners, of the fire department, of all firemen, officers, and employees therein or connected therewith, and of all fire stations, property and apparatus connected therewith; he shall have power to supersede temporarily the chief of the fire department, and his orders to such department and all employees therein shall be binding upon the department.

3. Traffic Regulations.—He shall be charged with the duty of enforcing all ordinances and resolutions relating to traffic on the public streets, alleys, and public ways, on and across railway lines and through and over the cemetery-ways, public parks, and other public places.

4. Health Regulations.—He shall, subject to the supervision of the board of commissioners, have control of the laws, ordinances, and orders relating to the public health and sanitation, and all health officers, employees of the city, connected with and under his department; and it shall be the duty of the board of commissioners to pass such ordinances and prescribe such rules and regulations and employ such persons as will be necessary to protect and preserve public health. He shall have control and supervision, through the health officer under his department, over public dumping grounds and dumps and city scavengers; he shall be charged, through his department, with the enforcement of all quarantine regulations, of keeping clean all streets, alleys, and public places, and with suppressing and removing conditions on private property within the city that are a menace to health or public safety. He shall be authorized to enter upon private premises for the purpose of discharging the duties imposed upon him, and he shall cause to be abated all nuisances which may endanger or affect the health of the city, and generally do all things, subject to the control of the board of commissioners, that may be necessary and expedient for the promotion of health and suppression of disease.

5. Sewer and Light Systems.—He shall have control and supervision over the sewer system, and shall have charge and control over the sewer inspector and all other officers and employees connected with the department of lights and sewers. He shall have supervision and control over the lighting system of the city, and the management and direction of the lighting of the streets, alleys, and all other public places and grounds and all other places where city lights are placed; he shall be charged with the duty of seeing that all persons, firms, and corporations charged with the duty of supplying lights or waterpower perform the obligation imposed upon them by law, ordinance, or order of the board of commissioners.

6. Control over Officers.—He shall have

charge of the electrical inspector, plumbing inspector, building inspector, market house and the employees connected therewith and of all apparatus and property used therein; he shall have charge, supervision and direction of all officers and employees of the city connected with and under his department. He shall perform all other services ordered by the board of commissioners, or that may be ordered by the board of commissioners, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S. 2879.)

§ 160-331. Recommendations as to purchases.—It shall be the duty of each commissioner to recommend to the city purchasing agent the purchase of goods and the contract for all things necessary to be contracted for in his department, and these recommendations shall be submitted to the board of commissioners for its orders with respect thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 9; C. S. 2880.)

Cross Reference.—As to purchasing agent, see § 160-328, subsection 1.

§ 160-332. General powers of board of commissioners.—The board of commissioners shall exercise all legislative powers, functions, and duties conferred upon the city or its officers. It shall make all orders for the doing of work or the making or construction of any improvements, bridges, or buildings. It shall levy all taxes, apportion and appropriate all funds, audit and allow all bills and accounts, payrolls, and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers, and other work, improvements, or repairs which may be specially assessed. It shall make or authorize the making of all contracts, and no contracts shall bind or be obligatory upon the city unless either made by ordinance or resolution adopted by the board of commissioners or reduced to writing and approved by the board or expressly authorized by ordinance or resolution adopted by the board. All contracts and all ordinances and resolutions making contracts or authorizing the making of contracts shall be drawn by the city attorney, or submitted to such officer before the same are made or passed. All heads of departments, agents, and employees are the agents of the board of commissioners only, and all their acts shall be subject to review and to approval or revocation by the board of commissioners. Every head of department, superintendent, agent, employee, or officer shall from time to time, as required by law or ordinance, or when requested by the board of commissioners, or whenever he shall deem necessary for the good of the public service, report to the board of commissioners in writing respecting the business of his department, office, or employment, all matters connected therewith. The board of commissioners may by ordinance or resolution assign to a head of a department, a superintendent, officer, agent, or employee. duties in respect to the business of any other department, office, or employment, and such service shall be rendered without additional compensation. The board of commissioners shall elect and have authority over the city clerk, who shall be the clerk of the board of commissioners. The board of commissioners shall have charge of all matters pertaining to public health, and shall perform all duties belonging thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, ss. 10, 11; C. S. 2881.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686.

§ 160-333. Commissioners' service exclusive. — Each member of the board of commissioners shall devote his time and attention to the performance of the public duties to the exclusion of all other occupations, professions, or callings. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 12; C. S. 2882.)

§ 160-334. The initative and referendum:

1. Ordinances Submitted by Petition.—Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal to the number provided herein for recall of any official. The signatures, verifications, authentications, inspections, certification, amendments, and submission of such petition shall be the same as provided for the removal of officials.

2. Duty of the Board.—If the petition accompanying the proposed ordinance be signed by the requisite number of electors, and contains a request that the ordinance be passed, or submitted to a vote of the people if not passed by the board of commissioners, such board shall either:

a. Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or

b. After the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall forthwith submit the question to the qualified voters at a special election called for that purpose, or to a general election occurring within ninety days after the date of the clerk's certificate. If the petition is signed by not less than ten and less than twenty-five per cent of the electors as above defined, then the board of commissioners shall within twenty days pass such ordinance without change or submit the same at the next general city election.

3. Popular Vote Taken.—The ballots used when voting upon such ordinance shall contain these words: "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

4. Proposition for Repeal.—The board of commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general election; and should any such proposi-

tion so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly.

5. Publication.—Whenever any ordinance or proposition is required by this subchapter to be submitted to the voters of the city at any election, the city shall cause such ordinance or proposition to be published once in a newspaper of general circulation in the city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

6. When Ordinance Takes Effect.— No ordinance passed by the board of commissioners, unless otherwise expressly provided, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency and is passed by a two-thirds vote of the board of commissioners, shall go into effect before twenty days from the time of its final passage and publication, as herein provided.

7. Action upon Protest Filed.— If during the twenty days a petition, signed by electors of the city equal to the number prescribed herein to be signed to a petition for the recall of any official, protesting against the passage of such ordinance, be presented to the board of commissioners, the operation of such ordinance shall thereupon be suspended, and it shall be the duty of the board of commissioners to consider such ordinance, and if the same is not entirely repealed, the board of commissioners shall submit to the qualified voters the question of the repeal of such ordinance at an election to be held for that purpose in the manner and under the conditions herein provided for reference to voters of the question of recall of an official. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 3, s. 1; C. S. 2883.)

§ 160-335. Nomination of candidates:

1. Nomination by Primaries.—All candidates to be voted for at all general municipal elections, at which time a mayor, commissioners, or any other elective officers are to be elected under the provisions of this subchapter, shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in such primary in the manner hereinafter prescribed.

2. How Primaries Held.—The primary election for such nominations shall be held on the second Monday preceding all general municipal elections. The judges and other officers of election appointed for the general municipal election shall, whenever practicable, be the judges of the primary election, and it shall be held at the same place and in the same manner and under the same rules and regulations and subject to the same conditions, and the polls to be opened and closed at the same hours, as are required for the general election.

3. Notice of Candidacy.—Any person desiring to become a candidate for nomination by the primary for the office of mayor or commissioner of either of the other two departments or any other elective office shall, at least ten days prior to the primary election, file with the clerk a statement of such candidacy in substantially the following form:

State of North Carolina—County of .....

I, ..., hereby give notice that I reside at ..... street, city of ..... county of ....., State of North Carolina; that I am a candidate for nomination to the office of (mayor, or commissioner of a particular department, or other office) to be voted upon at the primary election to be held on the ..... Monday of ....., 19.., and I hereby request that my name be printed upon the official ballot for the nomination by such primary election for such office.

(Signed) .....

And he shall at the same time pay to the clerk, to be turned over to the city treasurer, the sum of five dollars.

4. Publication of Names.—Immediately upon the expiration of the time for filing the petition of candidates, the city clerk shall cause to be published for three successive days in a daily newspaper of general circulation in the city, in proper form, the names of the persons as they are to appear upon the primary ballots.

5. Ballots Prepared.—The clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the ballot the names of the candidates for mayor, arranged alphabetically, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one." Following the names, likewise arranged in alphabetical order, shall appear the names of the candidates for the commissioners of the two other departments, respectively, with a square at the left of each name, and below the names of such candidates for each of the departments shall appear the words, "vote for one." Like provision shall be made for the names of candidates for each other elective office provided by law. The ballots shall be printed upon plain, substantial white paper, and shall be headed: "Candidates for nomination for mayor and commissioners of two other offices (naming them), of the city of ....., North Carolina, at the primary election," but shall have no party designation or mark whatever.

6. Form of Ballots.—The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of parties you favor as candidates for the respective positions.)

Official primary ballot. Candidates for nomination for mayor and commissioners and other offices (naming them) of the city of ....., North Carolina, at the primary election.

For Mayor (naming candidates). (Vote for one.)

For Commissioner of the Department of Public Safety (names of candidates). (Vote for one.)

For Commissioner of the Department of Public Works (names of candidates). (Vote for one.)

Official ballot. Attest:

(Signature) ..... City Clerk.

7. Distribution of Ballots.—Having caused ballots to be printed, the city clerk shall cause to be delivered at each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor.

8. Who Entitled to Vote.—The persons who are qualified to vote at the succeeding municipal election shall be qualified to vote at such primary election, and shall be subject to challenge made by any resident of the city, under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of election and registrars: Provided, however, that the law applicable to challenge at a general municipal election shall be applicable to challenge made at such primary election.

9. Ballots Counted.—Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precincts for each of the candidates, and make return thereof to the city clerk, upon blanks to be furnished by the clerk, within six hours of the closing of the polls.

10. Returns Canvassed.—On the day following the primary election the city clerk, under the supervision and direction of the mayor, shall canvass such returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city, at least once, the result thereof. The canvass by the city clerk chall be publicly made.

11. Who to Be Candidates. — The two candidates receiving the highest number of votes for mayor, and the two candidates receiving the highest number of votes for commissioners for each of the respective departments, and the two candidates receiving the highest number of votes for any other elective office, shall be the candidates, and the only candidates whose names shall be placed upon the ballot for mayor, commissioners, and other elective offices at the next succeeding general municipal election. Provided, however, if any candidate for Mayor receives a majority of all the votes cast for the office of Mayor, or if any candidate for Commissioner receives a majority of all the votes cast for the office of Commissioner of the Department for which such person is a candidate, then only the name of the candidate receiving a majority of all the votes cast for such position shall be placed upon the ballot for Mayor or Commissioner of such Department at the next succeeding general municipal election. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 4; 1929, c. 32, s. 1; C. S. 2884.)

Editor's Note.—The Act of 1929 added the proviso to subsection 11 of this section.

§ 160-336. Recall of officials by the people:

1. Who may be Removed.—The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent.

2. Petition Filed and Verified.—The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the clerk, which petition shall contain a general statement of the ground for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

3. Clerk to Examine and Certify Sufficiency.—Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not the petition is signed by the requisite number of qualified electors, and he shall attach to the petition his certificate, showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the board of commissioners without delay.

4. Board to Order Primary.—If the petition shall be found to be sufficient, the board of commissioners shall order and fix a date for holding a primary, as provided in cases preceding regular elections, the primary to be held not less than ten days or more than twenty days from the date of the clerk's certificate to the board of commissioners that a sufficient petition is filed. If in the primary election any candidate receives a majority of all the votes cast, he shall be declared to be elected to fill out the remainder of the term of the officer who is sought to be recalled. If there be more than two candidates in such primary and no one received a majority of all the votes cast therein, then there shall be an election held within twenty days from the date of the primary, at which election the two candidates receiving the highest vote in the primary shall be voted for. Candidates' names shall be placed on the ticket in the primary and election held, and the results canvassed, under the same rules, conditions, and regulations as are prescribed for the primaries preceding regular elections. The board of commissioners shall make or cause to be made publication for ten days of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the results thereof declared in all respects as other city elections.

5. Candidate Elected Succeeds to Office. — The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. At such election, if some other person than the incumbent is elected, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor.

6. Vacancy Filled.—In case the party elected should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant, and in that event the unexpired term shall be filled by election by the board, but the commissioner removed shall not be eligible to election by the board, and the person so elected by the board shall be subject to recall as other commissioners. If the incumbent receives a majority of votes in the primary election he shall continue his office.

7. Application of Method of Removal.—Such method of removal shall be cumulative and additional to any other method provided by law. In the event any officer is recalled and any person is elected as his successor, the right of recall of such successor so elected shall be as in case of an officer originally elected. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 5; C. S. 2885.)

Power to Remove Officers.—"In 1 Dillon Mun. Corp. (4th Ed.), sec. 240, it is said: 'The power to remove a corporate officer from his office for reasonable and just cause is one of the common-law incidents of all corporations.' This doctrine, though declared before, has been considered settled ever since Lord Mansfield's judgment in the well known case of The King v. Richardson, 1 Burrows, 517. It is there denied that there can be no power of a motion unless given by charter or prescription, and the contrary doctrine is asserted, 'that from the reason of the thing, from the nature of corporations, and for the sake of order and government, the power is incidental.' " State v. Jenkins, 148 N. C. 25, 27, 61 S. E. 608.

§ 160-337. Salaries of officers.—The mayor and commissioners shall have offices at the city hall. The compensation of the mayor and commissioners shall be as follows: In cities of five thousand inhabitants and under, the mayor shall receive one thousand dollars and the commissioners each seven hundred and fifty dollars. In cities of five to ten thousand inhabitants the mayor shall receive fifteen hundred dollars and the commissioners each one thousand dollars. In cities of ten to fifteen thousand inhabitants the mayor shall receive two thousand dollars and the commissioners each fifteen hundred dollars. In cities of fifteen to twenty-five thousand inhabitants the mayor shall receive twenty-six hundred dollars and the commissioners each twenty-four hundred dollars. In cities of twenty-five to forty thousand inhabitants the mayor shall receive three thousand five hundred dollars ($3,500.00), and the commissioners each three thousand two hundred and fifty dollars ($3,250.00). In cities over forty thousand inhabitants the mayor shall receive six thousand dollars ($6,000.00) and the commissioners each five thousand five hundred dollars ($5,500.00). The number of inhabitants shall be determined by the last United States government census or estimate. Every other officer, agent, employee, and assistant of the city government shall receive such salary or compensation as the board of commissioners shall by ordinance provide, payable in equal monthly installments, unless the board shall order payments to be made at other intervals. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 6; 1923, c. 203; 1927, c. 243; C. S. 2886.)

Editor's Note.—Prior to the amendment of 1923 the salaries of officers in all cities over 25,000 was the same as is now provided for cities from 25,000 to 40,000 inhabitants. By the amendment of 1923 the salaries of officers in cities over 40,000 inhabitants was raised; the mayor to receive $4,500, and the commissioners each $4,250. By amendment of 1927 salaries of officers in cities having more than 40,000 inhabitants were raised again; the mayor to receive $6,000 and the commissioners each, $5,500.

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ 160-338. How it becomes operative. — The method of city government herein provided for shall be known as Plan D. Upon the adoption of Plan D by a city in the manner prescribed by article 21 of this subchapter, such plan shall become operative, and the powers of government of such city shall be exercised, as provided herein and in article 21. (1917, c. 136, sub-ch. 16, Part V, Plan D, ss. 1, 2; C. S. 2887.)

§ 160-339. Governing body.—The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in article 21 set forth, except that the city manager shall have the authority hereinafter specified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 3; C. S. 2888.)

§ 160-340. Number and election of city councils.—The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 4; C. S. 2889.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, cc. 94, 187.

§ 160-341. Power and organization of city council.—All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on Wednesday after the first Monday of May in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk or justice of the peace to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice from its members of a mayor, who shall hold his office during the term for which he was elected a member of the city council, and a mayor pro tem., who shall hold his office during the pleasure of the city council. The organization of the city council shall take place as aforesaid, notwithstanding the absence, death, refusal to serve, or nonelection of one or more of the members: Provided, that at least three of the persons entitled to be members of the city council are present and make oath as aforesaid. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor, may make oath at any time thereafter. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 5; 1919, c. 270, s. 1; C. S. 2890.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-342. Meetings regulated.—The city council shall fix suitable times for its regular meetings. The mayor, the mayor pro tem. of the city council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or

left at his usual dwelling place at least six hours before the time of such meeting. Meetings of the city council may also be held at any time when all the members of the council are present and consent thereto. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 6; C. S. 2891.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-343. Quorum and conduct of business.—A majority of the members of the city council shall constitute a quorum. Its meetings shall be public, and the mayor, who shall be the official head of the city, shall, if present, preside and shall have the same power as the other members of the council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the mayor, the mayor pro tem. of the city council shall preside, and in the absence of both, a chairman pro tempore shall be chosen. The city clerk shall be ex officio clerk of the city council, and shall keep records of its proceedings; but in case of his temporary absence, or in case of a vacancy in the office, the city council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties, and may act as clerk of the city council until a city clerk is chosen and qualified. All final votes of the city council involving the expenditure of fifty dollars or over shall be by yeas and nays and shall be entered on the records. On request of one member, the vote shall be by yeas and nays, and shall be entered upon the records. Three affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 7; C. S. 2892.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-344. Vacancies in council.—Vacancies in the city council shall be filled by the council for the remainder of the unexpired terms. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 8; C. S. 2893.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-345. Election of mayor.—The mayor shall be elected by the city council from among its own members, and shall hold office during the term for which he has been elected to the council. In case of a vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 9; 1919, c. 60, s. 1; 1919, c. 270, s. 2; C. S. 2894.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-346. Salaries of mayor and council.—The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding seven hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding two hundred dollars a year for each. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10; C. S. 2895.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-347. Election of treasurer; salary.—The mayor and council may elect from their membership a treasurer by the method outlined above, and in addition to the salary allowed as a member of the council, such treasurer may be paid for his services as treasurer not exceeding three hundred dollars per annum. (1935, c. 180.)

§ 160-348. City manager appointed.—The city council shall appoint a city manager, who shall be the administrative head of the city government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and shall receive such compensation as it shall fix by ordinance. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 11; C. S. 2896.)

§ 160-349. Power and duties of manager.—The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions, and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs; (5) appoint and remove all heads of departments, superintendents, and other employees of the city. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 12; C. S. 2897.)

Conceding that the city manager is an officer in the meaning of the Constitution, Art. XIV, § 7, yet the duties of his office in the cases set forth in this section for the time being can be performed ex officio by one of the council "as mere auxiliary duties." State v. Holmes, 207 N. C. 293, 298, 176 S. E. 746.

Cited in Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293.

§ 160-350. Appointment and removal of officers.—Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 13; C. S. 2898.)

City of Charlotte has power to create the office of commissioner of police or public safety. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542.

§ 160-351. Control of officers and employees.—The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 14; C. S. 2899.)

Part 5. Plans "A" and "D," with Initiative, Referendum and Recall.

§ 160-352. How submitted, and effect of adoption.—There may be submitted as an addition to

Plans A or D "The Initiative and Referendum" and "Recall of Officials by the People," as set forth in Plan C, in which case all references to the board of commissioners shall apply to the mayor and council, and the petition for election and the ballots shall contain the name of the plan as "Plan A, with Initiative, Referendum, and Recall"; "Plan D, with Initiative, Referendum and Recall," and such plans shall be submitted with such additions as provided in this subchapter for the submission of such plans. (1917, c. 136, sub-ch. 16, Part VI; C. S. 2901.)

Art. 23. Amendment and Repeal of Charter.

§ 160-353. "Home rule" or "Local self-government."—Within the limitations prescribed by the constitution and now existing or hereafter enacted general laws, any municipality may amend or repeal its charter or any part thereof or adopt a new charter. The proposal to amend, repeal, or adopt may be initiated: (a) By the governing body of such municipality; (b) By any number of the qualified electors of such municipality not less than twenty-five per centum of qualified electors entitled to vote at the next preceding regular municipal election in such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 1; C. S. 2902.)

§ 160-354. Ordinances to amend or repeal charter:

1. How Adopted. If any amendment, repeal, or adoption be initiated by the governing body of any municipality, the governing body shall at one of its regular meetings, and not less than six days after the introduction thereof, adopt by not less than a two-thirds vote of all its members an ordinance in which shall be recited in full the amendment, repeal, or adoption proposed; such ordinance shall also recite that such amendment, repeal, or adoption is, in the opinion of the governing body, for the best interest of the municipality.

2. Publication Made. It shall direct publication over the name of the mayor or other chief officer of the municipality of a notice in substantially the following form (the blank spaces to be properly filled in):

Notice of Amendment to Charter of

.....

(here insert name of municipality.)

The governing body of (here insert name of municipality) at a regular meeting held on the .... day of ....., 19.., adopted a resolution as follows (here copy verbatim the resolution).

Dated this .... day of ....., 19.. .

....., Mayor.

3. Submitted to Vote. The governing body shall in its resolution provide that the amendment, repeal, or adoption therein proposed shall not become effective until submitted to and approved by a majority of the votes cast at a regular municipal election or a special election called for that purpose, and such amendment, repeal or adoption shall be submitted to the qualified voters of the city at an election called and held for such purpose, or at a regular municipal election. Thereupon, if such amendment, repeal, or adoption shall have been approved by a majority of the votes cast as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

4. Manner of Publication. The notice required shall be published once a week for four successive weeks in a newspaper of general circulation in the municipality. (1917, c. 136, sub-ch. 16, Part VII, ss. 2, 8; C. S. 2903.)

§ 160-355. Officers to be voted for.—The governing body of the town, if it submits the question of amending the charter of the town at a regular election so as to provide for a different number of members constituting the governing body of the town from that number provided for in the old charter, may also order an election to be held at said regular municipal election for the commissioners or members of the governing body provided for in the proposed amended charter, and at said election commissioners shall also be voted for as provided for under the old charter. If the proposed amendment is adopted, then the commissioners or members of the governing body elected under the proposed amendment shall constitute the governing body of the town for the ensuing term. If the proposed amendment is not adopted, the commissioners or the members of the governing body of said town elected under the provisions of the old charter shall constitute the governing body of the town for the ensuing term. (1919, c. 334; C. S. 2904.)

§ 160-356. Petition for amendment or repeal of charter:

1. Nature of Petition.—If any amendment, repeal, or adoption be initiated by the qualified electors of such municipality the same shall be by a petition signed by not less than twenty-five per centum of the qualified electors entitled to vote at the next preceding regular election in such municipality. The petition shall be appropriately entitled and shall be addressed to the governing board of such municipality, and shall state in exact language the amendment, repeal, or adoption proposed; the petition need not be all on one sheet, and if on one or more than one sheet shall be verified by a freeholder in such municipality who is also a signer of such petition. The petition shall contain a request to the governing body of the municipality to submit to the qualified electors thereof the amendment, repeal, or adoption as therein stated, either at a regular election or at a special election to be called for that purpose. It shall thereupon be the duty of the clerk of such municipality to examine the petition for the purpose of ascertaining whether the same has been signed by the required number of qualified electors of the municipality, and the clerk shall certify to the governing body the result of his investigation.

2. Submitted to Vote.—Upon such certificate, it shall be the duty of the governing body to provide for submission to a vote of the amendment, repeal, or adoption proposed in the petition, either at a regular election or at a special election to be called for that purpose, and if the amendment, repeal, or adoption shall be approved by a majority of the votes cast, as hereinbefore provided, such amendment, repeal, or adoption shall become effective. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S. 2905.)

§ 160-357. Nature of verification.—Whenever verification of any petition is provided or required to be made by this article, such verification shall consist of a written oath signed by the person making the same, which shall state in substance that the persons whose names appear signed to such petition were so signed by such persons respectively in the presence of the person making oath, and that, to the best of the knowledge and belief of the person making the oath, each of such persons is a qualified elector entitled to vote at the next preceding regular election in the municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S. 2906.)

§ 160-358. Laws controlling elections.—Whenever any election, either regular or special, is provided or required to be held under this article, such election shall be held under such laws, either general or special, as are at the time of the holding of such election in force and effect with reference to such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 5; C. S. 2907.)

§ 160-359. Several propositions voted on.—Any number of amendments or repeals may be initiated by one and the same resolution or petition, and whenever under this article an election is provided or required to be held, any number of such amendments or repeals may be submitted and voted upon at one and the same election. (1917, c. 136, sub-ch. 16, Part VII, s. 6; C. S. 2908.)

§ 160-360. Limitations as to holding special elections.—No special election provided or required by this article shall, except as otherwise provided in this subchapter, be held within two months of the time of holding any regular municipal election in any municipality; not more than two special elections may be held under this article in any municipality within any one year. The elections, subject to the other provisions of this section, shall be held within three months from the date of the filing of the petition. Any election heretofore called within three months from the date of filing any petition under this section and related sections is hereby validated. (1917, c. 136, sub-ch. 16, Part VII, s. 7; 1921, c. 56; C. S. 2909.)

Editor's Note.—By amendment of 1921 the last sentence to this section was added, and the words "within three months" in the next to the last sentence were substituted for "not less than three months."

§ 160-361. Adoption or change certified and recorded.—Upon the amendment, repeal, or adoption of a charter of any municipality as provided in this article, the governing body shall cause to be certified to the secretary of the municipal board of control a copy of such amendment, repeal, or adoption duly certified by its clerk and under the seal of such municipality; the copy so certified shall be recorded in the office of the secretary of state, and a copy shall be so certified by the secretary of state to the clerk of the superior court of the county in which such municipality is situated and recorded in the office of the clerk; the record therein provided for, either in the office of the secretary of state or in the office of the clerk of the superior court, shall be evidence in all the courts of this state. (1917, c. 136, sub-ch. 16, Part VII, s. 9; C. S. 2910.)

§ 160-362. Adoption or change ratified by vote.—Whenever any amendment, repeal, or adoption of a charter of any municipality is submitted under the provisions of this article to the qualified electors of such municipality, such amendment, repeal, or adoption shall not become effective unless and until the same shall have been approved by a majority of the votes cast at the election and the result of the election thereon canvassed, determined, and declared as provided by law. (1917, c. 136, sub-ch. 16, Part VII, s. 10; C. S. 2911.)

§ 160-363. Plan not changed for two years.—When any municipality shall, as provided in this subchapter, adopt any one of the plans as set forth in this subchapter, no amendment, repeal, or adoption of such plans shall be made until and after the expiration of two years from the date of the adoption of such plan. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S. 2912.)

Art. 24. Elections Regulated.

§ 160-364. Laws governing elections.—All elections called and held by any city for any purpose under the provisions of this subchapter shall be held under, governed and controlled by the laws in force at the time of such election governing and controlling regular and special municipal elections of such city in so far as they are applicable and not inconsistent with the provisions of this subchapter, and where not otherwise provided by law. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2913.)

§ 160-365. Publication of notice.—Except as otherwise provided in this subchapter, notice of every special election held in any city shall be published in a newspaper of general circulation in such city at least once a week for four weeks preceding the date of such election, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the city. Such notice shall set forth the date and hours of such elections, the proposition to be voted on thereat, the location of the polling places, and, in the event a new registration is ordered for such election, shall so state and set forth the dates of opening and closing the registration books and the names and addresses of the several registrars in charge thereof. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2914.)

§ 160-366. Time for holding elections.—If any city shall adopt any one of the plans of government provided for in this subchapter during the year nineteen hundred and seventeen, the election of city officers under such plan shall be held on Tuesday after the first Monday in May following the adoption of such plan, and the regular municipal elections of such city shall take place biennially thereafter. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2915.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT

Art. 25. General Provisions.

§ 160-367. Short title.—This subchapter may be cited as "The Municipal Finance Act, 1921."

(1917, c. 138, s. 1; 1919, c. 178, s. 3(1); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2918.)

Cross References.—As to validation of municipal bonds, see §§ 159-50 et seq. As to local government acts, see chapter 159. As to application of sinking funds to purchase of municipality's own bonds, see §§ 153-148 and 153-150.

Editor's Note.—An attempt was made to amend and reenact the Municipal Finance Act by Public Laws 1921, c. 8. The amended and reenacted law was declared unconstitutional in its entirety in Allen v. Raleigh, 181 N. C. 453, 107 S. E. 463, as a result of failure of the General Assembly to comply with Art. II, § 14 of the North Carolina Constitution in enacting it. The attempted amendment and reenactment was thereafter accomplished by Public Laws, Ex. Sess. 1921, c. 106.

Applicability to School Districts.—This Act does not deal with school districts. It, therefore, does not repeal the Acts of 1915, ch. 722. Waters v. Com'rs, 186 N. C. 719, 120 S. E. 450.

§ 160-368. Meaning of terms.—In this subchapter, unless the context otherwise requires the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts not evidenced by bonds.

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements on property the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this state, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this subchapter as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts evidenced by bonds.

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "specially assessed" has a corresponding meaning. (1917, c. 138, s. 2; 1919, c. 178, s. 3(2); 1919, c. 285, s. 1; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1; C. S. 2919.)

Editor's Note.—By amendment, Ex. Sess. 1921 the provision as to the determination of who is chief financial officer being left to the determination of governing body was omitted.

Prior to Public Laws 1933, c. 259, this section, in the definition of "funding bonds" and "refunding bonds" limited such bonds to those issued for the payment of debts "incurred before July first, one thousand nine hundred and thirty-one." The quoted clause was deleted by the amendment.

§ 160-369. Publication of ordinance and notices.—An ordinance or notice required by this subchapter to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality. (1917, c. 138, s. 3; 1919, c. 178, s. 3 (3); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2920.)

§ 160-370. Application and construction of subchapter.—This subchapter shall apply to all municipalities. Every provision of this subchapter shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this subchapter. If any portion of this subchapter shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be exscinded. (1917, c. 138, ss. 4, 5; 1919, c. 178, s. 3 (4), (5); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2921.)

Art. 26. Budget and Appropriations.

§ 160-371. The fiscal year.—The fiscal year of every municipality shall begin on the first day of July, one thousand nine hundred thirty-one, and on the first day of July in each year thereafter. (1917, c. 138, s. 6; 1919, c. 178, s. 3 (6); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 66; C. S. 2922.)

Editor's Note.—Prior to the 1931 amendment the fiscal year of a municipality began either on the first day of June or September as the governing body might determine.

§ 160-372. Special revolving fund for municipalities to supplant borrowing money on anticipations.—In order to avoid the necessity of borrowing money in anticipation of the receipt of taxes and revenues or the proceeds of the sale of bonds, a municipality may by ordinance create a special revolving fund and with the consent of the Local Government Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 160-373, 160-374 and/or 160-375, in respect to the borrowing of the money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No ordinance creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund, without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 47.)

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398.

Art. 27. Temporary Loans.

§ 160-373. Money borrowed to meet appropriations.—A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual bud-

get and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to the power of the governing body to delegate authority to fix face amount, rate of interest, time of maturity, place of payment, etc., see § 159-43. As to application to local government commission for issuance of notes, see §§ 159-7 et seq.

§ 160-374. Money borrowed to pay judgments or interest.—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this subchapter as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times not later than five years after the first day of July, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section.

In addition to the foregoing powers, a municipality may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the municipality sufficient to pay the principal and interest thereof. (1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259, s. 1; 1939, c. 231, s. 1; C. S. 2933.)

Editor's Note.—By amendment of Ex. Sess. 1921 this section was made applicable to a judgment or judgments, and bonds, where before the amendment it provided for "a judgment" and debts.

The Act of 1931 added the last two sentences to the first paragraph.

Public Laws 1933, c. 259, changed the time mentioned in this section from January 1, 1931, to July 1, 1933.

The 1939 amendment added the second paragraph.

City May Anticipate Collection of Taxes.—Where the levy of the taxes had been approved by the qualified voters of the city, the city, under this section, has the authority to borrow money to pay judgments in anticipation of the collection of the taxes validly levied for that purpose. Hammond v. Charlotte, 206 N. C. 604, 175 S. E. 148.

§ 160-375. Money borrowed in anticipation of bond sales. — At any time after a bond ordinance has taken effect as provided in article 28 herein, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published. (1917, c. 138, s. 13; 1919, c. 178, s. 3 (13); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2934.)

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

§ 160-376. Notes issued for temporary loans.—Negotiable notes shall be issued for all moneys borrowed under the last three sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment for any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount, and rate of interest within the limitations prescribed by said resolution. All such notes shall be executed in the manner provided in § 160-393 of this subchapter in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval indorsed on the notes. The resolution authorizing issuance of notes for money borrowed under § 160-374 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1917, c. 138, s. 14; 1919, c. 178, s. 3, (14); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 293; 1939, c. 231, s. 1; C. S. 2935.)

Cross Reference.—As to sale of notes at public or private sale, see §§ 159-13, 159-14, and 159-15.

Editor's Note.—By the amendment of Ex. Sess. 1921 negotiable notes were provided for instead of "notes" as was formerly provided, and provision was made for maximum rate of interest instead of six per cent as was formerly specified. Provision was also made for private or public negotiation, and the power to fix the face amount was vested in "any officer" appointed by the governing body instead of as was formerly provided "the financial officer or chief executive officer."

The Act of 1931 substituted "three" for the word two formerly appearing in the first sentence of this section.

The 1939 amendment added the last sentence.

Art. 28. Permanent Financing.

§ 160-377. Not applied to temporary loans.—The provisions of this article shall not apply to temporary loans made under article 27, unless otherwise provided in said article. (1917, c. 138, s. 15; 1919, c. 178, s. 3 (15); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2936.)

Editor's Note.—By the amendment of Ex. Sess. 1921 the application of this article was qualified by adding the last six words.

In General.—Prior to the decision of the Supreme Court of the State in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029, 63 L. R. A. 870, 101 Am. St. Rep. 825, December 18, 1903, it was held that the construction and maintenance of a system of light, water and sewerage was not within the meaning of the words "necessary expenses," as used in the State Constitution, Art. 7, sec. 7. In that case the court, in an opinion written by Justice Montgomery, expressly overruled the earlier cases. Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343, 40 L. R. A. 163. This decision has been uniformly, and in a large number of cases cited in the Annotated Edition of the 134th Volume, approved and has been and is now the fixed, accepted law of the State. Connor & Cheshire, Anno. Const. 319. In accordance with these decisions the Legislature enacted the Municipal Finance Act. Hill v. Elizabeth City, 291 Fed. 194, 210.

Cited in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416.

§ 160-378. For what purpose bonds may be issued.—A municipality may issue its negotiable bonds for any one or more of the following purposes:

1. For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

2. To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "debt" as used in this subsection two includes all valid or enforceable debts of a municipality, whether incurred for current expenses or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred forty-two shall be funded or refunded. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; 1943, c. 13; C. S. 2937.)

Cross Reference.—As to necessity of application to local government commission for issuance of bonds, see § 159-7.

Editor's Note.—By amendment of Ex. Sess. 1921 "negotiable bonds" were specified instead of "bonds," and the date prior to which they were incurred was changed from March seventh, 1917 to December fifth, 1921. The Act of 1931 changed the date to July first, 1931. The 1921 act provided that bonds should not be issued to refund serial bonds which mature in installments as provided in § 160-391. The provision, as amended by the 1931 act, was striken out by the 1933 act which inserted the third and fourth sentences of subsection 2 and omitted the limitation that the debt must have been incurred before July 1, 1931.

The amendment of 1935 substituted the word "incurred" for the word "issued" in the second sentence of subsection 2. It also added the last four sentences of that subsection beginning with the words "Furthermore, the said word debt," etc.

The 1939 amendment substituted "forty" for "thirty-eight" in the last line of this section.

The 1943 amendment substituted "forty-two" for "forty" in the last line of this section.

Power to Hold Election Implied.—This section impliedly confers the power to hold the necessary election. Hailey v. Winston-Salem, 196 N. C. 17, 21, 144 S. E. 377.

Bonds Issued by School Trustees.—The board of trustees of a city school is an official board of the city and under this section bonds may be issued to pay the indebtedness they have incurred in operating the school. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663.

Refunding Bond.—Under the provisions of this and the following section an ordinance authorizing the issuance of refunding bonds need not be submitted to the voters. A municipal corporation does not contract a debt, within the meaning of Art. VII, § 7, of the Constitution, when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the refunding bonds are valid and enforceable obligations of the municipality. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361.

Issuance of Bonds Pursuant to Section Not Enjoined. — The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters is conferred on a municipality by this section and § 160-230, and where the other statutes relevant have been duly followed, the bonds so issued are a valid obligation of the town issuing them, and their issuance will not be enjoined by the courts. Burleson v. Spruce Pine Board of Aldermen, 200 N. C. 30, 156 S. E. 241.

§ 160-379. Ordinance for bond issue:

1. Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. What Ordinance Must Show.—The ordinance shall state:

a. In brief and general terms the purpose for which the bonds are to be issued, including, in the case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness.

b. The maximum aggregate principal amount of the bonds;

c. That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the

discretion of the governing body, be altered or omitted;

d. That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection.

e. One of the following provisions:

(1) If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

(2) If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this subchapter; or

(3) In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this subchapter, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this subchapter.

3. When the Ordinance Takes Effect.— A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

4. Need not Specify Location of Improvement. —In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially in the language employed in § 160-382 of this subchapter to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

5. Application of Other Laws.—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this subchapter for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the constitution of this state. The special, private and public-local laws here referred to include all such laws enacted prior to the expiration of the regular session of the general assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a municipality from issuing bonds or notes under any special private or public-local law applicable to such municipality, it being intended that this subchapter shall be cumulative and additional authority for the issuance of bonds and notes. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); 1919, c. 285, s. 2; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 49; 1933, c. 259, s. 1; 1935, c. 302, s. 1; C. S. 2938.)

Cross References.—As to provisions which may, upon the approval of the local government commission, be included in the ordinance for bond issue, see § 159-46. As to provision for accelerating the maturity of bonds and notes, see § 153-81.

Editor's Note.—By the amendment Ex. Sess. 1921 two subdivisions under subsection 2 were omitted. They provided for the statement of taxable valuations for the past three fiscal years, and the amount of the municipal debt. The provision for funding or refunding debts incurred prior to March seventh, 1917 was also changed by the provision for funding and refunding being made applicable to bonds for local improvement.

Public Laws of 1933, c. 259, added to subdivision 2, a, the requirement for a brief description of indebtedness for funding or refunding bonds. It also added the proviso to 2, c, relating to funding and refunding bonds. And it omitted the limitation formerly occurring in subdivision 5, that the indebtedness must have been incurred before July 1, 1931.

The amendment of 1935 added the last two sentences of the section.

Ordinance Must Comply with Statutes.—It is not required by the various statutes on the subject that a bond ordinance of a municipality set forth in express terms the proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. Leak v. Wadesboro, 186 N. C. 683, 121 S. E. 12.

Subsequent Ratification of Bond Issue.—If a school board borrows money and the debt is taken up by an election this ratification renders unimportant the question of whether or not the money was borrowed for necessary purposes. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663.

Cited in Adcock v. Fuquay Springs, 194 N. C. 423, 425, 140 S. E. 24.

§ 160-380. Ordinance not to include unrelated purposes.—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection 4 of § 160-382 of this subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s. 3 (17); 1919, c. 285, s. 3; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2939.)

Editor's Note.—By the amendment of Ex. Sess. 1921 a provision in next to the last sentence which required the bond ordinance to "have taken effect," before a consolidated bond issue could be had, was omitted.

Public Laws 1933, c. 259, added the last sentence to this section.

§ 160-381. Ordinance and bond issue; when petition required.—In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance

of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one-fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed. (1919, c. 178, s. 3 (17); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

§ 160-382. Determining periods for bonds to run:

1. How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection four of this section, determine and declare:

a. The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

b. If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

2. Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

3. Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

4. Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

c. Gas systems, thirty years.

d. Electric light and power systems, separate or combined, thirty years.

e. Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.

f. Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

g. Playgrounds, fifty years.

h. Buildings for purposes not stated in this section, if they are:

(1) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of other construction, twenty years.

i. Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

j. Lands for purposes not stated in this section, fifty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

(1) Is constructed of sand and gravel, five years;

(2) Is of waterbound macadam or penetration process, ten years;

(3) Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

l. Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

s. Equipment, apparatus, or furnishings not included in the foregoing clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of this subsection, forty years.

u. Land for airports or landing fields, including grading and drainage, forty years.

v. Buildings and equipment and other improvements of airports or landing fields, other than grading and drainage, ten years.

5. Improvements and Properties Defined.—The maximum periods fixed herein for the improvements and properties mentioned in clauses numbered from a to i, both inclusive, of subsection 4 of this section shall be applied thereto whether such improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one clause of subsection 4 above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

6. Kind of Construction Determined. — If the bonds are for a building referred to in clause h of subsection 4 above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in clause k of subsection 4 above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

7. Period of Payment.—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the tax-payers of the municipality, the governing body shall not deem said period to be greater than fifty years. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 929, c. 170; 1931, c. 60, s. 50; 1931, cc. 188, 301; 1933, c. 259, s. 1; C. S. 2942.)

Editor's Note.—By amendment Ex. Sess. 1921, c. 106 the arrangement of this section was changed and the period for the bonds to run, in most cases was changed. The Act of 1929, which inadvertently referred to § 2943 of the Consolidated Statutes, added the last two paragraphs under subsection 4. These paragraphs were also added by Public Laws 1931, c. 301, and c. 188 corrected the erroneous reference in the Act of 1929. Public Laws 1931, c. 60, s. 50, struck out subsection 7 and inserted in lieu thereof the present subsection.

The only change effected in this section by Public Laws 1933, c. 259, occurs in subsection 7. The limitation was formerly thirty years if the gross debt of the county was less than twelve per cent of the assessed valuation, and fifty years in other cases. The amendment makes the limitation fifty years in all cases.

Maturity of Refunding Bonds. — Under this section the period for maturity of refunding bonds is in the discretion of the governing body of the city issuing them. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361.

Cited in Jones v. Durham, 197 N. C. 127, 133, 147 S. E. 824.

§ 160-383. Sworn statement of indebtedness.—1. What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(a) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

(1) Outstanding debt not evidenced by bonds.

(2) Outstanding bonded debts.

(3) Bonded debt to be incurred under ordinances passed or introduced.

(b) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

(1) Amount of unissued funding or refunding bonds included in gross debt.

(2) Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

(3) The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.

(4) The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.

(5) The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

(6) The amount of existing bonded debt included in the gross debt, and incurred or to be incurred for the construction of sewerage systems or sewage disposal plants where said sewerage system is entirely supported by sewerage service charges or when said systems or plants are operated together with the waterworks as a combined and consolidated system and as an integral part thereof, and when the amount necessary to meet the annual interest payable on the debt, and the annual installment necessary for the amortization of the debt, and the amount necessary for repairs, maintenance and operation of said system or systems is included in the rate for waterworks service and so collected by the municipality.

(7) The amount which the municipality shall be entitled to receive from any railroad or street-railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt;

(8) Indebtedness for school purposes.

(c) The net debt, being the difference between the gross debt and the deductions.

(d) The assessed valuation of property as last fixed for municipal taxation.

(e) The percentage that the net debt bears to said assessed valuation.

2. Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers, sewage disposal or sewage purification plants, the construction of which shall have been ordered by the state board of health or by a court of competent jurisdiction, or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

3. Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this subchapter, unless it appears (in an action or proceeding commenced within the time limited by § 160-385 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); 1919, c. 285, s. 4; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; 1933, c. 321; Ex. Sess. 1938, c. 3; C. S. 2943.)

Local Modification.—Alamance, City of Burlington: 1933, c. 334; Mecklenburg, Transylvania: 1933, c. 321.

Cross Reference.—As to limitation of debts prior to this section, see § 160-64.

Editor's Note.—This section has been changed by the Public Laws Ex. Sess. 1921 to such an extent that a comparison of the old with the new is the most expeditious method of determining the effect of the later law. One of the most decided changes was in subsection 2 where the net indebtedness was lowered from twelve and one-half per cent when assessed valuation was less than four million dollars and ten per cent in any other case, to eight per cent in all cases.

The Act of 1927 inserted paragraphs (7) and (8) of 1, (b).

The Act of 1931 changed the date in paragraph (a) (1) of subsection 1, December 6, 1921 to July 1, 1931.

Public Laws 1933, c. 259, eliminated the provision that the outstanding debt must have been incurred before July first, one thousand nine hundred and thirty-one, as had been provided in paragraph (a) (1) of subsection 1. Public Laws 1933, c. 321, inserted paragraph (6) of 1, (b).

The 1938 amendment made subsection 2 applicable to bonds for erosion control and bonds for erecting jetties, etc.

Bonds Including Amount of Assessment.—Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments under the provisions of subsection (b) of this section. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41.

Bonds issued by a municipality for water and sewer systems should be deducted from the gross debt in computing the net debt of the municipality in relation to the prohibition against incurring debt in excess of eight per cent of the assessed valuation of property for taxation, bonds for sewer systems being necessarily included in bonds for "water purposes" within the meaning of this section, subsec. 1(5). Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293.

Such bonds do not come within the inhibition of this section, subsec. 2, against incurring debt in excess of eight per cent of the assessed valuation. Id.

§ 160-384. Publication of bond ordinance.—A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the.... day of....., 19...., and was first published (or posted), on the.....day of.....,19.....

Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

....., Clerk (or Secretary).

(1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2944.)

Editor's Note.—By amendment Ex. Sess. 1921 publication is required only twice where formerly it was required four times, except that when it was to take effect at once, then only one publication was required.

§ 160-385. Limitation of action to set aside ordinance.—Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2945.)

Editor's Note.—This section was re-enacted without change by the Public Laws Ex. Sess. 1921.

Right to Test Constitutionality Not Affected.—In construing a similar provision with reference to bond issues by counties, it was held that the statute did not prevent a suit to determine the constitutionality of the bond issue. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418.

§ 160-386. Ordinance requiring popular vote.—1. When Vote Required.—If a bond ordinance provides that it shall take effect thirty days after its first publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

2. Petition Filed.—A petition demanding that a

bond ordinance be submitted to the voters may be filed with the clerk within thirty days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum of the total number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

3. Sufficiency of Petition.—The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition and the determination of the governing body shall be conclusive. (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; 1919, c. 178, s. 3 (21); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 2; C. S. 2947.)

Editor's Note.—The amendment of Ex. Sess. 1921 changed the required number of petitioning voters from thirty-three and one-third per centum to twenty-five per centum.

Injunction against Bond Issue.—In Hill v. Elizabeth City, 291 Fed. 194, 210, it is said: "Section 2947 [G. S. § 160-386], par. 1 provides for an election before bonds are issued, upon a petition to be filed within 30 days after the first publication of the ordinance. No such petition having been filed, the board of aldermen, on the 9th day of October, 1922, adopted an ordinance for directing the issuance of the bonds. I find no valid objection to the proceedings taken by the board of aldermen, entitling plaintiff to enjoin the issuance of the bonds."

Where Vote of Qualified Electors Not Necessary.—Where an ordinance for the issuance of bonds to establish and maintain playgrounds for children contained a provision which afforded the prescribed time for filing a petition under this section, and no petition was filed during such time, it was held that irrespective of such provision a vote of the qualified electors was not necessary, the bonds being a necessary expense within the meaning of Art. VII, § 7 of the Constitution. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330. **Cited** in Smith v. Carolina Beach, 206 N. C. 834, 835, 175 S. E. 313.

§ 160-387. Elections on bond issue.

1. What Majority Required.—If a bond ordinance provides for the issuance of bonds for a purpose other than the payment of necessary expenses of the municipality, the approval of a majority of the qualified voters of the municipality, as required by the constitution of North Carolina, shall be necessary in order to make the ordinance operative. If however, the bonds are to be issued for necessary expenses, the affirmative vote of the majority of the voters voting on the bond ordinance shall be sufficient to make it operative, in all cases where the ordinance is required by this subchapter to be submitted to the voters. If the bonds will result in an increase in the municipal debt by more than two-thirds of the amount by which it was decreased during the preceding year, a majority of the votes cast will be required to make the ordinance operative.

2. When Election Held.—Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinances by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election.

3. New Registration.—The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine a. m. to six p. m. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

4. Notice of Election.—A notice of the election shall be deemed sufficiently published if published once not later than twenty days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The date of the election shall be stated therein.

5. Ballots.—A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "for the ordinance authorizing $.... bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing $.... bonds (briefly stating the purpose), and a tax therefor," with squares in front of each proposition, in one of which squares the voter may make an (X) mark, but this form of ballot is not prescribed.

6. Returns Canvassed.—The officers appointed to hold the election in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes

cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

7. Application of other laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

8. Statement of Result.—The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality and file the original in his office and publish it once.

9. Limitation as to Actions.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement: Provided, that §§ 160-386 and 160-387 shall not apply to the incorporated towns of Madison county. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); 1919, c. 291; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2948.)

Editor's Note.—By amendment of Ex. Sess. 1921 the time within which election may not be held after notice was changed from two months to one month; all except the first sentence in subsection three was added; subsection seven was added and the time within which proceedings may be commenced to question an election was changed from twenty to thirty days.

Necessity of Notice.—In Hill v. Skinner, 169 N. C. 405, 408, 86 S. E. 351, it is said: "While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all respects free from taint of any sort, so that no well founded suspicion can be cast upon it, it would be idle to say that this free and untrammeled expression of the popular will should be disregarded and set aside." Board of Com'rs v. Malone & Co., 179 N. C. 604, 607, 103 S. E. 134.

Form of Ballot Directory.—There being nothing in the statute making the exact language essential to the validity of a ballot, and the words used carrying practically the same meaning the requirement is directory and not mandatory, and a substantial compliance, is all that is necessary. Board of Com'rs v. Malone & Co., 179 N. C. 604, 607, 103 S. E. 134.

Publication of Returns.—It is not necessary to the validity of an election that the returns be published as required by this section if it appears that no prejudice was sustained because of such failure. Board of Com'rs v. Malone & Co., 179 N. C. 604, 607, 103 S. E. 134.

When Election Held.—The requirement of this section, subsection 2, that bond elections shall not be held within one month or after a regular municipal election, is mandatory and refers to a month according to the designation in the calendar without regard to the number of days it may contain, § 12-3, subsection 3, and is computed by excluding the first and including the last day thereof as provided in § 1-593. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24.

And the term "general election" is interpreted with the antecedent words of the statute "municipal election," and excludes a general State or National election. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24.

Applied in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416.

§ 160-388. Preparation for issuing bonds.—At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect. (1917, c. 138, s. 23; 1919, c. 178, s. 3 (23); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2949.)

Editor's Note.—This section was re-enacted without change by the Public Laws Ex. Sess. 1921.

§ 160-389. Within what time bonds issued.—After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within three years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued in anticipation of the receipts of the proceeds of the bonds and shall be outstanding: Provided, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the ordinance takes effect. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1939, c. 231, s. 1; C. S. 2950.)

Local Modification.—Buncombe, and municipalities therein: 1943, c. 56.

Editor's Note.—By amendment of Ex. Sess. 1921 the qualification following the second comma was added.

The 1939 amendment added the proviso.

§ 160-390. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. The bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2951.)

Cross Reference.—As to power to fix the face amount, the rate of interest, time of maturity and place of payment of temporary loans and notes, see § 159-43.

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

Public Laws 1933, c. 259, inserted the words "or otherwise" following the word "semi-annually."

§ 160-391. Bonded debt payable in installments.—Each bond issue made under this subchapter shall mature in annual installments or series, the first of which shall be made payable not more than three years after the date of the first issued bonds of such issue, and the last within the period determined and declared pursuant to § 160-382, of this subchapter. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or

refunding bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; C. S. 2952.)

Editor's Note.—This section was re-enacted without change in meaning by the amendment of Public Laws Ex. Sess. 1921.

Public Laws 1933, c. 259, inserted the last sentence of the section stating that the section shall not apply to funding or refunding bonds. Prior to the amendment the section was applicable to such bonds in municipalities having a debt of less than twelve per cent of the assessed valuation.

§ 160-392. Medium and place of payment.—The bonds may be made payable in such kinds of money and at such place or places within or without the state of North Carolina as the governing body may by resolution provide. (1917, c. 138, s. 27; 1919, c. 178, s. 3 (27); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2953.)

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

§ 160-393. Formal execution of bonds.—The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds. (1917, c. 138, s. 28; 1919, c. 178, s. 3 (28); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2954.)

Cross Reference.—As to requirement that bond be on a single sheet of paper, see § 159-17.

Editor's Note.—The amendment of Ex. Sess. 1921 provided that in case no one was designated the mayor and clerk sign the bonds. Formerly it was provided that the mayor and financial officer sign, and the clerk affix the seal of the municipality and attest it.

§ 160-394. Registration and transfer of bonds:

1. Bonds Payable to Bearer.—Bonds issued under this subchapter shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

2. Registration and Effect.—A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

3. Registration and Transfer Noted on Bond.—Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut off and cancel the coupons.

4. Agreement for Registration.—A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. (1917, c. 138, s. 29; 1919, c. 178, s. 3 (29); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2955.)

Editor's Note.—By amendment Ex. Sess. 1921 in subsection 2 the appointment of registrar or transfer agent is designated as appointed by the "governing body," where formerly it was by the "governing board."

In subsection 4 a former provision for agreeing by a recital in the bond to register them as to both principal and interest, was omitted, by the same amendment.

See 13 N. C. Law Rev., 76.

§ 160-395. Application of funds.—The proceeds of the sale of bonds under this subchapter shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1917, c. 138, s. 31; 1919, c. 178, s. 3 (31); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2957.)

Cross References.—As to penalty for misappropriating funds, see § 159-36. As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159-49.1.

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

§ 160-396. Bonds incontestable after delivery.—Any bonds reciting that they are issued pursuant to this subchapter shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this subchapter and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds. (1917, c. 138, s. 32; 1919, c. 178, s. 3 (32); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2958.)

Cross Reference.—As to method of testing the validity of bonds, see § 159-52.

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

§ 160-397. Taxes levied for payment of bonds.—The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond

and note issued under this subchapter, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this subchapter as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this subchapter, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this subchapter.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in § 160-391 of this subchapter, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2959.)

Cross References.—See also, § 159-34. As to municipality applying sinking fund to purchase of its own bonds, see §§ 153-148 et seq.

Editor's Note.—By amendment Ex. Sess. 1921 the provision in the last sentence of the second paragraph for local improvement and collection of assessments for local improvements, replaced a former provision for "special assessments upon which assessment bonds or other bonds or notes are predicated."

Public Laws 1933, c. 259, inserted the proviso at the end of this section.

Net Revenue Derived from Revenue Producing Enterprise Should Be Applied to Bonds.—It is clear from a reading of this section that the Legislature intended that, where bonds were issued to enable a municipality to carry on a revenue producing enterprise, the net revenue derived from such enterprise should be applied to the payment of the interest and principal of such bonds. George v. Asheville, 80 F. (2d) 50, 53, 103 A. L. R. 568.

After Paying Operation and Maintenance Expenses. — Where a waterworks system produces revenue, it is a revenue-producing enterprise; and, if net revenues are derived from it, after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such system, this section requires that they be applied to the payment of the principal and interest due on the bonds issued "for such enterprise." George v. Asheville, 80 F. (2d) 50, 54, 103 A. L. R. 568.

The requirement that net revenues after paying the expenses of operation shall be applied on bonds does not mean that the discretionary control of waterworks vested in the city authorities by § 160-256 is in any wise limited. Id.

Without Regard as to Time Bonds Are Issued.—There is nothing in this section which limits the application of the net revenue of a revenue-producing enterprise to bonds thereafter issued and there is no reason why the section should be so interpreted. The language of the section provides in the broadest possible terms that the net revenue from such an enterprise shall be applied on the principal and interest of bonds "issued for such enterprise," without limitation as to when such bonds may have been issued. George v. Asheville, 80 F. (2d) 50, 55, 103 A. L. R. 568.

Where Bonds Share Alike.—As this section clearly intended that such net revenues should be applied on the principal and interest of all bonds which were issued for the system, where the sewer system is an integral and essential part of the waterworks system and with it constitutes one revenue-producing enterprise, we think that sewer bonds should share along with waterworks bonds in the net revenues of the waterworks system. George v. Asheville, 80 F. (2d) 50, 54, 103 A. L. R. 568.

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. George v. Asheville, 80 F. (2d) 50, 54, 103 A. L. R. 568.

Injunction to Restrain Diversion of Gross Revenues.—As net revenues can be effectively diverted in advance of their ascertainment by diversion of gross revenues, injunction should be granted to restrain the diversion of gross revenues, if it appears that net revenues are in danger of being diverted in this way. However, care should be taken so as not to trench upon the discretion of the municipal authorities in the management of the water and sewer system. George v. Asheville, 80 F. (2d) 50, 57, 103 A. L. R. 568.

If net revenue remains after payment of operating expenses such funds are thereafter held in trust to be applied as the statute directs, and any threatened diversion or misapplication should be enjoined. Id.

Bonds Not a Charge upon the Taxing Power of City.—As bonds in aid of the ordinary revenue-producing enterprises of a city, i. e., enterprises for furnishing water, gas, electric light, or power, were exempted from the debt limitation of § 160-383, this shows that it was thought that, while the credit of the municipality would be pledged for bonds of this character, they would not be a charge upon the taxing power of the city but would be taken care of by the revenues of the enterprises for which they were issued. George v. Asheville, 80 F. (2d) 50, 54, 103 A. L. R. 568.

§ 160-398. Destruction of surrendered bonds of cities and towns.—All surrendered bonds of a city or town may, in the discretion of the governing board of such city or town, be destroyed. Before such bonds are destroyed the treasurer of the municipality shall make a correct descriptive list of all surrendered bonds of the municipality, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds shall be destroyed by burning in the presence of the mayor, treasurer or auditor, city attorney and secretary of the governing board of the city or town, who shall each certify under his hand in such book that he saw the described bonds so burned and destroyed. (1941, c. 203.)

Art. 29. Restrictions upon the Exercise of Municipal Powers.

§ 160-399. In borrowing or expending money:

1. No municipality shall:

a. Make an appropriation of money except as provided in this subchapter.

b. Borrow money or issue bonds or notes except as provided in this subchapter;

c. Make an expenditure of money unless the money shall have been appropriated as provided in this subchapter, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

d. Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

2. The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued. (1917, c. 138, s. 34; 1919, c. 178, s. 3 (34); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2960.)

Editor's Note.—This section was re-enacted without change by Public Laws Ex. Sess. 1921.

In General.—A city purchasing a cemetery in excess of the acreage allowed by sec. 160-2, subsection 3, although the act is ultra vires and no provision is made in the city's budget for payment, takes a good title, and only the state in direct proceedings can question it. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582.

Continuing Contract.—A definition of a "continuing contract" as used in subsection d. of this section depends largely upon the facts of particular cases. The governing principle in such contracts is successive transactions between the parties over a definite or indefinite period of time. White Co. v. Hickory, 195 N. C. 42, 45, 141 S. E. 494.

A contract with an engineer to furnish services in connection with the construction of a city's water supply, the completion of which will extend beyond the period of one year, is a continuing one under this section. White Co. v. Hickory, 195 N. C. 42, 141 S. E. 494.

§ 160-400. Manner of passing ordinances and resolutions.—Ordinances and resolutions passed pursuant to this subchapter shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this subchapter shall, unless they relate solely to elections held under this subchapter, be so approved before they take effect. (1917, c. 138, s. 35; 1919, c. 178, s. 3 (35); 1921, c. 8, s. 4; Ex. Sess. 1921, c. 106, s. 1; C. S. 2961.)

Editor's Note.—By amendment of Ex. Sess. 1921 a part of the last sentence reading "expenditure of money as required by law" was changed to read: "expenditures of money are required by law."

§ 160-401. Enforcement of subchapter.—If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this subchapter to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers or other persons to carry out such order. (1917, c. 138, s. 36; 1919, c. 178, s. 3 (36); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2962.)

Editor's Note.—By amendment Ex. Sess. 1921 there was omitted from this section a provision for officers, creditors and taxpayers to maintain an action to declare invalid any illegal official act, and a provision for jurisdiction of the superior court to enforce by mandamus or injunction the provision of this act.

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar on the one hundred dollars valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section: Provided, that in cities where the taxable values for the year 1920 amounted to one hundred million dollars or more, the rate of taxation for general purposes shall not exceed sixty-five (65) cents on the one hundred dollars valuation. (1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2963.)

Editor's Note.—By amendment, Ex. Sess. 1921 the rate of one dollar on the one hundred dollar valuation replaced a former rate of one dollar and twenty-five cents on the one hundred dollar valuation. All that part following the second comma beginning with "notwithstanding" was added.

Art. 30. General Effect of Municipal Finance Act.

§ 160-403. Effect upon prior laws and proceedings taken. — All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject-matter of this subchapter, are hereby repealed: Provided, however, that this subchapter shall not affect any local or private act enacted at the extraordinary session, 1921, of the general assembly, or regular session of one thousand nine hundred and twenty-one, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the extraordinary session, 1921, of the general assembly, or regular session of one thousand nine hundred and twenty-one, so that any municipality may, at its option, proceed under any such local or private act applicable to it enacted at the extraordinary session, 1921, of the general assembly or regular session of one thousand nine hundred and twenty-one without regard to

the restrictions imposed by this subchapter, or may proceed under this subchapter without regard to the restrictions imposed by any other act: Provided further, that this subchapter shall not affect any of the provisions of article nine of subchapter one of chapter 160, except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said article shall apply to all municipalities in this state, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this subchapter shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the municipal finance act, as it stood prior to December 20, 1921, or under any other law, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the laws under which they were done or taken, and to issue said bonds or other obligations under such acts in the same manner as if this subchapter had not been passed: Provided further, that this subchapter shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases when such bonds, notes or proceedings have been validated by any other act. (Ex. Sess. 1921, c. 106, s. 2; C. S. 2969(a).)

Art. 31. Municipal Fiscal Agency Act.

§ 160-404. Title of article.—This article shall be known as "The Municipal Fiscal Agency Act." (1925, c. 195, s. 1.)

§ 160-405. Payment of fees to bank.—Whenever any county, city, town, township, school district or school taxing district is or shall be authorized or permitted to make payments of bonds or coupons issued by it or in its behalf at any place other than within such county, city, town, township, school district or school taxing district, and such bonds or coupons are by their terms payable at such other place, it shall be lawful for the officer disbursing the funds for such payment to pay the reasonable fees of the bank, trust company or other agency making payment at such place, and to agree to pay such fees at a fixed rate throughout the term of the bonds as to which such payment is to be made at such place, but no fee in excess of one-fourth of one per cent of the amount of interest paid and one-eighth of one per cent of the amount of principal paid shall be deemed reasonable. (1925, c. 195, s. 2.)

Local Modification.—Buncombe: 1937, c. 320.

Art. 32. Municipal Bond Registration Act.

§ 160-406. Title of article.—This article shall be known as "The Municipal Bond Registration Act". (1925, c. 129, s. 1.)

§ 160-407. Registration.—Each county, city, town, school district and school taxing district which has issued or shall hereafter issue bonds in its own name, and each county, city and town, which has issued or shall hereafter issue bonds in behalf of a school district or a school taxing district, is hereby authorized to keep in the office of its treasurer or financial agent or its clerk, or in the office of the bank or trust company appointed by its governing body as bond registrar, a register or registers for the registration as to principal of such bonds in the name of the owner thereof, in which it may register any such bond as to principal at the time of its issue, or at the request of the holder thereafter. Such registration shall not affect the payment of interest, but such interest shall continue to be made upon the presentation and surrender of interest coupons if issued, but after such registration as to principal, the principal shall be payable to the person in whose name registered or to the person in whose name the bonds registered may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner: Provided, however, that a registered bond may be discharged from registry by a transfer to bearer registered as herein provided. Upon the registration or transfer of a bond as aforesaid the bond registrar shall note such registration or transfer on the back of the bond. (1925, c. 129, s. 2.)

§ 160-408. Powers in addition to existing powers.—The powers herein granted are not in substitution of existing powers but in addition thereto. (1925, c. 129, s. 3.)

SUBCHAPTER IV. FISCAL CONTROL.

Art. 33. Fiscal Control.

§ 160-409. Municipalities brought under terms of county fiscal control act.—All cities and towns shall be subject to and be governed by all of the provisions of the County Fiscal Control Act [§§ 153-114 to 153-141] and acts amendatory thereof and supplemental thereto, including acts ratified at the 1931 session of the General Assembly, except as herein otherwise provided or except as the context shows that it is not intended that such acts shall be applicable to cities and towns. (1931, c. 60, s. 65.)

Cross Reference.—As to County Fiscal Control Act, see §§ 153-114 et seq.

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271.

§ 160-410. Terms in county fiscal control act made applicable to cities and towns. — Except as the context may otherwise show, and for the purpose of applying the provisions of the County Fiscal Control Act to cities and towns, the following words and phrases in the County Fiscal Control Act, and acts amendatory thereof and supplemental thereto, shall be deemed to have the following meanings when applied to cities and towns:

County Accountant, County Treasurer, County Auditor, County Depository and County Treasury shall mean Municipal Accountant, Municipal Treasurer, Municipal Auditor, Municipal Depository and Municipal Treasury; the Board of County Commissioners shall mean the governing body of a municipality, sub-division shall mean a school district, school taxing district or other political corporation or sub-division wholly or partly within a municipality, the taxes for which are under the law levied by the governing body of the municipality: county as a noun shall mean municipality; county as an adjective shall

mean municipal; Clerk of the Board of County Commissioners shall mean clerk of the municipality or of its governing body; courthouse door shall mean door of the municipal building; appropriation resolution and resolution making tax levy shall mean appropriation ordinance and ordinance making tax levy, respectively; County Fiscal Control Act shall mean Local Government Act, being Public Laws 1931, chapter 60, and acts amendatory thereof and supplemental thereto; County Government Advisory Commission shall mean the Director of Local Government whose office is created by the Local Government Act. (1931, c. 60, s. 67.)

Applied in Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33. **Cited** in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271; Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398.

§ 160-411. Purposes of municipal funds required by article.—The municipal funds required by this article for cities and towns are not those funds required by the County Fiscal Control Act for counties, but are funds for each of the following functions of municipal government:

(1) Current operating expense of the municipality.

(2) School expenses of the municipality supplemental to constitutional school maintenance.

(3) Municipal debt service.

(4) Each special purpose to which the General Assembly has given its special approval, separately stated.

(5) Debt service of each sub-division, separately stated.

(6) Maintenance of each sub-division, separately stated.

(7) Permanent improvements in each sub-division, separately stated.

(8) Such other funds as may be established by the governing body, separately stated. (1931, c. 60, s. 68.)

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271.

§ 160-412. Exceptions.—Notwithstanding the foregoing, none of the provisions of the County Fiscal Control Act or acts amendatory thereof or supplemental thereto in relation to maintenance of schools for the constitutional term, depositories and security for deposits, abolition of the office of County Treasurer or appointment of financial agents to perform functions of the County Treasurer shall be applicable to or govern cities or towns. (1931, c. 60, s. 69.)

Art. 34. Revenue Bond Act of 1938.

§ 160-413. Title of article.—This article may be cited as the "Revenue Bond Act of One Thousand Nine Hundred and Thirty-Eight." (Ex. Sess., 1938, c. 2, s. 1.)

For comment on this enactment, see 17 N. C. Law Rev. 370.

§ 160-414. Definitions.—Wherever used in this article, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(1) Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, club houses and golf courses.

(2) Systems, plants, works, instrumentalities, and properties: (i) used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses, (ii) used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water, (iii) used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment.

(b) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, or sanitary district of this state now or hereafter incorporated.

(c) The term "governing body" shall mean the board or body in which the general legislative powers of the municipality are vested. (Ex. Sess., 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2.)

Local Modification.—Cabarrus: 1939, c. 288.

Editor's Note.—The 1939 amendment added to paragraph one the words "teacherages or homes for teachers of public schools."

The 1941 amendment added at the end of paragraph (1) of subsection (a), as it appeared in the 1938 act, the words "school dormitories and teacherages, club houses and golf courses." The amendment re-enacted the original section as amended, and took no notice of the 1939 amendment which added at the end of said paragraph the words "teacherages or homes for teachers of public schools."

§ 160-415. Additional powers.—In addition to the powers which it may now have, any municipality shall have power under this article:

(a) to acquire by gift, purchase, or the exercise of the right of eminent domain, to construct, to improve, to better, and to extend any undertaking wholly within or wholly without the municipality, or partially within and partially without the municipality; and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith;

(b) to operate and maintain any undertaking for its own use, for the use of public and private consumers, and when operated primarily for its own use and users within the territorial boundaries of the municipality, such undertaking may be operated incidentally for users outside of the territorial boundaries of the municipality;

(c) to prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of

such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(d) to pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of such undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of such undertaking;

(e) to make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payment of its bonds; Provided, no encumbrance, mortgage, or other pledge of property of the municipality is created thereby; and provided, no property of the municipality is liable to be forfeited or taken in payment of said bonds; and provided, no debt on the credit of the municipality is thereby incurred in any manner for any purpose. (Ex. Sess., 1938, c. 2, s. 3.)

§ 160-416. Procedure for authorization of undertaking and revenue bonds. — The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for six months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article. (Ex. Sess., 1938, c. 2, s. 4.)

§ 160-417. Bond provisions.—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding thirty years from their respective dates; may bear interest at such rate or rates, not exceeding six per centum per annum, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess., 1938, c. 2, s. 5.)

§ 160-418. Covenants in resolutions.—Any resolution or resolutions authorizing the issuance of bonds under this article to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants (notwithstanding that such covenants may limit the exercise of powers conferred by this article) as to:

(a) the rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of such undertaking;

(b) the use and disposition of the revenue of said undertaking;

(c) the creation and maintenance of reserves or sinking funds, the regulation, use and disposition thereof;

(d) the purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;

(e) events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(f) a fair and reasonable payment by the municipality to the account of said undertaking for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking;

(g) the issuance of other or additional bonds or instruments payable from or a charge against the revenue of such undertaking;

(h) the insurance to be carried thereon, and the use and disposition of insurance moneys;

(i) books of account and the inspection and audit thereof;

(j) limitations or restrictions as to the leasing or otherwise disposing of the undertaking while any of the bonds or interest thereon remain outstanding and unpaid; and

(k) the continuous operation and maintenance of the undertaking.

The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of said bonds; and the duties of the municipality and the governing body and the officers of the municipality under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding at law or in equity. (Ex. Sess., 1938, c. 2, s. 6.)

§ 160-419. No municipal liability on bonds. — Revenue bonds issued under this article shall not

be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon; nor to enforce payment thereof against any property of the municipality; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality. Every bond issued under this article shall contain a statement on its face that "this bond is not a debt of ....., but is payable solely from the revenues of the undertaking for which it is issued, as provided by law and the proceedings in accordance therewith, and the holder hereof has no right to compel the levy of any tax for the payment of this bond or the interest to accrue hereon and has no charge, lien or encumbrance legal or equitable upon any property of said .....". (Ex. Sess., 1938, c. 2, s. 7.)

Indirect Invocation of Taxing Power.—Defendant municipality proposed to issue bonds to obtain funds for the construction of a municipal hydroelectric generating plant. The city owned and operated its own electric distributing system, and the proposed generating system was to be operated separate and apart therefrom. The resolution of the city authorizing the issuance of the bonds provided that they should be payable solely out of the revenues of the system and the bonds themselves are to contain like provision. Held: The bonds are not a general indebtedness of the municipality and its taxing power may not be invoked to provide for their payment, and the provision that the city, if it should voluntarily elect to take energy from its generating system for its own uses, should pay the cost of furnishing the energy so taken, which in no event should exceed a fair and reasonable charge therefor, does not indirectly provide for the invocating of the taxing power for the payment of the bonds. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 603.

§ 160-420. Right to receivership upon default.—(a) In the event that the municipality shall default in the payment of the principal or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days; or in the event that the municipality or the governing body, or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of the bonds, any holders of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the municipality is located or any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such bonds. Upon such application the superior court or any other court of competent jurisdiction may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such bonds then outstanding, or any trustee for holders of such bonds in such principal amount, shall appoint a receiver of the undertaking.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the undertaking and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the undertaking, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the undertaking as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds and interest thereon, and upon any other notes, or other obligations, and interest thereon, having a charge, lien, or other encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of bonds shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the undertaking to the municipality, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. (Ex. Sess., 1938, c. 2, s. 8.)

Cross Reference.—As to authority for municipality to avail itself of provisions of bankruptcy law, see § 23-48.

§ 160-421. Approval of state agencies and sale of bonds by local government commission.—All revenue bonds issued pursuant to this article shall be approved and sold by the local government commission in the same manner as municipal bonds are approved and sold by that commission, except that the said commission may sell any bonds issued pursuant to this article to the United States of America, or any agency thereof, at private sale and without advertisement. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or other like instrumentality of the state for the construction of an undertaking, provided, however, that existing powers and duties of the state board of health shall continue in full force and effect; and

provided, further, that no municipality shall construct any systems, plants, works, instrumentalities and properties used or useful in connection with the generation, production, transmission and distribution of gas (natural, artificial, or mixed), or electric energy for lighting, heating, and power, for public and private uses, without having first obtained a certificate of convenience and necessity from the public utilities commissioner, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized, or the bonds for which have been authorized, by any general, special or local law enacted prior to August 13, 1938. (Ex. Sess., 1938, c. 2, s. 9.)

Necessity of Certificate of Convenience.—It is necessary for a city to obtain a certificate of convenience from the public utilities commissioner in order to construct a hydroelectric generating system under this section and the contention of defendant municipality that it came within the proviso of this section since its resolution for the issuance of bonds for this purpose was passed prior to this article under authorization of chapter 473, Public Laws of 1935, is untenable when it appears that the resolution was amended and supplemented by a resolution passed subsequent to this article which made substantial changes, and supplied essential requirements lacking in the original resolution. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 608.

Defendant municipality, by resolution of its council, proposed to construct a hydroelectric plant and finance same by issuing bonds under the Revenue Bond Act of 1935 (ch. 473, Public Laws of 1935). Thereafter the council amended the prior resolution by resolution making substantial changes in the original plans so that the bonds contemplated would be issued under the Revenue Bond Act of 1938 (ch. 2, Public Laws, Extra Session of 1938). The General Assembly, by private act, then created a board of power commissioners for the city and gave said board all the powers and duties of the city with respect to the plant proposed by the original resolution of the council and the amendments thereto. Held: The board of power commissioners was created and authorized to prosecute the project as then constituted, which contemplated the issuance of bonds under the Revenue Bond Act of 1938, and the board is without power to change the fundamental character of the project by resolution rescinding the amendatory resolution of the council and re-enacting the original resolution of the council, so as to bring the project within the purview of the Revenue Bond Act of 1935, and thus obviate the necessity of a certificate of convenience from the utilities commissioner. McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48.

§ 160-422. Construction of article.—The powers conferred by this article shall be in addition and supplemental to, and not in substitution for; and the limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds or interim receipts may be issued under this article without regard to the provisions of any other general, special, or local law. The general assembly hereby declares its intention that the limitations of the amount or percentage of, and the restrictions relating to indebtedness of a municipality and the incurring thereof contained in the constitution of the state and in any general, special or local law shall not apply to bonds or interim receipts and the issuance thereof under this article. (Ex. Sess., 1938, c. 2, s. 10.)

§ 160-423. Termination of power to issue bonds.—Except in pursuance to any contract or agreement entered into prior to March 14, 1941, by any municipality, no municipality shall borrow any money or deliver any bonds pursuant to this article to the purchaser, or purchasers, thereof, after March first, one thousand nine hundred and forty-three. (Ex. Sess., 1938, c. 2, s. 11; 1941, c. 207, s. 1.)

Local Modification.—Brunswick, Town of Southport: 1943, c. 771; New Hanover: 1943, c. 596; Onslow, Town of Jacksonville: 1943, c. 771.

Editor's Note.—Public Laws 1938, Ex. Sess., c. 2, s. 15, provides that the limitation imposed by this section "shall not apply to the provisions of sections thirteen and fourteen hereof." Section thirteen added the last sentence to § 160-230 and section fourteen amended sections 157-2 and 157-3.

The 1941 amendment changed the date from December 31, 1940 to March 1, 1943.

§ 160-424. Article applicable to school dormitories and teacherages.—All the terms, conditions and provisions of this article are hereby made applicable to the acquisition, construction, reconstruction, improvement, betterment, or extension of school dormitories and teacherages within this state. (Ex. Sess., 1938, c. 5.)

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Art. 35. Capital Reserve Funds.

§ 160-425. Short title.—This article may be cited as "The Municipal Capital Reserve Act of one thousand nine hundred and forty-three." (1943, c. 467, s. 1.)

§ 160-426. Meaning of terms.—The terms "municipality," "governing body," "clerk," "financial officer," "publication," "special assessments" and "necessary expenses" as used in this article shall have the same meaning as expressed in § 160-368, the same being a part of the Municipal Finance Act, 1921. The terms "debt service," "fiscal year," "surplus revenues," "unencumbered balance" and "fund" as used in this article shall have the same meaning as expressed in § 153-114 the same being a part of the County Fiscal Control Act. (1943, c. 467, s. 2.)

§ 160-427. Powers conferred.—In addition to all other funds now authorized by law a municipality is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1943, c. 467, s. 3.)

§ 160-428. Sources of capital reserve fund.—The capital reserve fund may consist of moneys derived from any one or more of the following sources, except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred and forty-five:

(1) Unappropriated surplus revenues and unencumbered balances itemized as to:

(a) Collections of ad valorem taxes levied for the current operating expense fund of the municipality which are not pledged or otherwise applicable by law to the payment of existing debt;

(b) Proceeds from the sale of municipal property;

(c) Proceeds from insurance collected by reason of loss of municipal property;

(d) Receipts from revenues derived from sources other than ad valorem taxes, including revenues derived from operation of a revenue producing enterprise owned by the municipality, which are not pledged or otherwise applicable by law to the payment of existing debt;

(e) Collections of special assessments not

pledged or otherwise applicable by law to the payment of existing debt;

(f) Collections of ad valorem taxes levied for debt service;

(2) Appropriation included in the annual appropriation ordinance of the current operating expense fund: Provided, however, the sources of revenues from which such appropriation shall be payable shall be itemized in said appropriation ordinance as to amount and class of sources stated in subclauses (b), (c), (d), and (e) of clause (1) of this section;

(3) Proceeds from the sale of municipal property not included in the estimated revenues appropriated for the current fiscal year;

(4) Proceeds from insurance collected by reason of loss of municipal property: Provided, such proceeds are not included in the estimated revenues appropriated for the current fiscal year;

(5) Collections of special assessments not included in the estimated revenues appropriated for the current fiscal year and which are not pledged or otherwise applicable by law to the payment of existing debt;

(6) Moneys accruing to the municipality from the sale of alcoholic beverages which are not included in the estimated revenues appropriated for the current fiscal year. (1943, c. 467, s. 4.)

§ 160-429. How the capital reserve fund may be established.—When a municipality elects under this article to establish a capital reserve fund the governing body shall pass an ordinance authorizing and declaring that the same shall be established. Said ordinance shall state such itemized sources provided in § 160-428 from which moneys are available for deposit in the capital reserve fund at the time of passage. In said ordinance the governing body shall designate some bank or trust company as depositary in which moneys shall be deposited for the capital reserve fund. Said ordinance shall further contain a request to the local government commission that the provisions thereof be approved by said commission. Upon passage of said ordinance the same shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the local government commission. (1943, c. 467, s. 5.)

§ 160-430. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the ordinance passed under the provisions of § 160-429 are approved by the local government commission. After action is taken upon the provisions of said ordinance by the local gvernment commission the secretary of said commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the ordinance, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the municipality who shall immediately deposit in the designated depositary the moneys stated as available in said ordinance for the capital reserve fund and simultaneously report such deposit to the local government commission.

Upon establishment of the capital reserve fund it shall be the duty of the financial officer to promptly deposit in the designated depositary for the capital reserve fund all moneys which may thereafter become available from the sources stated in the ordinance authorizing such fund, or an amendment thereto, and to simultaneously report each such deposit to the local government commission stating the amounts from each such source so deposited. (1943, c. 467, s. 6.)

§ 160-431. Amendments to ordinance authorizing the capital reserve fund.—At any time or from time to time after the capital reserve fund is established, the governing body may amend the ordinance authorizing the establishment of such fund for the purpose of including additional sources provided in § 160-428 or for the purpose of changing the designated depositary. Each such amendment shall contain a request to the local government commission that the provisions thereof be approved by said commission. Each such amendment shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the local government commission. No such amendment shall be effective until the provisions thereof have been approved by said commission. (1943, c. 467, s. 7.)

§ 160-432. Security for protection of deposits.—Any bank or trust company designated as depositary of the capital reserve fund shall furnish such security for deposits made in said fund as is required by law for other funds of the municipality. (1943, c. 467, s. 8.)

§ 160-433. Purposes for which capital reserve fund may be used.—The capital reserve fund may be withdrawn in whole or in part at any time, or from time to time, and applied to or expended for:

(a) Any one or more of the improvements or properties enumerated in § 160-382, subsection four, the same being a part of the Municipal Finance Act, 1921, or to supplement the proceeds from the sale of bonds or bond anticipation notes issued for any one or more of such improvements or properties, or to supplement federal or state grants for any one or more of such improvements or properties;

(b) Temporary borrowing for meeting appropriations made for the current fiscal year in anticipation of the collection of taxes and other revenues of such current fiscal year: Provided, however, the aggregate amount of such withdrawal or withdrawals for meeting appropriations shall not at any time exceed twenty-five per centum of the total appropriations of the fiscal year in which such withdrawal or withdrawals are made and no such withdrawal or withdrawals shall be made in an ensuing fiscal year unless and until the capital reserve fund has been fully repaid for the amount or amounts so previously withdrawn: Provided, further, each such withdrawal shall be repaid not later than thirty days after the close of the fiscal year in which made;

(c) Purchasing at market prices and retiring outstanding bonds of the municipality maturing more than five years from the date of such withdrawal;

(d) Investment in bonds or notes of the United States of America, state of North Carolina, or bonds of the municipality;

(e) Payment of maturing serial bonds and in-

terest on bonds of the municipality in accordance with a determined plan of amortization.

No part of the capital reserve fund consisting of moneys derived from the collections of taxes levied for debt service may be used for any purpose other than those specified in clauses (b), (c), (d), and (e), of this section. (1943, c. 467, s. 9.)

§ 160-434. Authorization for withdrawals from the capital reserve fund.—A withdrawal for any one of the purposes contained in clauses (b), (c), (d) and (e) of § 160-433 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each source. Each such resolution shall contain a request to the local government commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the local government commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 160-433 shall further specify the total appropriations contained in the annual appropriation ordinance of the fiscal year in which such withdrawal is authorized and shall state the total amount of such previous withdrawals made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund.

A withdrawal for any one of the improvements or properties contained in clause (a) of § 160-433 shall be authorized by ordinance duly passed by the governing body which ordinance shall state:

(a) In brief and general terms the purpose for which the withdrawal is to be made;

(b) The amount of the withdrawal;

(c) The sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source;

(d) One of the following provisions:

(1) If the purpose of such withdrawal is for necessary expenses and the source of the moneys available therefor is in whole or in part ad valorem taxes, or, if such withdrawal is for either necessary expenses or other than necessary expenses and the source of all the moneys available therefor is from other than ad valorem taxes, the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this article.

(2) If the purpose of such withdrawal is for other than the payment of necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if the governing body, although not required to obtain the assent of the voters to such withdrawal, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this article.

Each ordinance authorizing a withdrawal from the capital reserve fund shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the local government commission. (1943, c. 467, s. 10.)

§ 160-435. Approval of ordinance or resolution for withdrawal by the local government commission.—No ordinance passed by the governing body authorizing a withdrawal from the capital reserve fund shall be published as provided in this article nor shall the question of approval of the provisions thereof be submitted to the voters until said provisions have first been approved by the local government commission. A certified copy of such ordinance filed by the clerk with the commission shall be deemed a request to the commission for its approval of the provisions thereof. The commission shall pass upon the provisions of such ordinance in the same manner as it passes upon an application for approval of the issuance of bonds or notes under the local government act, and may require such information and evidence pertaining to the necessity and expediency and the adequacy of amount of the proposed withdrawal as it deems necessary before acting upon said ordinance.

No resolution adopted by the governing body authorizing a withdrawal shall become effective until the provisions thereof have been approved by the local government commission. (1943, c. 467, s. 11.)

§ 160-436. Publication of ordinance for withdrawal.—Upon approval by the local government commission of an ordinance authorizing a withdrawal from the capital reserve fund, the clerk shall cause said ordinance to be published once in each of two consecutive weeks over the following appendage (the blanks being first properly filled in):

The foregoing ordinance was passed on the ..... day of ....., 19...., and was first published (or posted), on the ..... day of ....., 19.... Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

.....
Clerk

(1943, c. 467, s. 12.)

§ 160-437. Limitation of action setting aside a withdrawal ordinance.—Any action or proceeding in any court to set aside an ordinance authorizing a withdrawal from the capital reserve fund, or to obtain any other relief upon the grounds that such ordinance is invalid, must be commenced within thirty days after the first publication made under § 160-436. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any grounds whatever, except in an action or proceeding commenced within such period. (1943, c. 467, s. 13.)

§ 160-438. Elections on ordinance authorizing withdrawal.—The provisions of §§ 160-386 and 160-387, the same being a part of the Municipal Finance Act, 1921, relating to popular vote and an election on a bond ordinance, shall apply to an

ordinance authorizing a withdrawal from the capital reserve fund: Provided, however, the majority of the qualified voters of the municipality, as required by the constitution of North Carolina, shall be necessary only if the purpose stated in the ordinance authorizing such withdrawal is for other than a necessary expense and the source of moneys in the capital reserve fund for such withdrawal is in whole or in part ad valorem taxes. In all other cases where the provisions of such ordinance may be required to be approved by the voters, the affirmative vote of the majority of voters voting on such ordinance shall be sufficient to make it operative and in effect: Provided, further, a notice of election required by this article to be published shall state the amount of the proposed withdrawal and the purpose thereof, as well as the date of the election, and: Provided, further, the ballots to be furnished each qualified voter may contain the words, "For the ordinance authorizing $..... withdrawal from the capital reserve fund of the ..... of ..... (briefly stating the purpose)" and "Against the ordinance authorizing $..... withdrawal from the capital reserve fund of the ..... of ..... (briefly stating the purpose)." (1943, c. 467, s. 14.)

§ 160-439. How a withdrawal may be made.—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or ordinance which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal for the purpose stated in clause (e) of § 160-433 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depositary by the financial officer of the municipality and payable to said financial officer. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the local government commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the Municipal Capital Reserve Act of One Thousand Nine Hundred and Forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the local government commission: Provided, however, the state of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 467, s. 15.)

§ 160-440. Accounting for the capital reserve fund.—It is the intention of this article that the deposits in and withdrawals from the capital reserve fund shall be as one account with the depositary but it shall be the duty of the financial officer to maintain accounts of each source, entering the credits thereto and withdrawals therefrom, and of the purpose for which each authorized withdrawal is made. (1943, c. 467, s. 16.)

§ 160-441. Certain deposits mandatory.—Each withdrawal shall be used only for the purpose specified in the resolution or ordinance authorizing the same and shall constitute an appropriation duly made for said purpose: Provided, however, that if for any reason any part of such withdrawal is not applied to or is not necessary for such purpose, such unexpended or unused part thereof shall be promptly deposited in the capital reserve fund and credits of such deposit shall be entered to the various sources prorated on the basis upon which the withdrawal was made.

All receipts of earnings from and realizations of investments shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all withdrawals made for investment.

Receipts for repayment of moneys withdrawn for the purpose of meeting appropriations shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all such withdrawals made. (1943, c. 467, s. 17.)

§ 160-442. Action of local government commission.—Any action required by this article to be taken by the local government commission may be taken by the executive committee of said commission, and such action taken by said executive committee shall be subject to review by the commission in the same manner as action taken under the local government act upon the issuance of bonds. (1943, c. 467, s. 18.)

§ 160-443. Provision for sinking funds.—Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital reserve fund a municipality may make allocation thereof to a sinking fund for the retirement of term bonds, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid. (1943, c. 467, s. 19.)

Chapter 161. Register of Deeds.

Art. 1. The Office.

§ 161-1. Election and term of office.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a register of deeds. (Rev., s. 2650; Const., Art. VII, s. 1; C. S. 3543.)

Cross Reference.—As to time of election, see § 163-4.

Legislature May Change Duties and Emolument.—The office of register of deeds is constitutional, but the duties are statutory, and the Legislature may, within reasonable limits, change the duties and diminish the emoluments of the office, if the public welfare requires it to be done. Fortune v. Commissioners, 140 N. C. 322, 52 S. E. 950.

§ 161-2. Four-year term for registers of deeds; counties excepted. — At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this state by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Avery, Beaufort, Bladen, Clay, Davidson, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Macon, Mitchell, Orange, Rowan, Swain, Vance, Yadkin, Cherokee, Dare, Lincoln, and Moore counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192.)

Editor's Note.—The 1937 amendment struck out Stanly from the list of counties excepted from the operation of this section.

The 1939 amendments struck out Alleghany and Washington from the list of excepted counties.

The 1941 amendment struck out Transylvania from the list of excepted counties.

§ 161-3. Oath of office.—The register of deeds shall take the oath of office on the first Monday of December next after his election, before the board of county commissioners. (Rev., s. 2652; Code, s. 3647; 1868, c. 35, s. 2; 1876-7, c. 276, s. 5; C. S. 3544.)

Cross Reference.—As to form of oath, see § 11-11.

§ 161-4. Bond required.—Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the state, and conditioned for the safe keeping of the books and records, and for the faithful discharge of the duties of his office, and shall renew his bond annually on the first Monday in December. (Rev., s. 301; Code, s. 3648; 1868, c. 35, s. 3; 1876-7, c. 276, s. 5; 1899, c. 54, s. 52; C. S. 3545.)

Local Modification.—Dare: 1907, c. 75.

Cross References.—As to induction into office and necessity of approval of bond by county commissioners, see § 153-9, subsection 11. As to power of county commissioners to fill vacancy, see § 153-9, subsection 12. As to action on official bonds, see § 109-34 et seq. As to penalty for issuing marriage license unlawfully, see § 51-17.

Office Vacated unless Bond Given.—The board of commissioners may declare the office vacant for failure of the register to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262.

All Duties Included.—The words "and faithfully discharge the duties of his office," in the bond of a register of deeds, do not refer alone to the safe-keeping of the "records and books," but to all other official acts, the nonperformance of which results in injury. State v. Young, 106 N. C. 567, 10 S. E. 1019, and cases there cited.

What Amounts to Breach of Bond.—Failure of the register of deeds to register written instruments properly presented or failure to properly index and cross-index them is a breach of the bond required by this section. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506.

§ 161-5. Vacancy in office.—When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. (Rev., s. 2651; Code, s. 3649; 1868, c. 35, s. 4; C. S. 3546.)

Cross Reference.—As to authority of county commissioners to fill vacancy, see § 153-9, subsection 12.

Office Declared Vacated.—The county commissioners may appoint a successor to the office of register of deeds where they have declared the office vacant by reason of the incumbent's failure to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262.

§ 161-6. Deputies may be appointed.—The registers of deeds of the several counties in this state are hereby authorized and empowered to appoint deputies, whose acts as such shall be valid and for which the registers of deeds shall officially be

responsible. They shall file the certificate of the appointment of the deputy in the office of the clerk of the superior court, who shall record the same. (1909, c. 628, s. 1; C. S. 3547.)

Local Modification.—Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

§ 161-7. Office at courthouse.—The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (Rev., s. 2653; Code, s. 3650; 1868, c. 35, s. 5; C. S. 3548.)

§ 161-8. Attendance at office.—The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (Rev., s. 2654; Code, s. 3651; 1868, c. 35, s. 6; C. S. 3549.)

Free Abstracts Not Required.—While it is the duty of the Register of Deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the payment of his proper fees, to allow any one to make copies or abstracts therefrom. Newton v. Fisher, 98 N. C. 20, 3 S. E. 822.

§ 161-9. Official seal.—The office of register of deeds for every county in the state shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures. (Rev., s. 2649; 1893, c. 119, s. 1; C. S. 3550.)

§ 161-10. Fees of register of deeds.—The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding two dollars; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, eighty cents; and for every additional copy-sheet, ten cents.

Registering chattel mortgage, statutory form, twenty cents.

For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing, one dollar.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpœnas for witnesses, fifteen cents. This shall not include county orders on the treasury.

Recording and issuing each order of commissioners, ten cents. Where a standing order is made for the payment of money, monthly or otherwise, there shall be charged but one fee therefor.

Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents.

Issuing marriage license, one dollar.

For transcript and certificate of limited partnership, fifty cents.

For recording the election returns from the various voting precincts, ten cents per copy-sheet, to be paid by the county.

For attaching and indexing subdivisions or plats now allowed by law to be registered, fifty cents; for transcribing and indexing subdivisions and plats, seventy-five cents. If such subdivision or plat contains more than three lots or tracts of land, the register of deeds shall be entitled to charge twenty-five cents for transcribing each and every lot or tract of land in excess of three that is contained in such plat or subdivision, but in no case shall the fees exceed five dollars for transcribing and indexing such plat or subdivision. (Rev., s. 2776; Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; 1911, c. 55, s. 3; C. S. 3906.)

§ 161-10.1. Local variations as to fees of registers of deeds.—The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg. (Rev., s. 2776; 1907, cc. 421, 636, 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182; 1933, c. 48; C. S. 3907.)

In Alexander county the board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland county. (P. L. 1915, c. 513; P. L. 1917, c. 423; C. S. 3907.)

In Catawba county the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a building and loan association, the sum of eighty cents. (1909, c. 43; C. S. 3907.)

In Forsyth county the register shall receive for registering any deed or other writing authorized to be registered, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each. (Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177; C. S. 3907.)

In Jackson county the register shall, for his

service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county. (P. L. 1913, c. 182; C. S. 3907.)

In Tyrrell county the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents. (1909, c. 780; C. S. 3907.)

In Union county the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds. (P. L. 1917, c. 366; C. S. 3907.)

In Gates county the register of deeds shall receive for canceling of a mortgage or deed of trust, ten cents. (P. L. 1919, c. 4; C. S. 3907.)

In Wake county the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registering lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure pre-existing debt, and to give additional security to the lien, thirty cents; for registering short-form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents. (P. L. 1915, c. 138; C. S. 3907.)

In Yadkin county the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof. (P. L. 1911, c. 414; C. S. 3907.)

In Carteret county the register of deeds shall receive in addition to all other fees now allowed by law for recording instruments authorized to be registered, the sum of ten cents (.10) per name for each name in excess of five, for cross-indexing such names which appear on all instruments presented at his office and recorded therein. (1943, c. 289.)

Local Modification.—Alamance: Pub. Loc. 1921, c. 234, s. 2; Alleghany: Pub. Loc. 1927, c. 175, s. 3½; Ashe: Pub. Loc. 1927, c. 372, s. 2; Avery: Pub. Loc. 1927, c. 612; Beaufort: Pub. Loc. 1921, c. 229, s. 3; Brunswick: Pub. Loc. 1921, c. 436, s. 3; Burke: Pub. Loc. 1937, c. 564; Catawba: Pub. Loc. 1921, c. 47, s. 2; 1939, c. 33; Cherokee: Pub. Loc. 1921, c. 523, s. 3; Chowan: Pub. Loc. Ex. Sess. 1920, c. 63; Cleveland: Pub. Loc. 1921, c. 75; Columbus: Pub. Loc. 1921, c. 77, s. 6; c. 350, s. 6; Craven: Pub. Loc. 1921, c. 461, s. 3; 1941, c. 68; Cumberland: Pub. Loc. 1927, c. 172, s. 1; Pub. Loc. 1931, c. 523; Davidson: Pub. Loc. 1921, c. 421, s. 2; Davie: Pub. Loc. 1921, c. 84, s. 9; Durham: Pub. Loc. 1921, c. 46, s. 4; Forsyth: Pub. Loc. 1921, c. 69, s. 1; Franklin: Pub. Loc. 1921, c. 45; Gates: Pub. Loc. 1927, c. 177; Pub. Loc. 1933, c. 237, s. 3; Graham: Pub. Loc. 1921, c. 453; Pub. Loc. 1927, c. 475; Pub. Loc. 1931, c. 28, s. 3; Halifax: Pub. Loc. 1921, c. 519, s. 1; Henderson: Pub. Loc. 1921, c. 189, s. 1; Pub. Loc. 1927, c. 528; Lee: Pub. Loc. Ex. Sess. 1920, c. 164; Lincoln: Pub. Loc. 1921, c. 122, s. 1; Macon: Pub. Loc. 1921, c. 145; Madison: Pub. Loc. 1921, c. 151, s. 2; Martin: Pub. Loc. Ex. Sess. 1921, c. 250; Pub. Loc. 1927, c. 415; Mitchell: Pub. Loc. 1927, c. 516; Pub. Loc. 1935, c. 93; 1943, c. 364; Montgomery: 1937, c. 137; New Hanover: Pub. Loc. 1921, cc. 95, 442; Pub. Loc. 1927, c. 390; Northampton: 1931, c. 11, s. 2; Pasquotank: Pub. Loc. 1921, c. 320, s. 2; Pub. Loc. 1927, c. 518; Perquimans: Pub. Loc. 1921, c. 152; Person: Pub. Loc. 1921, c. 577; Pitt: Pub. Loc. 1927, c. 255; c. 597, s. 2; Polk: 1925, c. 44; Robeson: Pub. Loc. 1921, c. 37; Rockingham: Pub. Loc. Ex. Sess. 1921, c. 108; Rutherford: Pub. Loc. 1921, c. 443, s. 4; Stokes: Pub. Loc. 1921, c. 285, s. 7; Pub. Loc. 1927, c. 569, s. 2; Swain: Pub. Loc. 1921, c. 422; 1943, c. 456; Transylvania: Pub. Loc. 1933, c. 386, s. 10; Union: Pub. Loc. 1921, c. 75; Wake: Pub. Loc. 1921, c. 190; Warren: Pub. Loc. 1921, c. 294, s. 2; Wayne: Pub. Loc. 1939, c. 118; Wilkes: Pub. Loc. 1927, cc. 406, 547.

Editor's Note.—The 1943 amendment added the last paragraph.

§ 161-11. Fees for issuing certificates of encumbrances.—The fee charged by the register of deeds for preparing and issuing a certificate of encumbrance as required for federal chattel mortgages and/or crop liens shall be limited to fifty (50c) cents for each such certificate. (1933, c. 437.)

Art. 2. The Duties.

§ 161-12. Apply to clerk for instruments for registration.—The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register. (Rev., s. 2655; Code, s. 3652; 1868, c. 35, s. 7; C. S. 3551.)

§ 161-13. Failure of clerk to deliver papers.—In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in § 161-12, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk. (Rev., s. 2656; Code, s. 3653; 1868, c. 35, s. 8; C. S. 3552.)

§ 161-14. Registration of instruments.—The register of deeds shall register all instruments in writing delivered to him for registration forthwith. He shall indorse on each instrument in writing the day and hour on which it is presented to him for registration, and such indorsement shall be entered on his books and form a part of the registration, and he shall, immediately upon making the indorsement herein required upon each instrument in writing, index and cross-index the same in the order of time in which such instruments are presented to him: Provided, that the register of deeds may, if in his opinion it is proper to do so, prepare and use in lieu of his permanent index a temporary index until the instrument is actually recorded, upon which all instruments shall be indexed immediately upon receipt of same into his office, and until said instruments shall have been recorded the temporary index shall operate in all respects as the permanent index. In the event the register of deeds shall use a temporary index, however, all instruments shall be recorded and cross-indexed on the permanent

index within thirty (30) days from date of receipt of same. (Rev., s. 2658; Code, s. 3654; R. C., c. 37, s. 23; 1868, c. 35, s. 9; 1921, c. 114; C. S. 3553.)

Cross References.—As to requisites and formalities of the registration of deeds and mortgages, generally, see § 47-17 et seq. As to indexing of instruments, see also §§ 161-21, 161-22.

Editor's Note.—The section was radically changed in 1921, Public Laws 1921, ch. 114. Until this amendment twenty days were allowed for the registration of all instruments except mortgages and deeds of trust, it was not required that the hour of filing be endorsed on instrument, and there was no provision for a temporary index.

Section Means Complete Registration.—This section means a registration complete and perfect, so that it may serve all the purposes of the law in protecting the rights of parties directly interested, and give notice truly to the public. State v. Young, 106 N. C. 567, 570, 10 S. E. 1019.

Indexing and Cross-Indexing Is Essential to Proper Registration.—The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by this section, is essential to their proper registration. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 672, 184 S. E. 506.

Filing Has Effect of Registration.—The filing for registration is in law registration, and all rights and liabilities accrue from the date of filing and do not depend upon the greater or less diligence of the register in performing his duty. Glanton v. Jacobs, 117 N. C. 427, 428, 23 S. E. 335.

Delivery to Proper Officer Necessary to Filing.—Where the filing of a paper in the office of the register of deeds is necessary to the title to lands, the time thereof will be considered as that at which the paper was delivered to and received by the proper officer; and while the file mark of the officer is evidence as to the time, it is not essential under our statutes. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N. C. 668, 96 S. E. 99.

Same—Delivery at Office.—It is required for a valid filing of a mortgage that it be delivered at the register of deeds' official office, and where a paper was delivered to the register outside of his office it is ineffectual until he returns and makes the proper entry. McHan v. Dorsey, 173 N. C. 694, 92 S. E. 598.

Sufficiency of Acknowledgment.—A certificate by the Clerk of the Superior Court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purpose therein set forth," was sufficient to warrant the registration of the deed. Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369.

Registry Dated When Fees Paid.—Where a deed was handed to the register for registration, but he refused to register it because his fees were not paid, but the paper was left in his office for several months, when, the fees being paid, he made an endorsement that it was filed on the day first presented, followed by an explanatory endorsement reciting the facts: Held, the register was not compelled to register before his fees were paid, and the facts did not constitute a filing for registration on the day when the deed was first presented to the register. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714.

Endorsement Unnecessary.—The endorsement required to be made by register of deeds on mortgages and deeds in trust on the day on which such deeds are presented to him for registration, is not essential to registration; and when made is not conclusive evidence—but only prima facie evidence of the facts therein recited. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714.

Clerical Mistake.—A registry of a mortgage is not void because of a clerical mistake made by the register in transcribing, which does not affect the sense and provision as to the amount secured, description of property, etc., or obscure the meaning of the instrument. Royster v. Lane, 118 N. C. 156, 24 S. E. 796.

Omission of Signatures.—The registration of a deed showing the probate, including the separate examination of the wife, and the order of registration, and the names of the grantors, but omitting a copy of their signature at the end of the instrument is sufficient notice under this section. Smith v. Ayden Lumber Co., 144 N. C. 47, 56 S. E. 555.

Omission of Seal.—The failure of the register of deeds to copy the seal of the corporation on his books, or make an imitation copy thereon, does not render the conveyance of the lands invalid where the recitals in the deed signify that the seal was in fact attached, it appears upon the original, and the books show the name of the corporation appearing in brackets therein at its proper location. Lockville Power Corporation v. Carolina Power & Light Co., 168 N. C. 219, 84 S. E. 398; Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369.

Omission of Great Seal of State. — The fact that it does not appear of record that a scroll or imitation of the Great Seal of State was copied thereon, does not invalidate the registry of the grant. The recital in the body of the grant, as recorded, of the affixing of the seal is sufficient evidence of its regularity. Broadwell v. Morgan, 142 N. C. 475, 55 S. E. 340.

Correction of Omission or Error.—Where the register has committed an error or omission in the recordation of an instrument he has the power to correct such error. Brown v. Hutchinson, 155 N. C. 205, 71 S. E. 302.

Certificates of Registration Prima Facie Evidence. — The certificates of registration made by registers of deeds are prima facie evidence of the facts therein recited. Sellers v. Sellers, 98 N. C. 13, 3 S. E. 917.

Cited in Moore v. Ragland, 74 N. C. 343; Fleming v. Graham, 110 N. C. 374, 14 S. E. 922.

§ 161-15. Certify and register copies.—When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall indorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (Rev., s. 2657; 1899, c. 302; C. S. 3554.)

§ 161-16. Liability for failure to register.—In case of his failure to register any deed or other instrument within the time and in the manner required by § 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (Rev., s. 2659; Code, s. 3660; 1868, c. 35, s. 10; C. S. 3555.)

Error in Amount of Mortgage.—A register is liable for wrongly recording the amount of a mortgage, to a person injured thereby. State v. Young, 106 N. C. 567, 10 S. E. 1019.

Presumption of Regularity.—The probate of a deed is presumed to be regular from the fact of registration. Cochran v. Improvement Co., 127 N. C. 386, 37 S. E. 496.

Abatement of Action by Death.—Under the provisions of section 1-74, an action for a penalty, against a register of deeds and the surety on his bond, abates by the death of the officer. Wallace v. McPherson, 139 N. C. 297, 51 S. E. 897.

Failure to Properly Index and Cross-Index Is a Breach of Bond.—The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, § 161-4, for which he and the surety on his bond are liable to the person injured by such breach under this section. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506.

§ 161-17. Papers filed alphabetically.—The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (Rev., s. 2660; Code, s. 3661; 1868, c. 35, s. 11; C. S. 3556.)

§ 161-18. Transcribe and index books.—The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by

the board shall be public records as the original books, and copies therefrom may be certified accordingly. (Rev., s. 2661; Code, s. 3662; 1868, c. 35, s. 12; C. S. 3557.)

§ 161-19. Number of survey in grants registered.—The register of deeds in each county in this state, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (Rev., s. 2662; 1889, c. 522, s. 2; C. S. 3558.)

§ 161-20. Certificate of survey registered.—It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all indorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (Rev., s. 2663; 1905, c. 243; C. S. 3559.)

§ 161-21. General index kept.—The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical sub-division of said family name, according to the particular system in use. (Rev. s. 2664; Code, s. 3663; 1868, c. 35, s. 13; 1929, c. 327, s. 1; C. S. 3560.)

Editor's Note.—The Act of 1929 added the provision relating to the "Family" index system. It also provided that upon its ratification a copy of the act be mailed to each of the registers of deeds of the several counties.

The last sentence of the section does not affect litigation pending on or instruments registered prior to March 19, 1929.

Chattel Mortgages.—An indexing of chattel mortgages is an essential part of their registration. Whitehurst v. Garrett, 196 N. C. 154, 144 S. E. 835.

Where for years a proper index of chattel mortgages has been kept in the books wherein the instruments were registered, it is a substantial compliance with this section and § 161-22, it appearing that the record of the instrument could have been found with an ordinary search such as a man of ordinary prudence would have made. Whitehurst v. Garrett, 196 N. C. 154, 144 S. E. 835.

Mortgage upon Land.—The proper indexing of a mortgage upon lands is an essential part of its registration, and where the husband and wife make a mortgage on her lands which is only indexed by the register of deeds in the name of the husband, it is not good as against a subsequent purchaser for value by deed from the husband and wife that had been properly indexed and registered. Heaton v. Heaton, 196 N. C. 475, 146 S. E. 146.

Cited in Woodley v. Gregory, 205 N. C. 280, 284, 171 S. E. 65; Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352; Tocci v. Nowfall, 220 N. C. 550, 18 S. E. (2d) 225.

§ 161-22. Index and cross-index of registered instruments.—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having sub-divisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct sub-division of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances; Provided, further, that it shall be the duty of the register of deeds of each county, in which there is a separate index for conveyances of personal property and for those of real estate, to double index every such conveyance, provided that such conveyance shall contain both species of property. A violation of this section shall constitute a misdemeanor. (Rev. ss. 2665, 3600; Code, s. 3664; 1899, c. 501; 1876-7, c. 93, s. 1; 1929, c. 327, s. 2; C. S. 3561.)

Editor's Note.—The Act of 1929 struck out the section formerly appearing and inserted in lieu thereof the above. See note under § 161-21.

Indexing Essential.—The indexing of deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639. See Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352 and comment thereon in 19 N. C. L. Rev. 77.

The provisions of this section are mandatory and the indexing and cross-indexing of a deed of trust given by a life tenant and the remainderman owning the land, in the name of the life tenant only followed by the words "et als.," is not a sufficient compliance with the statute, and where another deed of trust is subsequently executed on the same lands which is registered, indexed and cross-indexed in compliance with the statute, the purchaser under foreclosure of the second deed of trust acquires title free from the lien of the improperly indexed prior deed of trust. The case of Prudential Ins. Co. v. Forbes, 203 N. C. 252, 165 S. E. 699, in which the lien was indexed under "S. T. et ux." cited and distinguished. Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65.

Liability for Failure to Index.—The failure of a register

of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State v. Grizzard, 117 N. C. 105, 106, 23 S. E. 93. See also Watkins v. Simonds, 202 N. C. 746, 164 S. E. 363.

Same—Failure to Index Must Cause Damage.—While the register of deeds and the surety on his official bond are liable for his failure to index and cross-index instruments such liability does not arise to the individuals claiming damages therefor unless the default of the register in these particulars has been the proximate cause of injury to the claimant, and liability will not be imputed to the register of deeds when the negligence of the claimant or his agent has caused or concurred in causing the injury. State v. Hester, 177 N. C. 609, 98 S. E. 721, overruling Davis v. Whitaker, 114 N. C. 279, 19 S. E. 699. See also Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639; Ely v. Norman, 175 N. C. 294, 298, 95 S. E. 543.

Index of Mortgage on Land Held by Entireties under "J. H. and Wife."—Where the husband and wife mortgage their lands held by the entireties and the mortgage is indexed and cross-indexed under "J. H. and wife," the name of the wife not appearing on the index although it appeared on the mortgage deed, the index is sufficient to put a reasonable man upon inquiry which would have disclosed the facts, and upon the husband's death and the wife's remarriage, a mortgage given by the wife and her second husband is subject to the first mortgage, and the subsequent mortgagee is charged with notice thereof, and he may not restrain the first mortgagee from foreclosing his mortgage on the ground of insufficient indexing, although the name of the wife should have appeared on the index. West v. Jackson, 198 N. C. 693, 153 S. E. 257.

Filing at Same Instant of Time.—Where the record discloses that a purchase-money mortgage and another mortgage given to secure cash payment for land were filed for registration at the same instant of time, neither mortgage has priority over the other, but both constitute a first lien on the land, and the fact that one necessarily appeared before the other on the index of the day's transactions does not alter this result, since the record fails to show that the mortgages were not indexed at the same time. Hood v. Landreth, 207 N. C. 621, 178 S. E. 222.

Priority of Second Mortgage to One Not Indexed.—A mortgage duly filed for registration and spread upon the registry, but not indexed or cross-indexed as required by this section, is not superior to the lien of a duly registered "second mortgage" on the same property. Story v. Slade, 199 N. C. 596, 597, 155 S. E. 256.

Under this and the previous section a duly recorded chattel mortgage which is indexed and cross-indexed in the general chattel mortgage index has priority over a mortgage covering the same personal property and also certain real estate which is previously executed and recorded and indexed in the general real estate mortgage index but subsequently indexed and cross-indexed in the general chattel mortgage index. Pruitt v. Parker, 201 N. C. 696, 161 S. E. 212.

Capacity in Which Grantor Acted.—There is no law requiring that the cross index shall show the capacity in which the grantor acted in the making or execution of a deed. Tocci v. Nowfall, 220 N. C. 550, 556, 18 S. E. (2d) 225.

§ 161-23. Clerk to board of commissioners.—The register of deeds is ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of the said board. (Rev., s. 2666; Code, s. 3656; 1868, c. 35, s. 15; Const., Art. VII, s. 2; C. S. 3562.)

Cross Reference.—See also § 153-40.

Same Office.—The register of deeds is ex officio clerk to the board of county commissioners, and the two positions are not separate offices. State v. Gouge, 157 N. C. 602, 72 S. E. 994.

§ 161-24. Notices to certain officers served by mail.—The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing, and nothing more. (Rev., s. 2667; Code, s. 3657; 1879, c. 328, ss. 1, 3; C. S. 3563.)

§ 161-25. Keep list of statutes authorizing special tax.—The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the general assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to any one making application therefor a certified copy of said list of statutes. (1917, c. 182; C. S. 3565.)

§ 161-26. Duties unperformed at expiration of term.—Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (Rev., s. 2669; Code, s. 3655; 1868, c. 35, s. 14; C. S. 3566.)

§ 161-27. Register of deeds failing to discharge duties; penalty.—If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office. (Rev., s. 3599; Code, s. 3659; 1868, c. 35, s. 18; C. S. 3567.)

Cross References. —As to duty of register to issue marriage license, see § 51-8. As to penalty for issuing license unlawfully, see § 51-17. As to misconduct in public office and penalty therefor, see § 14-228 et seq. As to duty of register in regard to clerk's bond, see § 109-28; in regard to strays, see § 79-1; in regard to vacancy in office of entry-taker, see § 146-22.

Issuing Marriage License Not Included. — A register of deeds is not liable under this section for issuing a license for the marriage of an infant female under eighteen years of age, without the written consent of her parent or guardian. State v. Snuggs, 85 N. C. 542.

Chapter 162. Sheriff.

Art. 1. The Office.

§ 162-1. Election and term of office.—In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold his office for four years. (Rev., s. 2808; Const., Art. IV, s. 24; C. S. 3925.)

Cross References.—As to form of oath required of sheriff before taking office, see § 11-11; as to other oaths required of public officers, see §§ 11-6, 11-7; Const. Art. VI, s. 7; as to penalty for failure to take oath, see § 128-5.

Editor's Note.—It was held in Hoke v. Henderson, 15 N. C. 1, that a public office is to be classed as private property based on a contract between the State and the officer. In cases following Hoke v. Henderson, supra, it was held that there is a contract between the sheriff and the State that he will discharge the duties of the office, and it cannot be abrogated, or impaired except by the consent of both parties. King v. Hunter, 65 N. C. 603. However, Hoke v. Henderson, supra, and all cases following it in holding a public office to be private property, were overruled by Mial v. Ellington, 134 N. C. 131, 46 S. E. 961. Therefore, a sheriff is no longer considered to have a vested right in his office, nor is his tenure considered to be based upon a contract with the State.

Effect of Constitutional Amendment on Term of Office.—The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938, being in effect on the first Monday in December, the date of the beginning of the term of the sheriffs elected in that election, their term of office is four years in accordance with the amendment then in effect. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894.

§ 162-2. Disqualifications for the office.—No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the general assembly, or practicing attorney, or who heretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (Rev., s. 2809; Code, ss. 2067, 2068, 2069; R. C., c. 105, ss. 5, 6, 7; 1777, c. 118, ss. 2, 4; 1806, c. 699, s. 2; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; C. S. 3926.)

Full Settlement of Public Funds by Incumbent.—A person, although elected by the qualified voters of a county to the office of sheriff of said county for a term of two years, beginning on the first Monday in December after said election, was not eligible for said office, if he, having been theretofore sheriff of said county, had failed to settle with, and fully pay up to, every officer the taxes which were due to him. Lenoir County v. Taylor, 190 N. C. 336, 340, 130 S. E. 25.

A former sheriff must exhibit to the board of commissioners the receipts in full of the proper officers, for all public funds which he received, or ought to have received during his preceding official term, before he will be permitted to reenter upon a new term. Colvard v. Board, 95 N. C. 515; Lenoir County v. Taylor, 190 N. C. 336, 340, 130 S. E. 25.

Same—Produce Receipts. — The fact that he was able, ready and willing at the time of tendering his bond, to make settlement and payment of any liability on account of funds so received, does not dispense with the requirement that he shall produce receipts in full. Colvard v. Board, 95 N. C. 515.

Same—Requirement Constitutional.—The requirement that a sheriff-elect who has theretofore been sheriff, produce his tax receipts is not unconstitutional. State v. Dunn, 73 N. C. 595.

Cited in Pender County v. King, 197 N. C. 50, 54, 147 S. E. 695.

§ 162-3. Sheriff may resign.—Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (Rev., s. 2810; Code, s. 2077; R. C., c. 105, s. 15; 1777, c. 118, s. 1; 1808, c. 752; C. S. 3927.)

§ 162-4. Removal for misdemeanor in office.—If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office. (Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8; C. S. 3928.)

Cross Reference.—As to removal of unfit officers generally, see §§ 128-16 to 128-20.

Proceedings in Nature of Quo Warranto.—An action by the Attorney-General in the name of the people of the State, and of the person who claims the office of sheriff, is the proper mode of proceeding against the person who is alleged to be usurping it, to try the question as to which of the parties is entitled to the office. Loftin v. Sowers, 65 N. C. 251.

§ 162-5. Vacancy filled; duties performed by coroner.—If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject

to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled. (Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8; C. S. 3929.)

Cross References.—As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15 and notes thereto. As to filling vacancy, see § 153-9, subsec. 12 and notes thereto; see also § 162-10.

Commissioners Appoint for Unexpired Term Only.—In case of a vacancy in the sheriff's office, it is within the power of the board of county commissioners to appoint for the unexpired term only. Worley v. Smith, 81 N. C. 304. Indeed, a different holding would be to place it within the discretion of the commissioners, once they filled a vacancy, whether in the future the voters or the Board would elect to the said office. Ed. Note.

Sheriff-elect Fails to Qualify—Commissioners Appoint.—Where a sheriff-elect failed to qualify as sheriff for the term to which he had been elected, it became the duty of the board of commissioners forthwith to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 343, 130 S. E. 25.

It is the duty of the county commissioners to declare the sheriff's office vacant, and appoint some one for the unexpired term, whenever the incumbent thereof is found to be, on re-election, in arrears in his settlement of the public taxes. People v. Green, 75 N. C. 329.

S was appointed sheriff in 1875, to fill a vacancy, and held the office until May, 1877; in the meantime—November, 1876—an election was held, and upon the result of certain legal proceedings in May, 1877, M was declared to be elected sheriff, who failed to give bond, and the county commissioners declared a vacancy and appointed B to fill the same. It was held, that S had no right to hold over until the next popular election, but that B was entitled to the office, being elected by the commissioners. State v. Bullock, 80 N. C. 132.

When Sheriff Becomes Insane.—Upon the prima facie ascertainment of the insanity of the sheriff, or by inquisition of lunacy, the commissioners may declare the office vacant, under this section, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, till such declaration (Greer v. Asheville, 114 N. C. 678, 19 S. E. 635), and does not cast upon him the right to collect the taxes, which goes to the sheriff's bondsmen for the current list, and after that the duty devolves upon a tax collector chosen by the county commissioners.' Somers v. Board, 121 N. C. 582, 585, 31 S. E. 873.

Upon the insanity of the sheriff, his right to exercise the office ceases and the agency of his deputies is terminated, and his committal to a hospital for the insane and the appointment of a guardian for him are certainly at least prima facie evidence of such insanity. Somers v. Board, 123 N. C. 582, 584, 31 S. E. 873.

Same—Collection of Taxes.—Upon the declaration of insanity, the sureties of the sheriff had no more rights than would have gone to them upon his death, i. e., to collect the tax list then in his hands. Public Laws 1897, Chapter 169, Section 117; Perry v. Campbell, 63 N. C. 257; McNeill v. Somers, 96 N. C. 467, 2 S. E. 161. And the Commissioners on the first Monday in September are vested with the power of electing a tax collector for the ensuing year, unless and until the sheriff should be restored to reason. Somers v. Board, 123 N. C. 582, 584, 31 S. E. 873.

§ 162-6. Fees of sheriff.—Sheriffs shall be allowed the following fees and expenses, and no other, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action and taking bail, including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, two dollars.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, five cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the board of commissioners of the county in which the criminal proceedings were instituted.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and five cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled. Provided, that when the summons in a civil action or special proceedings shall be from any court of any county other than his own county, the sheriff's fees for serving the same shall be one dollar ($1) for each defendant named therein; and such service shall include the delivery of copy of said summons and complaint or petition attached to the original summons; and that for subpoenas served from other than the county of said sheriff he shall receive a fee of fifty cents (50c.) for each witness named therein.

The preceding sentence shall not affect fees provided in § 162-7 for service upon the waters of the counties of Carteret, Dare, Hyde, and Pamlico. For the service of summons together with a copy of the complaint, petition or other pleading, the sheriff shall have the fees now prescribed by law in the respective counties for the service of summons only, and shall not be entitled to an additional fee for serving the copy of the pleading unless it is necessary that it be served separately. (Rev., s. 2777; Code, ss. 931, 2089, 2090, 2135, 3752; 1885, c. 262; 1891, cc. 112, 143; 1903, c. 541; 1901, c. 64; R. C., c. 102, s. 21; R. C., c. 31, s. 56; 1822, c. 1132; 1924, c. 101; 1925, c. 275, s. 6; 1929, c. 227; 1933, c. 132; 1939, c. 138, s. 2; C. S. 3908.)

Cross References.—As to costs of laying off homesteads and personal property exemptions, see § 6-28. As to costs in reassessment of homestead, see § 6-29 and notes thereto. As to payment of certain sheriff's fees by county, see § 6-36. As to statute of limitation against fees due sheriff, see § 1-52.

Editor's Note.—This section was amended by the Laws of 1924, and again by the Laws of 1925. Chapter 101, Laws 1924, added the final proviso to the section which fixes the sheriff's fees for summons and subpoenas from outside the county, placing the fee for the former at one dollar, and for the latter at fifty cents.

Chapter 275, section 6, subsection 2, Laws 1925, further amended the section by striking out after the word "by" in line thirty-one of said section down to and including the word "thereof" in line thirty-eight of said section and inserting in lieu thereof the following: "the Board of Commissioners of the county in which the criminal proceedings were instituted," thus removing the cost from the State and placing it upon the county of the proceedings.

Public Laws of 1933, c. 132, reduced the mileage fee for bringing up a prisoner upon habeas corpus from ten cents per mile to five cents per mile.

The Act of 1929 added the last sentence to this section.

The 1939 amendment substituted "two dollars" for "one dollar" in line fourteen.

Construed with Section 6-36.—The true construction of this section regulating the fees of sheriffs is had by reading as a proviso at the end thereof section 6-36. Coward v. Commissioners, 137 N. C. 299, 301, 49 S. E. 207.

Legislative Control of Sheriffs' Salaries and Fees.—One who accepts a public office does so, with well defined exceptions as to certain constitutional offices, under the authority of the Legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the Legislature, and the same may be reduced during the term of the incumbent, or he may therein be compensated by a salary instead of on a fee basis. Mills v. Deaton, 170 N. C. 386, 86 S. E. 123, State v. Gentry, 183 N. C. 825, 112 S. E. 427; Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269.

Commissions When Debtor Pays after Levy.—At common law a sheriff could not demand commissions, although the debtor paid the creditor the amount of the judgment after he had received the execution and made his levy. He was allowed to do so at first under the Act of 1784. Pass v. Brooks, 118 N. C. 397, 398, 24 S. E. 736.

In Dawson v. Grafflin, 84 N. C. 100, when property was levied on and advertised for sale under execution, but payment was made before sale, the sheriff was allowed no commission on the sale. The rule in that case is now changed by this section. Cannon v. McCape, 114 N. C. 580, 581, 584, 19 S. E. 703, 20 S. E. 276.

Whenever a sheriff into whose hands an execution is placed levies the same and advertises a sale, he becomes entitled to his commissions. And if the plaintiff in the execution receives the amount from the debtor, the orders the same to be returned unexecuted, he makes himself liable for the sheriff's fees. Willard v. Satchwell, 70 N. C. 268, which is in conformity with the section, which changes the ruling in Dawson v. Grafflin, 84 N. C. 100.

Collecting Executions for Money.—It was said by Manly, J., in Dibble v. Aycock, 58 N. C. 399, 400: "The law upon the subject of sheriff's fees, Revised Code, Chap. 102, sec. 21, (now this section) gives 2 1-2 per cent commission to that officer upon all moneys collected by him by virtue of any levy, and the like commissions for all moneys that may be paid to the sheriff by the defendant while such precept is in the hands of the sheriff, and after levy. The sum upon which commission is asked, (in the instant case) was paid into the office of the court, for plaintiff, while the precept was in the sheriff's hands, and after a levy. The case is strictly, therefore, within the provisions of the law. That the payment was made under a condition for an injunction does not affect the question at all."

A sheriff is entitled to commissions only on moneys actually collected by himself under execution, and not where the same is paid the plaintiff by defendant after levy. Dawson v. Grafflin, 84 N. C. 100, 101.

When Sheriff Has Lien.—A lien exists in favor of the sheriff when he does not require the plaintiff, as he has a right to do, to pay his fees in advance. In such instances he has the right of retainer to the extent of the costs out of the amount collected, and can not be compelled to look exclusively to the plaintiff's prosecution bond, nor prevented from exhausting his remedy against the debtor, by reason of any receipt or compromise between the judgment creditor and debtor. Long v. Walker, 105 N. C. 90, 10 S. E. 858.

When Process Returned "Fees Not Paid."—Where the return of the sheriff was as follows, to wit: "Defendant does not petition for homestead, and the plaintiffs refuse to pay homestead fees. No action; the necessary fees not paid." The court held that an officer cannot be required to execute process unless his fees be paid or tendered by the person in whose interest the service is to be rendered. Lute v. Reilly, 65 N. C. 20, 21. Taylor v. Rhyne, 65 N. C. 530.

A sheriff is not required to sell the excess of realty beyond

the homestead, until the plaintiff has paid, or offered to pay, his fees for so doing. Taylor v. Rhyne, 65 N. C. 530.

Writ of Ejectment.—A sheriff is not entitled to any extra compensation for executing a "writ of ejectment," or a "writ of possession." Allen v. Spoon, 72 N. C. 369.

Summons of Tales Jurors.—There is no provision giving sheriffs compensation for the service of summoning tales jurors. This is one of the many gratuitous services expected to be performed by sheriffs. The Legislature, no doubt, deemed such service too trivial to be the subject of compensation, for all a sheriff has to do in a performance of the duty is to stand at his desk in the courthouse and, when a deficiency of jurors occurs, order A, B and C to take seats in the jury box. Bryan v. Commissioners, 84 N. C. 105, 106.

Power of Judge to Order Commissioners to Pay. — The judge of the superior court has no power to order the commissioners of one of the counties in his district to pay the sheriff any sum for his services in attending the court. Brandon v. Commissioners, 71 N. C. 62, cited and approved; Griffith v. Commissioners, 71 N. C. 340.

New Trial Awarded Where Number of Prisoners Conveyed Is Not Shown.—Where, in an action by a sheriff to recover compensation for transportation of prisoners under this section, it does not appear from the facts agreed how many prisoners were conveyed to jails in other counties by the sheriff or how many miles such prisoners were conveyed, a new trial will be awarded in order that the facts necessary to a determination of the question may be found and a proper adjudication made thereon. Patterson v. Swain County, 208 N. C. 453, 181 S. E. 329.

§ 162-7. Local modifications as to fees of sheriffs.—The sheriff of Hyde county shall be allowed the sum of two dollars for serving all warrants or capiases or other criminal processes on the waters of Pamlico sound or on the waters of any bay in Hyde county. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde and of Dare county to serve any civil process upon the waters of Pamlico sound and waters of Dare county or any bay in Hyde county, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of Hyde and Carteret counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke island, Hyde county, and Portsmouth in Carteret county. (Rev., s. 2777; 1907, c. 206; C. S. 3909.)

The sheriff of Dare county shall be allowed his actual traveling expenses incurred by him in serving warrants, capiases or other criminal process on the waters of Dare county or at any point in Dare county across the water. (1909, c. 527; C. S. 3909.)

For every illicit distillery seized as required by law the sheriffs of Haywood, Lincoln, Pitt and Transylvania counties shall receive the sum of twenty dollars, and in Madison county thirty dollars, which shall be allowed by the commissioners of the county in which the seizure was made. (Ex. Sess. 1908, c. 97; P. L. 1919, c. 30; C. S. 3909.)

For each person summoned on a special venire the sheriff of Robeson county shall receive thirty cents; but not for a special venire ordered to be summoned from the bystanders, in which case he shall receive ten cents for each person so summoned. (1909, c. 317; C. S. 3909.)

The sheriff of Wayne county shall receive the following fees, in addition to other fees allowed by law, for services of the following processes:

For arrest fee for state warrant	$ 2.00
For arrest fees for capias	2.00
Fees for claim and delivery	3.00
Fees for ejectment proceedings	2.00
Fees for service of executions on civil judgments	2.00

(1937, c. 254.)

The sheriff of Greene County shall be allowed the following fees, viz.:

Arrest of a defendant in a civil action and taking bail including attendance to justify, and all services connected therewith, two dollars ($2).

Arrest of any person indicted including all services connected with taking of bail, two dollars ($2).

Taking any bond or undertaking, including furnishing the blanks, seventy-five cents (75c).

Executing a subpoena on a witness, fifty cents, when not traveling less than one mile to do so.

Levying an attachment, two dollars ($2).

Service of writ ejectment, two dollars ($2).

Serving claim, and delivery process, two dollars ($2).

Advertising sale of property under execution at each place required thirty-three and one-third cents (33 1/3c). (P. L. 1919, c. 313; C. S. 3909.)

The Sheriff of Northampton County shall collect for the use of Northampton County the following fees:

Serving civil summons, one dollar for each defendant;

Subpoena, for each person, thirty cents;

For each arrest, two dollars. (1931, c. 11, s. 4.)

The board of county commissioners of Mitchell County shall make provision in the county budget for the fiscal year beginning July first, one thousand nine hundred thirty-two, for the payment of the salary of the Sheriff, which is hereby fixed at the rate of three thousand ($3,000) dollars per annum payable in equal monthly installments and shall also make provision in said budget for the payment to the sheriff at the same rate per annum for such time as he has served as sheriff since the first Monday of December, one thousand nine hundred thirty.

In addition to the salary, as hereinabove provided, the sheriff of Mitchell County shall be entitled to all fees and emoluments accruing to him, by virtue of his office, including such fees as are provided in chapter fifty-six, Public Laws of one thousand nine hundred twenty-nine. (1931, c. 53, ss. 6, 8.)

The Sheriff of Harnett County shall be allowed the following fees:

For an arrest, one dollar and fifty cents ($1.50), with fifty cents (50c) additional for taking bond.

For the service of summons, with or without complaint attached, or for the service of notices, execution, or other Court orders, a fee of one dollar each for the first five persons upon whom the process is served; and fifty cents for each additional person.

For the service of claim and delivery process, two dollars for the first defendant, and one dollar each for additional defendant; also actual expenses of caring for property seized.

For the collection of judgments, five per cent

on the first five hundred dollars, and two and one-half per cent upon all amounts in excess of five hundred dollars.

In allotting homesteads, a fee of fifty cents for each appraiser and one dollar to the sheriff for his return, and an additional allowance of one dollar each for the use and benefit of each appraiser.

Guardhouse fees shall be sixty cents.

There shall be taxed in each bill of costs for the use and benefit of the Sheriff of Harnett County in all cases wherein defendants have been convicted or pleaded guilty to the charge of manufacturing whiskey or possession of any whiskey still, the sum of $10.00 for each still captured by the Sheriff or his Deputies and for which such defendant or defendants may have been found guilty or pleaded guilty of possessing.

The Sheriff of Harnett County shall receive for his services all such fees as are now allowed by law and not herein specifically enumerated. (1933, c. 75, s. 1; 1943, c. 422.)

Editor's Note.—The 1943 amendment increased the fee for arrest by sheriff of Harnett county from one dollar to one dollar and fifty cents.

Illicit Distilleries.—The fees or emoluments incident to a sheriff's office as allowance for the seizure and destruction of illicit distilleries, are excluded by a public-local law applicable to a certain county, subsequently enacted, but prior to the commencement of the term of the incumbent, wherein it is provided that the sheriff shall turn over to the county treasurer all moneys collected from fees, and receive a specified sum as a salary in lieu of his fees, with exception only of certain fees allowed to his township deputy in certain instances, the duty to seize the illicit distilleries being the same as any other required of him as sheriff of the county. Thompson v. Board, 181 N. C. 265, 107 S. E. 1.

Art. 2. Sheriff's Bonds.

§ 162-8. Sheriff to execute two bonds.—The sheriff shall execute two several bonds, payable to the state of North Carolina, as follows:

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The second bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden ..... is elected and appointed sheriff of ..... County; if, therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then the above obligation to be void; otherwise to remain in full force and effect. (Rev., s. 298; Code, s. 2073; R. C., c. 105, s. 13; 1777, c. 118, s. 1; 1823, c. 1223; 1879, c. 109; 1895, c. 270, ss. 1, 2; 1899, c. 207, s. 2; 1903, c. 12; 1899, c. 54, s. 52; 1943, c. 543; C. S. 3930.)

I. General Incidents of Bond.
II. Liability on Official Bonds.
  A. Liability Limited to Terms of Bonds.
  B. Successive Terms and Successive Bonds.
  C. Irregularities or Informalities in Bond.
III. Actions on Bonds.

CROSS REFERENCES.

As to official bonds generally, see §§ 109-1 et seq. As to duty of county commissioners to bring suit on sheriff's bond, in case of default, see § 155-18 and notes thereto. See also §§ 162-9 and 162-10. As to right of action on official bond, see § 109-34, and notes thereto.

I. GENERAL INCIDENTS OF BOND.

Editor's Note.—Prior to the 1943 amendment the sheriff was required to execute three bonds.

When Sheriff Fails to Comply.—Where the sheriff had not complied with the requirements of this section, it was held that he was not entitled to have the county commissioners induct him into office. Colvard v. Board, 95 N. C. 515, 518.

And this is true notwithstanding the fact that at the beginning of his term there is a tax collector in that county. Colvard v. Board, 95 N. C. 515.

When Section Complied with.—But when a sheriff-elect has fulfilled all the statutory requirements as to the execution of bonds, it is not competent for the county commissioners to refuse the said bonds and deprive the rightful holder of his office. Sikes v. Commissioners, 72 N. C. 34.

Ceremony. — The ceremony of acknowledgment in open court, and registration, are not essential to the validity of a sheriff's bond. State v. Buchanan, 53 N. C. 444.

Sufficiency of Form.—A sheriff's bond to "his Excellency M. S. Captain General and Commander in Chief, in and over the State of North Carolina in the sum of $10,000, to be paid to his Excellency, the Governor, his successor and assigns:" is a bond payable to the Governor in his official capacity, and is an official bond within the Act of 1823, which was in force when it was taken. Governor v. Montford, 23 N. C. 155.

School Fund Included in County Bond.—It is immaterial whether the school fund is, strictly speaking, State taxes or county taxes, or partly both. They are included in the "county" bond and the sheriff must account for them in settling his liability on that bond. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709; State v. Sutton, 120 N. C. 298, 301, 26 S. E. 920.

Process Bond Not Liable for County Taxes.—The county tax cannot be recovered of the sheriff upon the official bond required by the Act of 1777, which is the process bond required by this section. Governor v. Barr, 12 N. C. 65.

The case of Governor v. Crumpler, 12 N. C. 63, holds that the sureties on the "process" bond are not liable for default as to county taxes, which is true now, as it was then. State v. Sutton, 120 N. C. 298, 301, 26 S. E. 920.

II. LIABILITY ON OFFICIAL BONDS.

Editor's Note.—See 12 N. C. Law Rev. 394, for note "Extent of Liability on Sheriff's Official Bond."

A. Liability Limited to Terms of Bond.

Rule of Construction.—In a bond given for a specific object, general words shall be construed with reference only to that object. Therefore, when a bond is given with a condition that A. M. shall "collect the county contingent tax, and in all things perform his duty as sheriff" the public taxes cannot be recovered on it. Crumpler v. Governor, 12 N. C. 52.

Duties Specifically Described.—A sheriff and his sureties are liable on his official bond only for a breach of some duty specifically described therein. Eaton v. Kelly, 72 N. C. 110.

The general provisions of the bond as to the sheriff's performance of the duties of his office relate to the specific obligations therein set out as to process, and neither the sheriff nor the sureties on his bond are liable in a civil action for damages for injury inflicted by the sheriff while acting in his official capacity. State v. Leonard, 68 F. (2d) 228, 229.

Not Extended as to Years.—Where an action was brought on the bonds of a sheriff, given in 1872 and 1873 and conditioned only for those years, they could not be enlarged to embrace a default occurring in the year 1874 on the ground that the law required a bond for the principal's whole term of office. State v. McNeill, 77 N. C. 398.

Where Separate Bond Including All Official Duties Omitted.—Where the condition of a sheriff's bond is made in clear and unambiguous terms to secure the performance of a certain class of duties imposed on him by statute, the super-addition of general terms thereto, though large

enough to include all of his official duties, for which by law a separate bond is directed, but omitted to be given, will not extend the liability of sureties to such other duties. Governor v. Matlock, 12 N. C. 214.

Same—Examples.—In Crumpler v. Governor, 12 N. C. 52, the sheriff had given four bonds, but the condition of no one of them provided for the payment of the State taxes, the non-payment of which was the breach alleged. All of them contained general words, "faithfully execute the office," etc. It was held that these words did not extend beyond the duties specially described and provided for in the preceding clause. Mr. Justice Henderson dissented from the conclusion of the court, but he concurred in this rule of construction, and states it with great clearness and force.

State v. Long, 30 N. C. 415, was an action on a bond with a condition containing general words. In that case it was held that these words did not impose on the sureties an obligation that the sheriff should commit no wrong by color of his office, nor do anything not authorized by law. See also Jones v. Montford, 20 N. C. 69; State v. Brown, 33 N. C. 141; Commissioners v. Sutton, 120 N. C. 298, 301, 26 S. E. 920.

State v. Bradshaw, 32 N. C. 229, is not in conflict with the cases generally on this subject. That case simply decides that a bond to serve process, collect and pay out moneys, etc., is broad enough to cover money collected for a town which it was the sheriff's duty to collect. See State v. McNeill, 77 N. C. 398, 403.

Trespass under Color of Office.—The sureties in the official bond of a sheriff are not liable for damages for a trespass committed by the sheriff under color of his office. State v. Brown, 33 N. C. 141, cited in note in 21 L. R. A. 738. See also, State v. Long, 30 N. C. 415.

When New Duty Attached.—Where a statute requires a bond from an officer for the faithful discharge of his duty, and a new duty is attached to the office by statute, such bond, given subsequently to the latter statute, embraces a new duty, and is a security for its performance, unless where, when the new duty is attached, a bond is required to be given specifically for its performance. State v. Bradshaw, 32 N. C. 229.

Liability for Injury Caused by Prisoner While Unlawfully at Large as Trusty.—The statutory bonds required to be given by a sheriff under this section may be put in evidence as though they had been written as prescribed by § 109-1, and where suit is brought on one of the bonds which provides for liability if the sheriff fail to properly execute and return all process, or properly pay all moneys received by him by virtue of any process, "and in all things well and truly and faithfully execute the said office of sheriff," the general provisions of the bond as to the sheriff's faithful performance of the duties of the office relate to the specific obligations therein set out as to service and return of process, and neither the sheriff nor the sureties on his bond is liable thereon in a civil action for damages for a negligent injury inflicted by a prisoner lawfully intrusted to the custody of the sheriff while such prisoner was unlawfully permitted by the sheriff to be at large as a trusty. Sutton v. Williams, 199 N. C. 546, 155 S. E. 160.

Liability for Deputy's Negligent Injury of Prisoner in Jail.—The liability of the surety on the bond of a public officer is limited by the terms of the bond, and the condition of the bond of a sheriff for the "faithful execution of his office" refers to the specific condition for the "due execution and return of process" and the terms of the statutory bond do not impose liability on the surety for the negligent act of a deputy unconnected with the execution and return of process, and the surety's motion to nonsuit is properly granted in a prisoner's action to recover for negligent injury inflicted by a deputy while he was in jail. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366.

Liability for Use of Excessive Force in Making Arrest.—Where the complaint in an action against a sheriff in his official capacity and against his surety alleged that plaintiff was permanently injured by the sheriff's use of excessive force in arresting him, and that the arrest was wrongful and unlawful, defendants' demurrer to the complaint should have been overruled, since, even if the terms of the bond "and in all other things well and truly and faithfully execute the said office of sheriff," refer solely to the specific duties enumerated and do not impose liability for the wrong alleged, the provision of § 109-34 extends the liability on the sheriff's general official bond and imposes liability for the wrong alleged committed under color of his office. Price v. Honeycutt, 216 N. C. 270, 4 S. E. (2d) 611.

Change of Amount of Salary or to Fee Basis.—The liability of a surety on a sheriff's bond, given under this section is not affected by the fact that the sheriff, pending the life of the bond, has been put upon a salary instead of a fee basis, or the amount of his salary has been changed under the authority of a statute. Pender County v. King, 197 N. C. 50, 147 S. E. 695.

B. Successive Terms and Successive Bonds.

The various bonds separately required to be given by the sheriff under this section imposes a distinct liability on the sureties on each bond separately for the terms of office for which given, and where one is given by the same surety for the same sheriff for more than one successive term, the giving of the bond for the succeeding term does not discharge the bond previously given nor release the surety from liability thereon, and a separate cause of action lies against the surety on the bond for each term. Pender County v. King, 197 N. C. 50, 147 S. E. 695.

Appointment of Sheriff Removed for Failure to Give Bond.—Where under § 162-10, the board of county commissioners has declared the office of sheriff of that county vacant for his failure to give the bond required by this section, and has appointed another who likewise failed to give the bonds, and has again appointed the former sheriff, who gives the necessary bonds and then qualifies, his term is by virtue of his appointment by the board of County Commissioners, and the liability of the sureties on his official bonds commences from the time of his appointment. Pender County v. King, 197 N. C. 50, 147 N. E. 695.

Failure to Renew Bond.—The sureties on the bond of a sheriff are liable for all official delinquencies of which the principal may be guilty during the continuance of his term of office. Where a sheriff, elected in 1872, continued to exercise the duties of the office after his failure to renew his bond and produce his receipts, and was re-elected in 1874, and failed to collect and pay over the taxes for that year, held, that he was liable on his bond of 1872. State v. Pipkin, 77 N. C. 408. See also, State v. McNeill, 74 N. C. 535; State v. Clarke, 73 N. C. 255; State v. McIntosh, 31 N. C. 307.

Effect of Termination of Incumbency.—When the deputy of a sheriff received the note of a married woman for collection within a magistrate's jurisdiction, and failed to collect the same during the sheriff's official term, but afterwards, when acting as the deputy of his successor, collected it and failed to pay over the money, it was held that there was no breach of the former sheriff's official bond. State v. Buchanan, 60 N. C. 93.

Taxes for Preceding Year.—A sheriff's sureties for one year are not liable for any taxes received by him under the lists furnished in the preceding year; but the sureties of that year are liable. Fitts v. Hawkins, 9 N. C. 394.

C. Irregularities or Informalities in Bond.

When Valid as Voluntary Bond. — When a bond made payable to the State is given by a sheriff for the discharge of public duties, though not taken in the manner or by the persons designated by law to take it, will be good as a voluntary bond. Being for the benefit of the State, the State will be presumed to have accepted it when it was delivered to a third person for its benefit. State v. McAlpin, 26 N. C. 140.

Excessive Bond.—If a sheriff voluntarily give bond, with sureties, in an amount larger than is prescribed by law, they will be liable for a breach thereof. Governor v. Matlock, 9 N. C. 366; State Bank v. Twitty, 9 N. C. 5.

III. ACTION ON BONDS.

Demand Unnecessary.—A demand is not necessary before suit by the county treasurer on a sheriff's bond, as the sheriff is required by law to settle on or before a day certain. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627.

Proper Relator for Settlement of School Taxes.—The Code of 1883, sec. 2563, made the county commissioners the proper relators in an action on the sheriff's bond to compel a settlement of the school taxes. The Acts of 1889, ch. 199, substituted the county board of education as relators (Board v. Wall, 117 N. C. 382, 23 S. E. 358), but Acts of 1895, ch. 439, abolished the county board of education and again made the county commissioners the proper relators. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709; State v. Sutton, 120 N. C. 298, 301, 26 S. E. 920.

Certified Copy as Evidence.—The office of the clerk of the superior court of the county for which one is sheriff is the proper place of deposit for the bond of such sheriff: Therefore, a copy of such bond, certified by such clerk, is competent evidence of its contents. Such a copy is competent (at least under the maxim, omnia presumuntur, etc.) even although the certificate does not state that it has been recorded. State v. Lawrance, 64 N. C. 483.

Previous Settlements Prima Facie Correct. — Previous settlements with the sheriff, when approved by the board

of commissioners, are prima facie correct, and the burden of proving to the contrary rests upon them. Commissioners v. White, 123 N. C. 534, 31 S. E. 670.

Settlement of One Tax Fund at Expense of Another. — Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, the settlement exonerates him and his surety from liability on the bond for the taxes settled; he and his sureties are liable in an action on the bond for the taxes misappropriated for such defalcation. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627.

Plea in Bar.—The general rule is that where there is a plea in bar it must be disposed of before a reference for an account can be made. Commissioners v. White, 123 N. C. 534, 31 S. E. 670.

Summary Judgment Set Aside.—Where judgment is entered up summarily against the sureties of a sheriff, upon a proper case, it will be set aside. Crumpler v. Governor, 12 N. C. 52.

When Sum Differs from That Required.—A sheriff's bond payable to the Governor and his successors in a sum different from that directed by law, cannot be sued in the name of the successor. Governor v. Twitty, 12 N. C. 153.

Failure to Take Bail in Civil Cases.—In Governor v. Jones, 9 N. C. 359, it was held that the sheriff was not liable in debt upon his official bond for omitting to take bail when he executed a capias in civil cases; but must be proceeded against as bail by sci. fa.

Return Conclusive.—The return of a sheriff that a fi. fa. is satisfied is conclusive upon his sureties in an action on his official bond. Governor v. Twitty, 12 N. C. 153.

Failure to Have Insolvent's Allowance Made. — Where a sheriff failed to settle for taxes within the time appointed by law and not having had allowance made him by the commissioners for insolvents at the time and in the manner prescribed by law, he cannot have such allowances made by the court in an action brought against him on his official bond for the balance due by him on the tax list. Board v. Wall, 117 N. C. 377, 378, 23 S. E. 358.

Costs in Contested Election.—In Patterson v. Murray, 53 N. C. 278, it was held that a contested sheriff's election before the justices of a county court, was not an action which entitled the successful party to recover costs.

Misjoinder.—Where a sheriff has been elected for successive terms of office, and appointed for a third term by the county commissioners after the office for his third term had been declared vacant, an action against him and the sureties on his bonds given under the provisions of this section, for defalcation during the successive terms is a misjoinder of parties and causes of action, and a demurrer thereto is good. Pender County v. King, 197 N. C. 50, 147 S. E. 695.

§ 162-9. County commissioners to take and approve bonds.—The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safekeeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reënter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected. (Rev., s. 2812; Code, ss. 2066, 2068; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; R. C., c. 105, s. 6; 1806, c. 699, s. 2; 1830, c. 5, s. 5; C. S. 3931.)

Cross References.—See also § 153-9, subsecs. 11, 12. As to disqualification for office, see § 162-2.

Purpose.—The evident purpose of the section is only to protect and safeguard the public revenue and to insure its honest collection and application. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995.

Execution and Approval of Bonds.—To entitle a sheriff to be inducted into office, it is essentially necessary that three several bonds must be executed by him and approved by the county commissioners. Dixon v. Commissioners, 80 N. C. 118.

Not Liable to Sureties for Failure to Demand Receipt.—The county commissioners are not liable to the sureties on the bond of a defaulting sheriff and tax collector whose defalcations they were required to pay, for a failure to demand of the sheriff his receipts in full, for the taxes collected the previous year before permitting him to receive the tax duplicate for the current year. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995.

Cited in Pender County v. King, 197 N. C. 50, 53, 147 S. E. 695.

§ 162-10. Duty of commissioners when bonds insufficient.—It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties. (Rev., s. 2813; Code, s. 2074; 1879, c. 109, s. 2; C. S. 3932.)

Cross References.—As to bonds required of sheriff, see § 162-8; see also §§ 153-9, subsecs. 11, 12, and 162-5. As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15.

Right to Examine Sheriff and Vacate Office. — Under article seven, section 2 of the Constitution (1868 as revised) the county commissioners have the right to summons the sheriff to justify or renew his official bond, whenever in fact, or in their opinion the sureties have become, or are liable to become insolvent. And it is not only the right, but the duty of the commissioners, to declare the office of sheriff vacant, and appoint one for the unexpired term, whenever the incumbent thereof takes no notice of a summons by the commissioners to appear before them and justify or renew his bond. People v. Green, 75 N. C. 329.

Power to Fill Vacancy.—Upon the failure of a sheriff elect to give bonds required by law, the board has power to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 342, 130 S. E. 25.

Cited in Pender County v. King, 197 N. C. 50, 53, 147 S. E. 695.

§ 162-11. Liability of commissioners.—If any board of county commissioners shall fail to comply in good faith with the provisions of this article, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. (Rev., s. 2814; Code, s. 2075; 1868-9, c. 245, s. 3; C. S. 3933.)

Court Cannot Compel Approval. — The boards of county commissioners are liable in damages if they knowingly accept insufficient bonds, and approval or disapproval of such bonds is within their discretion, and the courts cannot compel them to approve and receive bonds which they find to be insolvent or insufficient. State v. King, 117 N. C. 117, 23 S. E. 92.

Liable for All Loss.—If any board of commissioners shall fail to comply with the provisions of the statute, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. Lenoir County v. Taylor, 190 N. C. 336, 341, 130 S. E. 25.

When Liable for One Penalty Only.—The statutes requiring the sheriff to renew annually his official bonds, and, in addition, produce receipts for the public moneys collected by him, and in default thereof it shall be the duty of the board of county commissioners to declare the office vacant, are intended to effectuate the same purpose, and therefore a member of the board of county commissioners is liable for only one penalty for failure to perform his duty in that connection. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729.

§ 162-12. Liability of sureties.—The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (Rev., s. 2815; Code, s. 2076; R. C., c. 105, s. 14; 1829, c. 33; C. S. 3934.)

Cross Reference.—See § 162-8 and notes thereto.

Liable for Amercements.—The sureties to a sheriff's bond, with a condition in the ordinary form, are liable for an

amercement of the sheriff for a default committed during his official year, though the final judgment for the amercement may not have been rendered until after the expiration of the year. Governor v. Montford, 23 N. C. 155.

Same—Records of Proceedings as Evidence.—The records of the proceedings against a sheriff for an amercement imposed upon him, are not evidence against his sureties to prove his default; but they are admissible against them to prove the fact of the existence of the amercement itself. Governor v. Montford, 23 N. C. 155.

Return Conclusive.—A sheriff cannot be heard to deny or contradict his return; as to him it is conclusive, and he and the sureties upon his bond are liable to the plaintiff in the execution for the sums so indorsed. Walters v. Moore, 90 N. C. 41.

Judgment or Amercement Not Conclusive.—A judgment of an amercement against a sheriff is not conclusive against the sureties on his bond. They may show that the judgment was either fraudulently or improperly obtained against their principal. State v. Woodside, 29 N. C. 296.

Art. 3. Duties of Sheriff.

§ 162-13. To receipt for process.—Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (Rev., s. 2816; Code, s. 2081; R. C., c. 105, s. 18; 1848, c. 97; C. S. 3935.)

Cross References.—As to collection of inheritance taxes by sheriff and commission therefor, see § 105-17. As to attendance upon county court, see § 7-337. As to duty to adjourn court in absence of judge, see § 7-76.

This section obviously has no reference to final process. Wyche v. Newsom, 87 N. C. 144, 145.

§ 162-14. Execute process; penalty for false return.—Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding term after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages.

Every sheriff and his deputies, and every constable, shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof, to be paid to the party aggrieved by order of such court, upon motion and proof of such delivery, unless the sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the officer shall be duly notified. (Rev., s. 2817; Code, s. 2079; 1899, c. 25; R. C., c. 105, s. 17; 1777, c. 218, s. 5; 1821, c. 1110; 1874, c. 33; C. S. 3936.)

I. General Considerations.
II. Neglect or Failure to Make Due Return.
  A. In General.
  B. What Constitutes Failure and Defenses.
    1. The Essential Elements of Failure.
    2. When Return Is Sufficient.
  C. Actions Concerning Amercements.
III. False Return.
IV. Writs from Justice's Court.

CROSS REFERENCE.

See §§ 14-242, 162-17.

I. GENERAL CONSIDERATIONS.

Summary of Section.—The section authorizes the following penalties and remedies: 1. An amercement nisi for $100, on "motion and proof" by the party aggrieved, for failure to "execute and make due return." 2. A qui tam action for penalty of $500 for a "false return," one moiety to the party aggrieved, and the other to any one who will sue for the same. 3. An action for damages by the party aggrieved. 4. An amercement nisi for $100 in justices' courts, on "motion and proof" by the party aggrieved, for "neglect or refusal" to execute process of such court. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 76, 11 S. E. 264.

Who May Issue Process.—Process can be issued by the mayor of a town or city to any lawful officer such as a sheriff, whose duty it then becomes to execute and make due return. State v. Cainan, 94 N. C. 880; Paul v. Washington, 134 N. C. 363, 385, 47 S. E. 793.

"Return" Defined. — The term "return" means that the process must be brought back and produced in the court whence it issued with such indorsement as the law requires. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836.

What Constitutes Due Return.—In Waugh v. Brittain, 49 N. C. 470, 471, it was said by Battle, J.: "We concur with his Honor in the opinion, due return of process, means a proper return, made in proper time; and such, we believe, has always been the construction put upon those words, as used in the Act of 1777, Rev. Code, ch. 105, sec. 17 [now this section.]"

A return of a sheriff to a fi. fa. that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that, after the day, it was too late to make a sale," is not such a "due return" of the process as will exempt the sheriff from amercement. Frost v. Rowland, 27 N. C. 385.

Where a sheriff indorsed upon an execution the words, "debt and interest due to sheriff, costs paid into office"; and upon another, the word "satisfied," without stating what disposition he had made of the fund the returns were held to be sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142.

Nor is he required to note thereon the date of its delivery to him. (The Act of Assembly has no reference to final process.) Person v. Newsom, 87 N. C. 142.

Same—Mixed Question of Law and Fact.—Whether, in any particular case, a due return has been made, may involve questions, both of law and fact. Whether the return is a proper one in form and substance is a question of law, to be decided by the court, but whether it was made in proper time, is a question of fact, to be decided by the jury. Waugh v. Brittain, 49 N. C. 470.

Manner of Making Return—By Mail.—If, then, the mail can be used as a medium by which process can be transmitted to a sheriff, so as to charge him with its reception, it would seem that he ought to be allowed to adopt the same means for making his return, at least so far as the due time of the return is involved. In Waugh v. Brittain, 49 N. C. 470, it was intimated that he might do so, and that he would be excused if the letter, indorsing the process, with his return upon it, was properly mailed in due time. Cockerham v. Baker, 52 N. C. 288, 289; affirmed in Yeargin v. Wood, 84 N. C. 326, 329.

Fees in Advance.—Until his fees are paid or tendered, a sheriff is not bound to execute process. Johnson v. Kenneday, 70 N. C. 435.

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

An amercement is a penalty, and is for a fixed sum without regard to the amount of the plaintiff's damage. Thompson v. Berry, 65 N. C. 484, 485.

Subsequent Term.—A sheriff may be amerced for a non-return of process at a term subsequent to that at which the process was returnable. Hyatte v. Allison, 48 N. C. 533.

A sheriff, failing to execute and return process, shall be subject to a penalty to be paid to the party aggrieved, by order of the court, on motion, and proof that process was delivered to him before the sitting of the court to which it was returnable, unless the sheriff shows sufficient cause to the court for his failure "at the court next succeeding such order." And there is nothing in the statute to prevent a sheriff not returning process from being amerced at a subsequent term to that to which the return should have been made. Halcombe v. Rowland, 30 N. C. 240.

Expiration of Term.—A sheriff, who goes out of office before the return day of the writ delivered to him, is not subject to amercement for failure to return it. McLin v. Hardie, 25 N. C. 407; State v. Woodside, 29 N. C. 296.

Process Must Be Delivered Twenty Days before Term.—To bring a delinquent officer within the provisions of the statute and subject him to its pains, the process must have been delivered to him twenty days before it is to be returned, and there must be "proof of such delivery." Yeargin v. Wood, 84 N. C. 326, 328.

When Returnable.—Executions shall be returnable to the term of the court next after that from which they bear teste. The sheriff is allowed all the days of the term to return an execution, unless he be ruled, upon motion and cause shown, to return it on some intermediate day. Person v. Newsom, 87 N. C. 142; Turner v Page, 111 N. C. 291, 292, 16 S. E. 174.

A sheriff who fails to make return of process before the adjournment of the court to which it is returnable, is subject to the penalty prescribed by statute. Turner v. Page, 111 N. C. 291, 16 S. E. 174; Boyd v. Teague, 111 N. C. 246, 16 S. E. 338.

Not Applicable to Federal Marshal.—In Lowry v. Story, 31 Fed. 769, 770, it was said by Dick, J.: "The motion before us is founded upon this law of the state imposing a penalty upon sheriffs who fail or neglect to execute process duly issued to and received by them. The motion cannot be allowed, as this court has no power to enforce against the marshal a penalty imposed by the law of this state upon a sheriff for neglect of duty. A federal court has no power to execute the penal laws of a state." Gwin v. Breedlove, 2 How. U. S. 29, 11 L. Ed. 167, affirmed in Gwin v. Barton, 6 How. U. S. 7, 12 L. Ed. 321.

B. What Constitutes Failure and Defenses.

1. The Essential Elements of Failure.

In General.—The delivery of the process to the officer and his failure to execute its commands and make due return are essential ingredients in the criminal dereliction of duty followed by the penal consequences thus summarily enforced. Yeargin v. Wood, 84 N. C. 326, 329.

Insufficient Return.—Under the Act of 1777 (Rev. St. c. 109, § 18), imposing a fine on a sheriff for not making due return of process placed in his hands, a return by the sheriff on a fi. fa. that he has levied on goods subject to older executions, without stating whether he had sold property seized or still held it, is not a due return, and subjects him to amercement. Buckley v. Hampton, 23 N. C. 322.

A return of a sheriff to a fi. fa. that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that after the day it was too late to make a sale," is not such a "due return" of the process as will exempt the sheriff from amercement. Frost v. Rowland, 27 N. C. 385.

Failure to Sell Property and Make Return.—A sheriff who had not sold property under execution nor made return on writs of venditioni exponas, should be amerced. Anonymous, 2 N. C. 415.

Agreement of Parties.—Where a scire facias was issued on a judgment, the sheriff was liable to amercement for failure to return the process, though the parties agreed, while it was in the sheriff's hands, that the collection of the money should be suspended, so as to enable them to make a full settlement. Morrow v. Allison, 33 N. C. 217.

Refusal of Clerk to Receive Return.—It is not a sufficient excuse to an officer for neglecting to return a process to the proper term of the court that he had tendered it to the clerk, who had refused to receive it, nor that the clerk had died during the term. Hamlin v. March, 31 N. C. 35.

False Impression as to When Summons Returnable No Defense.—A summons issued June 27, 1901, returnable at the July, 1901, term of the court, which recited that it was returnable on the fifth Monday before the first Monday in September, 1901, and was not returned until August 6, 1901, it was held not to constitute a defense to an action to recover the penalty prescribed by the section for the sheriff's failure to return the same within the time required, that he had the erroneous impression that the summons was returnable at a later date, and that his failure was occasioned by endeavoring to obtain service. Bell v. Wycoff, 131 N. C. 245, 42 S. E. 608.

Failure to Pay or Tender Fees.—Though a sheriff is not required to execute process until his fees are paid or tendered by the person at whose expense the service is to be rendered, he is not excused thereby for a failure to make a return of process; for, if he has any excuse for not executing the writ, he must state it in his return. Jones v. Gupon, 65 N. C. 48.

Belief That Lien Divested by Subsequent Legislation.—A sheriff is liable to be amerced for a return on a vend. exp. of "no goods," etc., after levy, although made in the belief that the lien has been divested by subsequent legislation. McKeithan v. Terry, 64 N. C. 25.

2. When Return Is Sufficient.

Sufficient—In General.—Where a sheriff indorsed on an execution the words, "Debt and interest due to sheriff; costs paid into office," it was held, that the return was sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142.

Return within Time Prescribed by Law.—A sheriff can not be amerced if he return an execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney. Cockerham v. Baker, 52 N. C. 288; Davis v. Lancaster, 5 N. C. 255.

Indorsing Execution "Satisfied."—Where a sheriff indorsed upon an execution merely the word "satisfied" without stating what disposition he had made of the fund, the return was sufficient in law to relieve him from an amercement for not making due return. Wyche v. Newsom, 87 N. C. 144.

Same—Return Marked "Satisfied" without Satisfaction.—In Cockerham v. Baker, 52 N. C. 288, 289, it was said by Mr. Justice Battle that "the counsel for the plaintiff contended that there was not a due return of the process as required by sec. 17, chap. 105, Rev. Code, (now this section), because, though returned 'satisfied', the money was not sent with it, nor paid into the clerk's office, nor to the plaintiff or his attorney. If this question were before the court for the first time, we should be strongly inclined to hold this objection to be fatal to the return. The writ, in its terms, demands that the sheriff shall have the money levied before the court, and it would seem a return of 'satisfied', without the 'satisfaction,' is but a mockery. But, at a very early period, a different construction was put upon the Act of 1777 (Chap. 118, sec. 6, Rev. Code of 1820), and as that act has been twice re-enacted in the same terms, we must consider that construction as settled; see Davis v. Lancaster, 5 N. C. 255; and see also 1 Rev. Stat., Chap. 109, sec. 18, and the Rev. Code, Chap. 105, sec. 17, (now this section) in both of which there is a marginal reference to that case, and according to it a sheriff can not be fined if he return the execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney."

Where Debtor Had No Property in Excess of His Exemptions.—A sheriff is not liable to amercement for failure to have in court the amount of an execution issued on a judgment for a debt contracted prior to 1868, when the judgment debtor had no property in excess of his exemptions, as the exemption laws (Const. Art. 10, and the statutes pursuant thereto) so modify Battle's Revisal, c. 106, § 15, as not to authorize the infliction of a penalty therein imposed for disobedience to the exemption laws. Richardson v. Wicker, 80 N. C. 172.

C. Actions Concerning Amercements.

Jurisdiction of Superior Court.—Where the sheriff has laid himself liable to the penalty for failure to make due return of process, the superior court has jurisdiction to give the judgment nisi on motion. Thompson v. Berry, 64 N. C. 79, 80.

Time of Trial.—Plaintiff is entitled to a trial the first term on a scire facias, on an amercement against the sheriff. Hogg v. Bloodworth, 1 N. C. 593.

Necessity of Trying Issues of Torts on Affidavits.—On a scire facias against a sheriff to amerce him for not returning an execution into the Supreme Court, whence it issued, issues of fact must be tried on affidavits, as the court has no power to call a jury. Kea v. Melvin, 48 N. C. 243.

Remedy by Rule.—When a prima facie case is made against a sheriff, either upon affidavit or other sufficient proof, a rule nisi is granted as of course, and surplusage in the affidavit will not impair its effect. Ex parte Schenck, 63 N. C. 601.

Process Mailed Sufficient for Amercement Nisi.—The proof is sufficient for an amercement nisi under former rulings,

where it is shown that the process in an envelope properly directed and with postage prepaid has been deposited in the postoffice in time to enable it to reach its destination in the due course of the mail twenty days before the session of the court to which it is returnable. State v. Latham, 51 N. C. 233; Yeargin v. Wood, 84 N. C. 326, 328.

Where in such case the summons sent by mail did not reach such officer until six days before the sitting of the court to which it was returnable, and he served it in two days thereafter he is not liable to amercement. Yeargin v. Wood, 84 N. C. 326.

Same—To Sheriff in Another County.—It has frequently been decided by the Supreme Court, after argument and full consideration, that if it be made to appear that a clerk has sent a writ to the sheriff of another county, enclosed in a stamped envelope, in due time to reach him in the regular course of the mails, twenty days before the sitting of the court to which it is returnable, it is sufficient to authorize a judgment nisi for an amercement for the non-return of the process. State v. Latham, 51 N. C. 233; Cockerham v. Baker, 52 N. C. 288, 289.

Presumption Subject to Rebuttal.—And the officer is allowed to rebut the presumption of its having been received and to discharge himself, as upon a motion for a rule against him, by making an affidavit that the writ did not come to his hands. Yeargin v. Wood, 84 N. C. 326, 329.

Judgment Nisi Made Absolute.—Where judgment nisi for $100 is rendered against a sheriff for failure to make due return of process, and no sufficient reason is shown for the failure, the judgment should be made absolute. Graham & Co. v. Sturgill, 123 N. C. 384, 31 S. E. 705.

Judgment Absolute Set Aside.—In a proceeding to enforce the statutory penalty against a sheriff for failure to make due return of process, it is not error to set aside a judgment absolute where it appeared that he had no notice of the rule upon him to show cause. Yeargin v. Wood, 84 N. C. 326.

Method of Recovering Penalty Exclusive.—The method by which a sheriff may be amerced for unlawfully failing to execute a warrant it was his duty to serve, as prescribed by this section, is alone to be followed in an action for penalty brought thereunder. Walker v. Odom, 185 N. C. 557, 118 S. E. 2. And a civil action cannot be resorted to. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 76, 11 S. E. 264.

Same—Nature and Form.—The statute provides only for an amercement, on motion, for the failure of a sheriff to make "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264. See also, Harrell v. Warren, 100 N. C. 259, 6 S. E. 777.

Penalty Gives Way to Exemption Laws.—The provisions of the exemption laws (Constitution, Art. X, and the statutes passed in pursuance thereof) so modify ch. 106, sec. 15 Bat. Rev., now this section, as not to authorize the infliction of the penalty therein imposed for obedience to said exemption laws. Richardson v. Wicker, 80 N. C. 172.

Courts Cannot Relieve.—The courts have no dispensing power to relieve from the penalty prescribed by law. Swain v. Phelps, 125 N. C. 43, 34 S. E. 110.

III. FALSE RETURN.

Penalty Enforced in Civil Action.—The action for $500 penalty for "false return," is properly sought to be maintained by civil action. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 76, 11 S. E. 264.

Power of Court to Allow Return to Be Amended.—In an action against a sheriff, for the penalty of $500 for a false return, as provided in this section, after the action was begun, the defendant, on affidavits, moved the court to be allowed to amend his return so as to speak the truth. The motion was allowed, and upon appeal the Supreme Court held that the power of the superior court judge to allow amendments in process, etc., is broad, both by statute and the inherent power of the court, and the ruling of the lower court was affirmed. Swain v. Burden, 124 N. C. 16, 32 S. E. 319, 320.

Where a sheriff to whom a summons issued, returned it "served," and was sued for the $500 penalty for false return provided for by this section, the court permitted him, for proper reasons set out in his affidavit, to amend this return and the power of the court below to allow the amendment was sustained on appeal. Swain v. Burden, 124 N. C. 16, 32 S. E. 319; Swain v. Phelps, 125 N. C. 43, 34 S. E. 110.

When, in an action against a sheriff for a false return, the court permits such return to be amended, the plaintiff should note his exception, and, unless the amended return is admitted to be true, proceed to try the issue. An appeal before final judgment on such admission, or a verdict, is premature and will be dismissed. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264.

Plaintiff Need Not Name Other Party.—Any person may sue for the penalty imposed upon sheriffs by the section for a false return, and he need not mention in his complaint the other party, to whom the statute gives one-half of the recovery. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777. See also Martin v. Martin, 50 N. C. 346; Peebles v. Newsom, 74 N. C. 473.

Restricted to Civil Process.—The penalty of $500 imposed for a false return by the section is restricted to sheriffs, and false returns by them made to civil process. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777. See also Martin v. Martin, 50 N. C. 346.

Element Essential to Liability.—In order to render a sheriff liable for a false return, under the section, falsehood must be found in the statement of facts in the return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777.

Mistake.—A return made by a sheriff, that is false in fact, although the officer was mistaken in the matter as to which he made his return will, nevertheless, subject him to the penalty for a false return. Albright v. Tapscott, 53 N. C. 473.

If a return be false in fact, inadvertence or mistake is no excuse or protection to the officer, although no intentional deceit was practiced. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777.

Illustrations.—In an action for the penalty imposed for a false return the complaint stated, in substance, that an execution was placed in the sheriff's hands and by him levied on the goods of the defendant therein named, which goods the sheriff kept locked up for several days; that defendant in the execution, at the time of the levy, demanded that his exemptions be allotted to him; that defendant paid the sheriff $2.50 in part of the execution, while his goods were held under the levy; that after keeping said goods several days, and receiving the said $2.50, the sheriff returned said execution, "Levy made; fees demanded for laying off exemptions and not paid; no further action taken;" that said return was false in that it did not state that he had collected said $2.50 on the execution. Upon such a state of facts the failure to mention the payment of $2.50 in his return made the return defective, but such an omission does not render the sheriff liable to the penalty imposed for a false return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777.

Where a sheriff returns upon a fi. fa., two credits for money received, thereon at different times, and, suppressing a third credit, returns not satisfied, it was held that such return was false, and subjected him to the penalty of $500, under Rev. Code, ch. 105, sec. 17, now this section. Martin v. Martin, 50 N. C. 346.

Same—Return "Too Late to Hand."—Where a sheriff indorsed truly the day on which he received a declaration in ejectment, returnable to a county court, and returned on the same "too late to hand," although five days intervened between the day indorsed, and the return day, it was held that he was not liable under 17th Section, 105th Chap., of Rev. Code, now this section, to the penalty for making a false return. Hassel v. Latham, 52 N. C. 465.

Same—Return "Not Found."—The return of "Not to be found" on a capias is not true, because of the defendant's being out of the state at the time the return is made, if the officer had an opportunity of making the arrest previously, while the process was in his hands. Martin v. Martin, 50 N. C. 349. See also. Tomlinson v. Long, 53 N. C. 469; Harrell v. Warren, 100 N. C. 259, 6 S. E. 777.

A deputy sheriff having an order of arrest to be executed, went to the house of the person named therein, and, after reading to him the summons in the action, told him that he had an order of arrest for him. After some talk, the deputy left the bond with him, on his promise to call next day and fix the matter up. It was held, that as the deputy did not have, or attempt to have within his control in any way the party named in the order, there was no arrest, and a return of the order "Not served" did not render the officer liable for a false return. State v. Buxton, 102 N. C. 129, 8 S. E. 774.

Same—Arrest.—Where a sheriff, having in hand an order of arrest against B., told B. that he "had better come and go with him to Jackson, and fix the matter there;" B. refused to go with him, and the sheriff left, without taking any further action, it was held that what passed did not constitute an arrest of B., and the sheriff was not liable for a false return, in that he returned on the order of arrest, "not served." State v. Buxton, 102 N. C. 129, 8 S. E. 774.

Statute of Limitations.—When an amercement was imposed upon a sheriff for a false return made more than six years previous, an action upon his official bond to recover the penalty was barred by the statute of limitations. State v. Barefoot, 104 N. C. 224, 10 S. E. 170.

IV. WRITS FROM JUSTICE'S COURT.

No Power to Amerce Sheriff of Another County.—Under the Act of 1874-'75, ch. 33, now this section, a justice of the

peace has no power to amerce the sheriff of a county other than that in which he holds his court, for failure to make due return to process issued by such justice. He can only amerce the sheriff of his county when he fails to perform the duties imposed by that act. Boggs v. Davis, 82 N. C. 27.

Action for Failure of Sheriff to Serve Warrant.—The court may not regard an independent action as a motion in the original cause when the latter is not before it; and where the sheriff is liable for the penalty prescribed by this section, for failure to serve a warrant in an action before a justice of the peace, and the plaintiff brings an independent action for the recovery of the penalty before another justice, from whose judgment the defendant has appealed, and a trial de novo had in the superior court, it is error for the trial judge to regard the summons and complaint in the independent action as a motion in the cause under this section and proceed with the trial accordingly. Walker v. Odom, 185 N. C. 557, 118 S. E. 2.

When Constable Not Liable for Refusal to Serve.—A constable does not subject himself to the penalty of $100 by declining to receive process which, at the time it was tendered, he could not have executed ex. gr. process against a person then attending under subpoena before a commissioner. Fentress v. Brown, 61 N. C. 373.

Where Sheriff a Party.—An execution directed to a sheriff, who is a party, is null and void, and the sheriff can not be amerced for neglecting or refusing to make a return thereon. Bowen v. Jones, 35 N. C. 25.

Where Sheriff's Motion for Non-Suit Properly Granted.—Plaintiffs instituted action against the sheriff and bondsman for damages caused by alleged false return of summons. The sheriff's return was regular upon its face, but each plaintiff testified that service was not made on him, but did not testify as to whether service was made on the other plaintiff, and there was no evidence corroborating plaintiffs' testimony. It was held that defendants' motion for judgment as of non-suit was properly granted. Penley v. Rader, 208 N. C. 702, 182 S. E. 337.

§ 162-15. Sufficient notice in case of amercement.—In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court. (Rev., s. 2818; Code, s. 446; 1871-2, c. 74, s. 4; C. S. 3937.)

Amercement, and not a civil action, is the remedy given against a sheriff for not making "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264.

When Rule Nisi Granted.—Where a prima facie case is made, either upon affidavit or other sufficient proof a rule nisi is granted as of course. Ex parte Schenck, 63 N. C. 601.

Immaterial Evidence.—On the trial of an action for the penalty, when the defendant sheriff offered to introduce in evidence the true returns of the proceeds of sale indorsed upon certain other executions, the evidence was immaterial and properly excluded. Finley v. Hayes, 81 N. C. 368.

Jurisdiction in Court to Which Process Returnable.—An action against a sheriff of a county other than that from which the process issued, for making a false return, is properly brought in the courts of the county to which that process was returnable. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836.

Amerced at Subsequent Term.—A sheriff may be amerced at a subsequent term to that at which the process was returnable, for not having made his return at a previous term. Hyatte v. Allison, 48 N. C. 533.

Return Prima Facie Correct.—The return or certificate of a ministerial officer, as to what he has done out of court, is only to be taken as prima facie true, and is not conclusive; it may be contradicted by any evidence and shown to be false, antedated, etc. Smith v. Low, 27 N. C. 197.

Non-Payment of Fees Does Not Excuse Return.—A sheriff is not required to execute process until his fees are paid or tendered by the person at whose instance the service is to be rendered; but this does not excuse him for a failure to make a return of the process. Jones v. Gupton, 65 N. C. 48.

Section 1-220.—On motion to set aside a judgment against defendant sheriff for an alleged failure to make due return of process, the facts of the instant case entitled him to relief under section 1-220. Francks v. Sutton, 86 N. C. 78.

Duties under C. C. P. and Old System. — The duties and liabilities of a sheriff in relation to the execution of process are nearly the same under the C. C. P. as under the old system but the mode of procedure for enforcing a judgment nisi against him is changed from a scire facias to a civil action, and the summons must be in the same court as the judgment, and must be returned to the regular term thereof. Jones v. Gupton, 65 N. C. 48.

§ 162-16. Execute summons, order or judgment.—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law. (Rev., s. 2819; Code, s. 598; C. C. P., s. 354; C. S. 3938.)

Execution from Justice's Court.—Execution from a justice's court must be directed to "any constable or other lawful officer of the county," and if it comes into the hands of the sheriff, he must obey it. McGloughan v. Mitchell, 126 N. C. 681, 36 S. E. 164.

When Addressed to Constable.—A constable can not serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. McGlouchan v. Mitchell, 126 N. C. 681, 36 S. E. 164.

When Want of Jurisdiction Not Apparent.—It is well settled, that if a court issuing process has general jurisdiction to issue such process, and the want of jurisdiction does not appear upon the face of the paper, a sheriff and his assistants may justify under it. State v. Ferguson, 67 N. C. 219.

When Coroner Acts.—In an action wherein the sheriff is a party defendant it is proper that a summons issued against a codefendant should be addressed to and served by the coroner. Battle v. Baird, 118 N. C. 854, 24 S. E. 668.

The county commissioners may declare the office vacant, upon the insanity of the sheriff, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, but does not cast upon him the right to collect taxes. Somers v. Board, 123 N. C. 583, 31 S. E. 873.

§ 162-17. Liability of outgoing sheriff for unexecuted process.—Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties. (Rev., s. 2820; Code, s. 2088; R. C., c. 105, s. 25; C. S. 3939.)

Cross Reference.—See § 162-14 and notes thereto.

Delivery to Successor.—It is the duty of the sheriff, going out of office, to deliver all the processes remaining in his hands to his successors. State v. Woodside, 29 N. C. 296.

When Not to Make Return.—A sheriff, to whom a writ

has been delivered, but who goes out of office before the return day of the writ, has no power to make the return on it, and therefore is not liable to amercement for not doing so. State v. Woodside, 29 N. C. 296.

§ 162-18. Payment of money collected on execution.—In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties. (Rev., s. 2821; Code, s. 2080; C. S. 3940.)

The auditing of account of sheriff by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud or special error. Williamson v. Jones, 127 N. C. 178, 37 S. E. 202; Commissioners v. Kenan, 127 N. C. 181, 73 S. E 997.

§ 162-19. Deposit county tax money with treasurer.—Every sheriff shall deposit the county and other local taxes, by him collected, with the county treasurer, if there be a county treasurer, as often as he shall collect or have in his possession at any one time of such county or local taxes a sum equal to five hundred dollars. (Rev., s. 298; Code, s. 2073; C. S. 3941.)

§ 162-20. Publish list of delinquent taxpayers.—Whenever any sheriff or tax collector shall be credited on settlement with any tax or taxes by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff or tax collector failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars. (Rev., ss 2826, 3587; Code, s. 2092; 1876-7, c. 78, ss. 1, 2, 3; C. S. 3942.)

§ 162-21. Liability for escape under civil process.—When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment, for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attachment, and damages for detaining the same. (Rev., s. 2823; Code, s. 2083; R. C., c. 105, s. 20; 13 Edw. I, c. 11; 1777, c. 118, ss. 10, 11; C. S. 3943.)

I. General Considerations.
II. Liability of Sheriff.
III. Actions.

I. GENERAL CONSIDERATIONS.

Escape Defined.—An escape is defined to be when one who is arrested gains his liberty before he is delivered in due course of law. State v. Ritchie, 107 N. C. 857, 12 S. E. 251.

An escape has been effected, in the criminal sense of the law, in the language of an eminent author in a work on criminal law, "when one who is arrested, gains his liberty before he is delivered in due course of law." 1 Russell on Crimes, 467. It is defined in brief words by another writer as "the departure of a prisoner from custody." 2 Whar. Cr. Law, § 2606; State v. Johnson, 94 N. C. 924, 926.

It is not an escape in a sheriff to permit a debtor committed under a ca. sa. to remain in prison with the door of the prison open, unless such debtor passes out of the prison. Currie v. Worthy, 47 N. C. 104.

Release before Commitment.—If the sheriff arrests a person on mesne process and, before commitment to prison, allows him to go at large, this is not an escape, but the sheriff is liable as special bail. State v. Falls, 63 N. C. 188, 189.

Two Kinds of Escape.—There are only two kinds of escape known to our law, of a prisoner confined for debt: one voluntary and the other negligent, except where the prisoner has escaped by the act of God or of the enemies of our country. Adams v. Turrentine, 30 N. C. 147.

Same—Difference in Liability.—The only difference as to the liability of the officer between the two kinds of escape is that in the case of voluntary escape he is liable absolutely; in the case of negligent escape he has a right to retake the prisoner, and, if he does retake him upon fresh pursuit, he is not liable to an action of debt brought after such recapture, and when he has the prisoner in custody. Adams v. Turrentine, 30 N. C. 147.

Negligent Escape.—The meaning of the term "negligent escape" in our statute is the same that was given to that term at the common law. Adams v. Turrentine, 30 N. C. 147.

At Common Law and under Statutes.—At common law a sheriff who had a person in actual custody under legal authority and suffered him to go at large was guilty of an escape; and in civil cases the only remedy for the injured was an action on the case. Various statutes have increased the remedies of the party injured, and changed in some respects the liability of the sheriff. State v. Falls, 63 N. C. 188, 189.

Not Dependent upon Section 162-14.—It would seem that this section is in no wise dependent upon section 162-14. In the case of Richardson v. Wicker, 80 N. C. 172, the court says: "The imposition of a penalty for a want of official diligence is a matter of State regulation, and it would be no impairment of the plaintiff's right to collect his debt if the Legislature should repeal the amercement law altogether." Washington Toll Bridge Co. v. Commissioners, 81 N. C. 491, 507.

Recapture as Defense.—Where a prisoner confined for debt escapes, the officer, in an action against him for the escape, can only excuse himself by showing that he has not only made fresh pursuit, but also that he has actually recaptured the prisoner before suit brought. Without this, fresh pursuit will not excuse the officer, even though the prisoner die before the officer has it in his power, by due diligence, to recapture him. Whicker v. Roberts, 32 N. C. 485.

Same—Made on General Issue.—In this State the defense of fresh pursuit and recapture need not be by plea, but may be made on the general issue. Whicker v. Roberts, 32 N. C. 485.

II. LIABILITY OF SHERIFF.

General Rule as to Liability.—In all cases of escape after a debtor is committed to jail, the sheriff is liable, however innocent he may be, unless the escape has been occasioned by the act of God or the public enemies. Rainey v. Dunning, 6 N. C. 386.

Escape of Insolvent Surrendered in Open Court.—To render a sheriff liable for the escape of an insolvent, surrendered in open court, it is necessary to show that such insolvent was committed to the sheriff's custody by an order of the court. A mere prayer to that effect will not be sufficient. State v. McKee, 47 N. C. 379.

Release on Bond to Appear and Take Insolvent's Oath.—Where a defendant has been arrested upon mesne process and gives bail, and, after judgment, the bail surrenders him to the sheriff, out of term-time, no execution having been issued on the judgment nor any committitur prayed by the plaintiff, if the sheriff releases him upon a bond to appear at court and take the benefit of the insolvent law, the sheriff is liable for an escape. State v. Ellison, 31 N. C. 261.

When Directed Not to Serve Ca. Sa. on One of Two Defendants.—When a judgment is obtained against two or more, and no bail bond has been taken from either of the defendants in the suit, and the sheriff, who has thus become bail for all, after the rendition of the judgment and

the issuing of the ca. sa., is directed by the plaintiff not to serve the ca. sa. on one of the defendants, he is still liable, as bail, for not surrendering the other defendant. Jackson v. Hampton, 32 N. C. 579.

When Prisoner Committed on Mesne Process.—A sheriff is not liable as special bail, after he has committed a defendant on mesne process, though such defendant be permitted by him to go at large. Buffalow v. Hussey, 44 N. C. 237.

A sheriff having permitted one arrested by him upon mesne process in a civil action, to go into an adjoining room, from which he escaped, was guilty of an escape. Winborne & Bro. v. Mitchell, 111 N. C. 13, 15 S. E. 882.

Prisoner Discharged as Insolvent.—Where a scire facias was issued against a sheriff to charge him as special bail for a person sued at the instance of the plaintiff, and who had been, for want of bail, committed to jail in the sheriff's county, and afterwards discharged as an insolvent by two magistrates, it was held that the sheriff was not liable as special bail. Buffalow v. Hussey, 44 N. C. 237.

Return Sufficient to Charge Sheriff.—The words "executed P. R. T., D. Sheriff," indorsed on a capias, which, duly issued, and came to the hands of the sheriff, are so much a due and legal return, as to make the sheriff liable as special bail, on the failure of him or his deputy, to take a bail bond. Washington v. Vinson, 49 N. C. 380.

When Sheriff Fails to Take Bail.—The sheriff is said to fail to take bail when the paper returned by him as a bail bond is so defective and imperfect as to be adjudged not to be such. Adams v. Jones, 60 N. C. 198.

Same—Exceptions and Notice.—If the sheriff fails to take bail, the plaintiff need not file exceptions nor give notice to fix him as bail. Adams v. Jones, 60 N. C. 198.

Failure to Handcuff as Negligence per se.—A sheriff's liability for permitting an escape depends on the circumstances of the particular case, and failure to handcuff does not constitute negligence per se. State v. Hunter, 94 N. C. 829, 830.

May Become Special Bail.—If the person, after arrest, get at large by the negligence of the sheriff and against his will, he may by his return elect to become special bail. State v. Falls, 63 N. C. 188, 189.

III. ACTIONS.

Negligent Escape When No Actual Negligence.—An action of debt will lie against a sheriff under our statute for a negligent escape of a prisoner confined for debt, even though there was no actual negligence. Adams v. Turrentine, 30 N. C. 147.

Damages Loss Really Sustained.—In an action of debt on a sheriff's bond for the escape of a debtor imprisoned under a ca. sa., the jury are not bound to give the whole sum due from such debtor, but should give the damages really sustained by the escape. State v. Eure, 53 N. C. 320, in which the case of Governor v. Matlock, 8 N. C. 425, is cited and approved.

Objection as to County by Plea in Abatement.—In an action for an escape, if the defendant wishes to except, upon the ground of its being a penal action, that it is brought in the wrong county, he must make the objection by plea in abatement. Whicker v. Roberts, 32 N. C. 485.

When Creditor Will Not Charge Party in Execution.—After surrender, if the creditor, upon reasonable notice, will not charge the party in execution, either a habeas corpus or a supersedeas would be issued by the court. State v. Ellison, 31 N. C. 261.

§ 162-22. Custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof. (Rev., s. 2824; Code, s. 2085; R. C., c. 105, s. 22; C. S. 3944.)

Duties of Jailer.—The duties of a jailer are those prescribed by statute and those recognized at common law. Gowens v. Alamance County, 216 N. C. 107, 3 S. E. (2d) 339.

Jailer Bound Only to Sheriff.—Where a sheriff arrested a man on a ca. sa. and committed him to jail, in custody of the jailer, and the prisoner escaped, it was held that without a bond of indemnity, the jailer was only bound to the sheriff for want of fidelity or due care in the discharge of his duty. Turrentine v. Faucett, 33 N. C. 652.

Sheriff May Take Jailer's Bond.—A sheriff has a right to take a bond from the jailer to idemnify him for all losses to which he may be subjected by the escape of a prisoner while in custody of the jailer. Turrentine v. Faucett, 33 N. C. 652.

Negligence of Deputy in Charge of Jail.—Where the evidence is sufficient to be submitted to the jury as to the negligence of a deputy in charge of a jail in causing injury to a prisoner in closing the cell door on the prisoner's thumb, it is sufficient to be submitted to the jury as to the liability of the sheriff, since the act of the deputy is within the scope of his authority and in the line of his duty, and the liability of the sheriff for acts of his deputy is governed by the law applicable to the law of principal and agent. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366.

Cited in Sutton v. Williams, 199 N. C. 546, 155 S. E. 160.

§ 162-23. Prevent entering jail for lynching; county liable.—When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this state. (Rev., s. 2825; 1893, c. 461, s. 7; C. S. 3945.)

§ 162-24. Not to farm office.—No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county and the other half to the person suing for the same. (Rev., s. 2828; Code, s. 2084; R. C., c. 105, s. 21; 23 Hen. VI, c. 10; C. S. 3946.)

A sheriff may employ a deputy to assist him, but he can not delegate his authority to another. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683.

Letting to Farm.—The section prohibits a sheriff from letting to farm, in any manner, his county, or any part of it. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683.

Cannot Be Subject of Bargain and Sale.—The public has an interest in the proper performance of their duties by public officers, and would be prejudiced by agreements tending to impair an officer's efficiency or in any way interfere with or disturb the due execution of the duties of the office. The office of sheriff and tax collector is one of public confidence and fidelity to a public trust, and can not be a matter of bargain and sale. It requires good faith and duty. Cansler v. Penland, 125 N. C. 578, 579, 34 S. E. 683.

Traffic in public offices is against good morals and contrary to public policy. Basket v. Moss, 115 N. C. 448, 20 S. E. 733.

To Secure Appointment, or Expenses for Attempting.—Not only an agreement by A to pay to B, a public officer, an amount equal to the emoluments of the unexpired term of his office in consideration of his resignation and his influence to secure the appointment of A to the office is void, but likewise an agreement to compensate anyone for or to pay the expenses of anyone in attempting to secure the appointment. Basket v. Moss, 115 N. C. 448, 20 S. E. 733.

§ 162-25. Obligation taken by sheriff, payable to himself.—The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any

other manner or form, by color of his office, shall be void, except in any special case and other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services and the allowance given and provided by law. (Rev., s. 2829; Code, s. 2082; R. C., c. 105, s. 19; 1777, c. 118, s. 8; C. S. 3947.)

Cross References.—As to statute of limitation, see § 1-50; as to judicial sales, see § 1-325; as to duty to summon and swear appraisers in homestead proceedings, see § 1-371; as to duty when warrant of attachment directed to sheriff, see § 1-447; as to duties and liabilities in claim and delivery, see §§ 1-476, 1-477; as to duty to note date of receipt and date of execution on process, see § 2-41; as to attachment for failure to obey writ of habeas corpus, see § 17-16; as to attachment against sheriff to be directed to coroner, see § 17-18; as to penalty for false return to writ of habeas corpus, see § 17-27; as to official deed, when sheriff selling or empowered to sell is out of office, see § 39-5; as to sheriff as tax collector, see §§ 105-401, 153-56; as to liability of sheriff's bond when he acts as treasurer, see § 155-6.

Division XVIII. Elections and Election Laws.

Chapter 163. Elections and Election Laws.

SUBCHAPTER I. GENERAL ELECTIONS.

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SUBCHAPTER I. GENERAL ELECTIONS.

Art. 1. Political Parties.

§ 163-1. Political party defined; creation of new party.—A political party within the meaning of the election laws of this state shall be any group of voters which, at the last preceding general state election, polled for its candidate for governor, or for presidential electors, in the state at least three per cent of the entire vote cast therein for governor, or for presidential electors; or any group of voters which shall have filed with the state board of elections, at least ninety days before a general state election, a petition signed by ten thousand qualified voters, declaring their intention of organizing a state political party, the name of which shall be stated in the petition together with the name and address of the state chairman thereof, and also declaring their intention of participating in the next succeeding election. No such group of electors shall assume a name or designation which shall be so similar, in the opinion of the state board of elections, to that of an existing political party, as to confuse or mislead the voters at an election. When any new political party has qualified for participation in an election as herein required, and has furnished to the state board of elections the names of such of its nominees as is desired to be printed on the official ballots by the first day of September prior to the election, it shall be the duty of the state board of elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. When any political party fails to cast three per cent of the total vote cast at an election for governor, or for presidential electors, it shall cease to be a political party within the meaning of this chapter. (Rev., s. 4292; 1901, c. 89, s. 85; 1933, c. 165, s. 1; C. S. 5913.)

Cross Reference.—As to definition of political party for primary elections, see § 163-144.

Editor's Note.—See 11 N. C. Law Rev. 226, for review and comment on this section.

For an interesting note on the definition of political parties see 11 N. C. Law Rev. 148 et seq.

This chapter repeals prior laws on the same subject. Window v. Morton, 118 N. C. 486, 24 S. E. 417.

Applicable to Municipal Elections.—The machinery provided by this chapter for ascertaining and declaring the successful candidate in an election applies to all municipal elections. State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234.

Art. 2. Time of Elections.

§ 163-2. For state officers.—On Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and four, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, and other state officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other state officers whose election is not otherwise provided for by law. (Rev., s. 4293; 1901, c. 89, s. 3; C. S. 5914.)

Cross Reference.—See also § 147-4.

§ 163-3. For presidential electors. — On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand nine hundred and eight, and every four years

thereafter, or on such days as the congress of the United States shall have directed, a poll shall be opened in each of the precincts of the state for the election of electors of president and vice president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled, and the persons shall be electors for the state as aforesaid, and the voting place in each ward or precinct shall be the same as in elections for members of the general assembly, unless changed by the county board of elections. (Rev., s. 4294; 1901, c. 89, s. 77; C. S. 5915.)

§ 163-4. For congressmen, legislators, county officers, and solicitors.—On the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred six, and every two years thereafter, an election shall be held in the several election precincts in each county for members of the House of Representatives of the Congress of the United States in the several districts, and members of the General Assembly for their respective counties and districts. At the same time and in the same manner as members of the General Assembly are elected, subject to whether the term is for two years or four as by law provided, an election shall be held in each county for a Clerk of the Superior Court, register of deeds, sheriff, coroner, county surveyor, county commissioners, where the county commissioners are elected by the people, and in such counties as have one, a county treasurer, and other officers; and at such times an election shall be held in the several solicitorial districts for the office of solicitor. (Rev., s. 4296; 1901, c. 89, s. 1; 1935, c. 362; 1943, c. 134, s. 4; Const. Art. IV, s. 24; C. S. 5917.)

Editor's Note.—The 1943 amendment substituted "solicitorial districts" for "judicial districts" near the end of the section.

§ 163-5. For township offices. — On the first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in each township for the office of constable, and also for justices of the peace in such counties as elect them by a vote of the people, and all other officers elected by a vote of the township. (Rev., s. 4297; 1901, c. 89, s. 2; C. S. 5918.)

Cross Reference.—As to municipal elections, see § 160-29.

Creation of New Township—Election upon Reasonable Notice.—Where the legislature has created a new township and the time for election has passed, as the public good requires the offices to be immediately filled, the commissioners may order an election upon reasonable notice. Grady v. County Comm., 74 N. C. 101.

§ 163-6. Special election for members of general assembly.—When a vacancy occurs in the general assembly by death, resignation, or otherwise, it shall be the duty of the chairman of the county board of elections, or of the sheriff of the county in which the late member resided, provided the general assembly shall not be in session, to notify the governor of such vacancy, and in case the general assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer in the house in which the vacancy occurs to notify the governor of the same, who shall thereupon issue a writ of election to the chairman or chairmen of the district or county represented by the late member, said election to be held at such time as the governor may designate, and in such manner as may be prescribed by law. (Rev., s. 4298; 1901, c. 89, s. 74; C. S. 5919.)

§ 163-7. For vacancies in state offices.—Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, solicitor, justices of the supreme court, judges of the superior court, or any other state officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the general assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the constitution. (Rev., s. 4299; 1901, c. 89, ss. 4, 73; C. S. 5920.)

Art. 3. State Board of Elections.

§ 163-8. State board of elections; appointment; term of office.—There shall be a state board of elections, consisting of five electors, whose terms of office shall begin on the first day of January, nineteen hundred and thirty-four, and continue for four years and until their successors are appointed and qualified. The governor shall appoint the members of this board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of said board shall be of the same political party. (Rev., s. 4300; 1901, c. 89, s. 5; 1933, c. 165, s. 1; C. S. 5921.)

Editor's Note.—The 1933 amendment changed this section and those following by increasing the term of office from two to four years and consolidating a number of provisions of the old law and conveniently enumerating the duties and powers of the state board in a single section of fifteen clauses. Several of these are new in whole or in part. See 11 N. C. Law Rev. 227.

Supervision by State Board of Elections.—The state board of elections has general supervision over the primaries and elections in the state, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the elections laws by county boards of elections, and the duty of the state board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592.

§ 163-9. Meetings of board; vacancies; pay.—The state board of elections shall meet in Raleigh whenever the chairman of said board shall call such meetings as may be necessary to discharge the duties and functions imposed upon said board by this chapter at such times and places as he may appoint. At the first meeting held after the appointment of members for a new term, the members shall take the oath of office and the board shall then organize by electing one of its members chairman and another secretary of said board.

The chairman of the state board of elections shall call a meeting of the board upon the application in writing of any two members thereof, or if there be no chairman, or if the chairman does not call such meeting, any three members of said board shall have power to call a meeting of the

board and any duties imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired; and if at any meeting any member of said board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than three days, at the end of which time, if there should be no quorum, the governor may remove the members so failing to attend summarily and appoint their successors.

Any vacancy occurring in the said board shall be filled by the governor, and the person so appointed shall fill the unexpired term.

The members of the board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter. (Rev., ss. 2760, 4301; 1901, c. 89, s. 7; 1933, c. 165, s. 1; C. S. 5922.)

§ 163-10. Duties of the state board of elections.—It shall be the duty of the state board of elections:

1. To appoint, in the manner provided by law, all members of the county boards of elections, and to advise such members of such boards as to the proper methods of conducting primaries and elections.

2. To prepare rules, regulations and instructions for the conduct of primaries and elections.

3. To publish and furnish to the county boards of elections and other election officials, from time to time, a sufficient number of indexed copies of all election laws then in force.

4. To publish, issue and distribute such explanatory pamphlets as in the opinion of the board should be issued to the electorate.

5. To furnish to the county boards of elections such registration and poll books, cards, blanks, instructions and forms as may be necessary for the registration of voters and holding elections in the respective counties.

6. To determine, in the manner provided by law, the forms of ballots, the forms of all blanks, instructions, poll books, tally sheets, abstract and return forms, and certificates of elections to be used in primaries and elections.

7. To prepare, print and distribute to the county boards of elections all ballots for use in any primary or election held in the state which the law provides shall be printed and furnished by the state to the counties, and to instruct the county boards of elections as to the printing of their county and local ballots.

8. To certify to the several county boards of elections the names of such candidates for district offices who are required to file notice of candidacy with the state board of elections, but whose names are required to be printed on the county ballots.

9. To require such reports from the several county boards and election officers as are provided by law, or as may be deemed necessary.

10. To compel the observance, by election officers in the counties, of the requirements of the election laws, and the state board of elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws pertaining to their duties thereunder. And the state board of elections shall have power to remove any member of a county board of elections for neglect or failure in his duties and to appoint a successor.

11. To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and to report violations of the election laws to the attorney general or solicitor of the district for further investigation and prosecution.

12. To tabulate the primary and election returns and to declare the results of same, and to prepare abstracts of the votes cast in each county in the state for such offices as is provided by law shall be tabulated by the state board of elections.

13. To keep a minute book showing a record of all proceedings and findings at each meeting of the state board of elections, which book shall be kept in the office of the state board of elections.

14. To make such recommendations to the governor and legislature relative to the conduct and administration of the primaries and the elections in the state as it may deem advisable.

15. To have the general supervision over the primaries and elections in the state and it shall have the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable: Provided same shall not conflict with any provisions of the law.

In the performance of these enumerated duties, the chairman of the state board of elections shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records and other evidence; and to fix the time and place for hearing any matter relating to the administration and the enforcement of the election laws: Provided, however, the place of hearing shall be had in the county where the irregularities are alleged to have been committed. (Rev., s. 4302; 1901, c. 89, s. 7; 1933, c. 165, s. 1; C. S. 5923.)

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746.

Art. 4. County Board of Elections.

§ 163-11. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the state a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the state board of elections on the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the state chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the state board of elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons on or before the tenth Saturday before a primary election is to be held.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election. (Rev., s. 4303; 1901, c. 89, s. 6; 1933, c. 165, s. 2; C. S. 5924.)

Editor's Note.—The 1933 amendment made ineligible as a member of the county board any office holder or candidate in a primary or general election. See 11 N. C. Law Rev. 228.

§ 163-12. Meetings of county elections boards; vacancies; pay.—The county board of elections in each county in the state shall meet in their respective counties at the courthouse at noon on the seventh Saturday before each primary election, and a majority being present, they shall take the oath of office and shall then organize by electing one of its members chairman and another member secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof may direct, for the performance of such duties as required by law.

Vacancies in the membership of the county boards of elections shall be filled by the state board of elections and the persons so appointed shall fill the unexpired term.

The members of the county board of elections shall receive in full compensation for their services three dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties. Provided, that the chairman of a county board of elections shall receive for his services, when actually engaged in the discharge of his duties, the sum of five dollars ($5.00) per day. (Rev., s. 4304; 1901, c. 89, s. 11; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; C. S. 5925.)

Local Modification.—Hyde, Iredell and Nash: 1941, c. 305, s. 2.

Editor's Note.—Prior to the amendment of 1923, this section required that the board of electors would meet not later than the first Monday in September 1906. In lieu of this requirement the present section requires that it should meet on the seventh Saturday before each primary election.

The 1941 amendment added the proviso at the end of this section.

§ 163-13. Removal of member of county board of elections.—The state board of elections shall have the power to remove from office any member of the county board of elections for incompetency, failure of duty, fraud, or for any other satisfactory cause. When any member of the county board shall be removed by the state board, the vacancy occurring shall be filled by the state board of elections; a vacancy occurring in the county board of elections for any other cause than removal by the state board of elections may be filled by either the board or by the chairman of the state board of elections, but the person so appointed shall be of the same political party as his predecessor. (Rev., s. 4305; 1901, c. 89, s. 11; 1913, c. 138; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, s. 2; C. S. 5926.)

Editor's Note.—The 1933 amendment changed this section by adding fraud as a cause for removal of a member of the board. See 11 N. C. Law Rev. 228.

§ 163-14. Duties of county boards of elections.—The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this chapter, and shall perform all the duties imposed by law which shall include the following:

1. To establish, define, provide, rearrange and combine election precincts.

2. To fix and provide the places for registration, when required, and for holding primaries and elections.

3. To provide for the purchase, preservation and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers and equipment as may be used in registration, nominations and elections.

4. To appoint and remove its clerk, assistant clerks, and employees, and all registrars, judges, clerks and other officers of elections, and to fill vacancies, and to designate the ward or district and precinct in which each shall serve.

5. To make and issue such rules, regulations and instructions, not inconsistent with law, or the rules established by the state board of elections as they may deem necessary for the guidance of election officers and voters.

6. To advertise and contract for the printing of ballots, and other supplies used in registrations and elections.

7. To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

8. To provide for the delivery of ballots, poll books and other required papers and materials to the polling places.

9. To cause the polling places to be suitably provided with stalls and other supplies required by law.

10. To investigate irregularities, non-performance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.

11. To review, examine and certify the sufficiency and validity of petitions and nomination papers.

12. To receive the returns of primaries and elections, canvass the returns, make abstracts thereof and transmit such abstracts to the proper authorities provided by law.

13. To issue certificates of election to county officers and members of the general assembly, except state senators in districts composed of more than one county.

14. To keep minute book of proceedings of board.

15. To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

16. To perform such other duties as may be prescribed by law or the rules of the state board of elections. (Rev., s. 4306; 1901, c. 89, s. 11; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; C. S. 5927.)

Editor's Note.—The 1933 amendment changed this section so as to consolidate and enumerate the duties and powers of the board under sixteen clauses. Several of these are new or partly new. See 11 N. C. Law Rev. 228.

Board Must Act as Body.—When the state board of elections instructs certain county boards of elections to amend their respective returns in accordance with the state board's rulings on protests challenging the validity of certain ballots, it is necessary for the county boards to hear the challenges and make the amended returns acting as a body in a

duly assembled legal session, and action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as a matter of law. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592.

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746.

Art. 5. Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended: Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable. No person holding any office or place of trust or profit under the government of the United States, or of the state of North Carolina, or any political sub-division thereof, except justices of the peace, shall be eligible to appointment as an election official. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (Rev., s. 4307; 1901, c. 89, s. 8; 1933, c. 165, s. 3; C. S. 5928.)

Local Modification.—Durham: 1937, c. 299.

Editor's Note.—This section was amended so as to add an additional requirement for election officials; they must be able to read and write. No political office holder, federal or state, except a Justice of Peace, may be appointed an election official. See 11 N. C. Law Rev., 228.

The following cases were decided under section 5969 of the Consolidated Statutes, repealed by Public Laws of 1933, ch. 165, s. 7. However, these cases seem applicable to the present law as the provisions of former section 5969 are substantially set forth in the instant section.

Party of Person Appointed by Board of Elections.—Upon failure of a Chairman of the State Executive Committee of a political party to designate judges of election on behalf of such party, the persons appointed by the board of elections must belong to the political party for which they are appointed. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136.

The board of elections has no authority to appoint two registrars from the same party in the same voting precinct. Mullen v. Morrow, 123 N. C. 773, 31 S. E. 1003.

Mandamus to Compel Board to Appoint Proper Persons.—Where the Chairman of the State Executive Committee of one political party fails to designate the judges of election for a particular county for and on behalf of such party, and under the exercise of the power of appointment given in this section, appoints persons not having the requisite qualifications, the Chairman of the Executive Committee of another political party in such county may bring mandamus to compel the board to appoint proper persons. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136.

§ 163-16. Names of precinct officers published by board.—The county board of elections shall, immediately after the appointment of the registrars and judges of elections as herein provided, publish the names of the persons so appointed, at the courthouse door of said county, and shall notify each person appointed of his or her appointment, either by letter or by having a notice to be served upon said persons by the sheriff. (Rev., s. 4308; 1901, c. 89, s. 16; 1923, c. 111, s. 2; 1933, c. 165, s. 3; C. S. 5929.)

§ 163-17. Vacancies in precinct offices; how filled.—If any registrar or judge of election shall fail to perform the duties of his office, and for that, or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place, of the same political party, and have such person or persons notified of the appointment. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward or precinct shall appoint some suitable elector of the same political party as the judge failing to attend, if practicable, to act in his stead, who shall be by him sworn before acting. If the registrar shall fail to appear at the polls, then the judges of election may appoint another to act as registrar, who shall also be sworn before acting. (Rev., s. 4309; 1901, c. 89, s. 9; 1933, c. 165, s. 3; C. S. 5930.)

§ 163-18. Removal of precinct officers; reasons for.—The county board of elections shall have power to remove any registrar or judge of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud or for any other satisfactory cause. (Rev., s. 4310; 1901, c. 89, s. 10; 1933, c. 165, s. 3; C. S. 5931.)

§ 163-19. Compensation for certain duties relating to elections.—The registrar shall receive three cents for each name registered in the new registration when ordered, and thereafter in the revision of the registration book he shall receive one cent for each name copied from the original registration book: Provided that in addition to the compensation herein before allowed the registrar, it shall be lawful for the county commissioners to pay to the registrar such additional compensation as may be by them considered just and fair. The registrar or judge of election who shall act as returning officer shall be allowed three dollars, to be payable out of the county treasury.

Each sheriff shall receive thirty cents for each notice he is required to serve under the law pro-

vided for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners.

Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. (Rev., ss. 2784, 4304; 1901, c. 89, ss. 11, 62; 1905, c. 434; 1907, c. 760; 1919, c. 61; C. S. 3917.)

§ 163-20. Compensation of precinct officers.—Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of four dollars. The registrar shall receive the sum of five dollars per day for his services on the day of a primary or election, and shall also receive the sum of five dollars per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters, and said registrar shall receive no other compensation whatsoever. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor. Provided, further, that the registrars and judges of elections shall receive the same compensation for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election. (Rev., s. 4311; 1901, c. 89, s. 42; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; C. S. 5932.)

Local Modification.—Alleghany, Ashe, Watauga: 1939, c. 264; Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Mecklenburg: 1937, c. 382.

Editor's Note.—The 1935 amendment provided that three dollars should be paid as compensation in each case where two dollars had been paid prior to the amendment. The 1939 amendment increased the pay of election judges from three to four dollars a day, and of registrars from three to five dollars a day. The 1941 amendment added the proviso at the end of the section.

§ 163-21. Duties of registrars and judges of election.—The registrars and judges of election shall perform such duties as are provided by law, which duties shall consist of:

1. The fair and impartial conduct of the primaries and elections within their respective precincts on the day of election.

2. The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws.

3. The registrar shall have in his charge the actual registration of voters within his precinct and shall attend the polling place on the days required for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe not inconsistent with the law.

4. The registrar shall have charge of the registration book on the day of election or primary for passing on the registration of voters who present themselves at the polls for the purpose of voting.

5. One of the judges of election shall keep a poll book in which shall be entered the name of every person who shall vote in the primary or election. The poll and registration books shall be signed by the registrar and judges of election at the close of any primary or election and filed with the chairman of the county board of elections.

6. The registrars and judges shall hear challenges on the right of electors to vote as provided by law.

7. The registrars and judges shall count the votes cast in their precinct and make such return of same as is required by law.

8. The precinct officers shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as required by law. (Rev., s. 4312; 1901, c. 89, s. 41; 1933, c. 165, s. 3; 1939, c. 263, s. 3½; C. S. 5933.)

Editor's Note.—The case treated below was decided under section 5971 of the Consolidated Statutes, now repealed, which provided for the duties of judges of elections. This case seems applicable to the present law as the provisions of former section 5971 are substantially set forth in the instant section.

Absence of Judges.—In the absence of fraud it is not material to the validity of an election that the persons appointed judges to hold it electioneered, or were absent from their posts at different times during the day. Wilson v. Peterson, 69 N. C. 113.

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746.

§ 163-22. Election precincts established or altered.—The county boards of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days' notice thereof, prior to the beginning of the registration period, in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discontinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days' notice thereof, prior to the beginning of registration period, by advertising in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least

one polling place in every township, conveniently located for a majority of the voters. (Rev., s. 4313; 1913 c. 53; 1921, c. 180; 1933, c. 165, s. 3; C. S. 5934.)

§ 163-23. New registration of voters or revision of registration books; how made.—The county board of elections shall have power from time to time to order a revision of the registration book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered, notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place: Provided, however, when a new registration or revision is ordered as herein provided for, the names of all persons who have been registered under the absentee voters' law shall remain upon the registration books unless the said persons so registered have died or otherwise become disqualified electors. The several county boards of elections shall have power to revise the registration books of any precinct and may require them to be purged of illegal or disqualified voters, after notice to such voters as herein directed. When an order for revision is made by said county board of elections, it shall be directed to the registrar and judges of election of the precinct to which it relates, directing said officials to meet at the polling place on the first Saturday for the registration of voters, before any primary or general election, and to prepare from the registration books a list of the names of registered voters, with their names and addresses as appearing on the registration books, who are, in the opinion of said precinct officials, dead or disqualified by removal from said precinct or county for the length of time prescribed by law to be disqualified to vote in that particular precinct. When such list is prepared it shall, within forty-eight hours, be delivered to the chairman of the county board of elections, who shall cause to be mailed to each of the names on said list, at his or her address as shown on said list, a notice requiring such person to appear at the polling place for the precinct in which they are registered, on the Saturday prescribed for hearing challenges, and show that they are legally entitled to vote in that particular precinct, or in lieu of a personal appearance at the precinct on the day named for hearing challenges, such person may furnish such satisfactory evidence by mail or otherwise, that he or she is qualified to vote in said precinct. Upon failure of such person to make such personal appearance on challenge day, or upon failure of such person to offer satisfactory evidence that he or she is qualified and entitled to vote in said precinct in the approaching primary or general election, their names shall be stricken off the registration book. After due investigation, such precinct officers shall strike from the registration book the names of all such persons found by them to be dead or disqualified to vote by removal from the precinct for such time as prescribed by law shall disqualify them from voting in such precinct.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in that precinct, should appear at the polling place on election day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the registration book and he shall be allowed to vote in said precinct as before. (Rev., s. 4314; 1905, c. 510; 1909, c. 894; 1921, c. 181, s. 3; 1933, c. 165, s. 3; C. S. 5935.)

Cross Reference.—As to new state-wide registration of voters, see § 163-43 et seq.

Editor's Note. — The provision for new registrations of voters and revisions of the registration books was rewritten by the 1933 amendment. See 11 N. C. Law Rev. 228.

Art. 6. Qualification of Voters.

§ 163-24. Persons excluded from electoral franchise.—The following classes of persons shall not be allowed to register or vote in this state, to wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now or may hereafter be imprisonment in the state's prison, unless such person shall have been restored to citizenship in the manner prescribed by law. (Rev., s. 4315; 1901, c. 89, s. 14; C. S. 5936.)

Cross Reference.—As to restoration of citizenship. see Chapter 13.

§ 163-25. Qualifications of electors; residence defined.—Subject to the exceptions contained in the preceding section, every person who has been naturalized, and who shall have resided in the state of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, four months next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward, or township in which he resides: Provided, that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

d. The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and live apart, the place where he or she resides the length of time required by the provisions of this article to entitle a person to vote, shall be considered and held to be his or her residence.

e. If a person remove to another state or county within this state, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.

f. If a person remove to another state or county within this state, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this state or county from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

g. School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live, and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

h. If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this state during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the state government who remove from one county to another within the state, unless a contrary intention is shown by such employee.

i. If a person goes into another state or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this state or county.

j. All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose. (Rev., s. 4316; 1901, c. 89, s. 15; 19th amendt. U. S. Const.; amendt. State Const., 1920; 1920 (Ex. Sess.), c. 18, s. 1; 1933, c. 165, s. 4; C. S. 5937.)

Editor's Note.—No changes were made in this section by the 1933 amendment as to the qualifications for suffrage, age, citizenship, literacy, and residence requirements, but ten rules are added to govern and aid Registrars and Judges of Elections in determining the difficult problem of the voter's legal residence. See 11 N. C. Law Rev., 229.

Change of Voting Qualifications by General Assembly.—The General Assembly cannot in any way change the qualifications of voters in State, county, township, city or town elections. People v. Canaday, 73 N. C. 198.

Qualification for Municipal Suffrage.—Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465; State v. Viele, 164 N. C. 122, 80 S. E. 408; Gower v. Carter, 194 N. C. 293, 139 S. E. 604.

Residence.— "Residence," as used in defining political rights, is synonymous with "domicile," denoting a permanent as distinguished from a temporary dwelling place. State v. Grizzard, 89 N. C. 115.

Length of Residence and Domicile—Evidence Thereof.—See People v. Teague, 106 N. C. 576, 11 S. E. 665.

Teachers.—The right of teachers in a locality to vote therein is made to depend upon whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. State v. Carter, 195 N. C. 697, 143 S. E. 513.

Infants and Aliens.—X was under 21 years of age and Y was a citizen of Syria, not of North Carolina, at the time they voted. They were therefore disqualified to vote in an election for Mayor. State v. Carter, 195 N. C. 697, 698 143 S. E. 513.

Three Months Residence Prior to Election.—H testified that he had lived in C only three months before the election and that the defendant registered his name. For this reason he was not a qualified elector to vote in an election for mayor. State v. Carter, 195 N. C. 697, 698, 143 S. E. 513.

Conviction of Infamous Crime. See In re Reid, 119 N. C. 641, 26 S. E. 337.

Person Imprisoned for Misdemeanor.—See People v. Teague, 106 N. C. 576, 11 S. E. 665.

§ 163-26. Residence of women.—For the purpose of the registration and voting of women, the residence of a married woman living with her husband shall be where her husband resides, and of a woman living separate and apart from her husband or where for any reason her husband has no legal residence in this state, then the residence of such woman shall be where she actually resides. (Ex. Sess. 1920, c. 18, s. 3; C. S. 5937(a).)

§ 163-27. Registration a prerequisite.—Only such persons as are registered shall be entitled to vote in any election held under this chapter. (Rev., s. 4317; 1901, c. 89, s. 12; C. S. 5938.)

See annotations to the next section.

General Consideration.—When duly made registration is prima facie evidence of the right to vote. State v. Waldrop, 104 N. C. 453, 10 S. E. 694; State v. Nicholson, 102 N. C. 465, 9 S. E. 545. This section must be complied with in order to constitute one a qualified voter. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489; Pace v. Raleigh, 140 N. C. 65, 52 S. E. 277.

§ 163-28. Voter must be able to read and write; exceptions.—Every person presenting himself for registration shall be able to read and write any section of the constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualification aforesaid: Provided, that said elector shall have registered prior to December 1st, 1908, in accordance with article six, section four, of the constitution and the laws made in pursuance thereto. (Rev., s. 4318; 1901, c. 89, s. 12; 1927, c. 260, s. 3; C. S. 5939.)

Editor's Note.—In lieu of the last proviso now appearing at the end of this section, this section prior to its amendment by the Laws of 1927 contained a proviso that the voter should show to the registrar that he or his ancestor was entitled to vote prior to January 1, 1867, in any state in the United States as provided by Art. 6, sec. 4 of the Constitution, and that if such voter is otherwise qualified he shall be registered regardless of whether or not he could read or write.

The provisions of this section are valid, since such qualification is prescribed by the Constitution, art. VI, § 4, and authority therein granted the legislature by art. VI, § 3, to enact general legislation to carry out the provisions of the article. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27.

And the provision placing the duty upon the registrar is logical and reasonable, and does not constitute class legislation, since its provisions apply to all classes, and there being an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, should refuse to register a person duly qualified. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27.

Art. 7. Registration of Voters.

§ 163-29. Qualification as to residence for voters; oath to be taken. — In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant has removed from another precinct, ward or election district in the same city, town or township since his last registration, such applicant shall, before being allowed to register, present to the registrar a written certificate signed by the registrar of the precinct, ward or election district from which he has so removed, showing that the applicant's name has been removed from the registration book of such precinct, ward or election district, and that he is no longer a registered voter therein. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of North Carolina not inconsistent therewith; that I have been a resident of the state of North Carolina for one year and of.....township (precinct or ward) for four months; or that I was a resident of..... township (ward or precinct) on the..... day of..... (being four months preceding the election) and removed therefrom to..... township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register. (Rev., s. 4319; 1901, c. 89, s. 12; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; C. S. 5940.)

Editor's Note.—This section was amended, 1933, so as to require an applicant for registration removing from one precinct to another to present a certificate from the registrar of his former precinct showing that his name has been removed from the registration books of the former precinct before he is entitled to have his name placed on the registration books of another precinct. See 11 N. C. Law Rev., 229.

In General.—While the general assembly can not add to the qualifications prescribed by the constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737.

Requirements Mandatory.—The requirements of the registration act are mandatory. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737.

Effect of Irregularities.—Where the disregard of constitutional or statutory directions does not affect the result it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State v. Nicholson, 102 N. C. 465, 9 S. E. 545.

Administration of Oath.—Const. art. 6, § 2, is satisfied by an oath to support the constitution of the United States and that of the state. All valid laws, whether state or national, are included by implication. State v. Nicholson, 102 N. C. 465, 9 S. E. 545.

In the absence of direct evidence to the contrary it will be presumed that the oath was taken with uplifted hand. State v. Nicholson, 102 N. C. 465, 9 S. E. 545.

Same—Failure to administer oath would not invalidate an election to determine whether a school tax should be levied in absence of fraud or improper motive. Gibson v. Board, 163 N. C. 510, 79 S. E. 976.

Registration by Other than Registrar.—The fact that a qualified voter was registered by a third person, with whom the registrar had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. Quinn v. Lattimore, 120 N. C. 326, 26 S. E. 638.

Inquiry as to Qualifications of Voters.—Registrars of election may ask an elector if he had resided in the state twelve months next preceding the election, and four months in the district in which he offers to vote. They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known.

If, in reply to such questions, the elector answers that he is twenty-one years old, and has resided in the state twelve months and in the county ninety days (now four months) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. In re Reid, 119 N. C. 641, 26 S. E. 337.

Sufficiency of Response.—In answer to the question of residence the designation of the county of residence is sufficient; but the designation of the state merely is insufficient. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737.

Denial of registration and voting to persons qualified to vote, even though by accident or mistake vitiates the election particularly where it would affect the result. McDowell v. Massachusetts, etc., Constr. Co., 96 N. C. 514, 2 S. E. 351. See also, Perry v. Whitaker, 17 N. C. 475; People v. Canaday, 73 N. C. 198.

§ 163-30. When person can register on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date. (Rev., s. 4322; 1901, c. 89, s. 21; C. S. 5946.)

Residence for One Year at Time of Election.—Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, which was refused: Held, that such vote should have been received. State v. Lattimore, 120 N. C. 426, 26 S. E. 638.

§ 163-31. Time when registration books shall be opened and closed; oath and duty of registrar. —The registration books shall be opened for the registration of voters at nine o'clock a. m., on the fourth Saturday before each election. The said books shall be closed at sunset on the second Saturday before each election. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the constitution of the United States and the constitution of North Carolina not inconsistent therewith, and that he will honestly and impartially discharge his duties as registrar, and honestly and fairly conduct such election. The registrar of each township, ward or

precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset on each day during the period when registration books are open, to keep open said books for the registration of any voters residing within such township, ward or precinct, and entitled to registration. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward, betwen the hours of nine o'clock a. m. and sunset, for the registration of voters. (Rev., s. 4323; 1901, c. 89, s. 18; 1923, c. 111, s. 3; 1933, c. 165, s. 5; C. S. 5947.)

Editor's Note.—The amendment of 1923 transposed the location of sentences and phrases of this section and introduced a few changes of phraseology, none of which changes affected the substance of the section.

The 1933 amendment changed the time for opening the registration books from the fifth Saturday to the fourth Saturday before each election. See 11 N. C. Law Rev., 229.

Time for Books to Remain Open.—Where the charter of a city or town provides that for the issuance of bonds an election shall be held "under the rules and regulations presented by law for regular elections," it refers to this section, requiring that the books of registration shall be kept open for twenty days (now two weeks); and construing this section in connection with section 160-37, it is held, that the former is for the purpose of a new and original registration, and the latter, in providing for only seven days, is for the purpose of revising the registration books so that electors may be registered whose names are not on the former books. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498.

Same—Substantial Compliance is all That is Necessary.—The statutory requirement that the registration be kept open and accessible for a specified time, are regarded as essentials by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appears that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appears that the election has been hotly contested by both sides, it shall be deemed sufficient. Hill v. Skinner, 169 N. C. 405, 86 S. E. 351.

Same—Effect of Non Compliance on Bond Issue.—The failure to keep the registry, for the question of the issuance of bonds in a special school district, open for twenty days (now two weeks), etc., required by this section, does not of itself render invalid the issuance of the bonds accordingly approved when it appears that the matter was fully known and discussed, opportunity offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. Hammond v. McRae, 182 N. C. 747, 110 S. E. 102.

Same—Presence of Registrar Every Moment of Time Not Necessary.—The requirements of this section do not require the registrar to be at his home or place of registration every moment of the twenty days (now two weeks) between the hours indicated, and a reasonable compliance is all that is necessary. Younts v. Commissioners, 151 N. C. 582, 66 S. E. 575.

Art. 8. Permanent Registration.

§ 163-32. Persons entitled to permanent registration.—Every person claiming the benefit of section four of article six of the constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall, prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the state for members of the general assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the state of North Carolina; I am .....years of age I was, on the first day of January, A. D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ....., wherein he then resided.) (Rev., s. 4325; 1901, c. 550, s. 1; C. S. 5949.)

Registration on Permanent Roll Does Not Dispense with New Registration.—The fact that a voter is registered on the permanent roll does not dispense with the necessity of his registering anew in order to become a qualified voter, whenever required by the statutes regulating the registration of voters. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52.

Object of Permanent Roll.—The making of a permanent roll or record was intended to be done for the sole purpose of furnishing convenient and easily available evidence of the fact that those whose names appear thereon are not required to have the educational qualification. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52.

§ 163-33. Oaths administered; names recorded.—It shall be the duty of the officer charged with the registration of voters in all such elections held in this state until November first, one thousand nine hundred and eight, to administer such oaths and to record the name of such person on his roll of registered and qualified voters; and all registration under this article and under the said section of the constitution shall be had and taken at the times and places provided by law for registration of voters for all such elections in this state until November first, one thousand nine hundred and eight. (Rev., s. 4326; 1901, c. 550, s. 2; C. S. 5950.)

§ 163-34. Registrar to return list to clerk of court; record.—It shall be the duty of such registration officer, within five days after the close of the election, to return to the clerk of the superior court of the county in which he resides a list of the names of all the persons so registered by him, stating therein the name and age of such person, and the name of the person from whom descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, and the state wherein he or his ancestor was a voter, and the date on which he applied for registration, and it shall be the duty of the clerk of the superior court, within ten days after receipt of said list, to make an alphabetical roll by townships of all persons taking such oath and registered by such registrar, and to record the same in a book to be provided for that purpose, which said book shall contain the name and age of such person, the name of the person from whom he was descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, the state in which he was such voter and the date he applied for registration. And the said roll shall, during the office hours of said clerk, be open to the inspection of the public. (Rev., s. 4327; 1901, c. 550, s. 3; 1903, c. 557; C. S. 5951.)

§ 163-35. Clerks to certify list to secretary of state.—It shall be the duty of the several clerks of the superior courts of this state to certify to the secretary of state, within thirty days after the close of each election, a copy of the said roll in his office, and it shall be the duty of the secretary

of the state to record, in a book provided for that purpose, the facts set out in such certified copy, and keep the lists from each county separate. The clerk of the superior court shall keep the lists from each township in separate columns. The books kept by such clerks and the secretary of state shall be plainly lettered "Permanent Roll of Registered Voters," and they shall prepare a complete alphabetical index to the same. And for recording and indexing such names the clerks of the superior courts shall receive as compensation ten cents for each copy-sheet, to be paid by the county commissioners. (Rev., s. 4328; 1901, c. 550, s. 4; 1903, c. 557, s. 2; C. S. 5952.)

§ 163-36. How permanent roll prepared and certified; certified copies from roll.—It shall be the duty of all officers charged with the registration of voters in any election held in the state to enter the name of such person on the registration book and voting lists of his township, ward, or precinct, and to give a certificate in the following form:

I, ..., registrar for ..... township (ward or precinct) of .....county, do hereby certify that on this day.....of..... race, of ..... county, ... township, ... precinct (or ward), age ..... years, took and subscribed the oath required by law, and has this day been registered on the permanent roll as a voter in said township (ward or precinct), in accordance with section four, article six, of the constitution of North Carolina.

This the ..... day of ....., 19....

.....,
Registrar.

And it shall be the duty of the clerk of the superior court to certify, under his hand and seal, to the genuiness of such certificate as follows:

North Carolina, ... county.

I, ..., clerk of the superior court of the aforesaid county, do hereby certify that the foregoing certificate is in due form, and that the signature of said ....., registrar of said precinct (ward or township), is in his own proper handwriting.

Witness my hand and official seal, this the.... day of ....., 19.....

.....,
Clerk of the Superior Court.

And for furnishing such certificates and administering such oaths neither the said registrar nor clerk shall be paid any compensation by the person so applying for registration. In the event of the loss of such certificate the person entitled to the same, upon the payment of twenty-five cents, may obtain from the clerk of the superior court, or from the secretary of state, a certificate under his official seal to the effect that his name is on the permanent roll of registered voters from his county, in his office, and such certificate shall, in all respects, take the place of such original, and be used as such. (Rev., s. 4329; 1901, c. 550, s. 5; C. S. 5953.)

§ 163-37. When copy of roll obtainable by clerk from secretary of state.—In the event of loss or destruction of such rolls in the clerk's office, it shall be his duty to obtain from the secretary of state a certified copy of said roll for his county, and such certified copy shall be good and effectual for all purposes as the original would have been. (Rev., s. 4330; 1901, c. 550, s. 6; C. S. 5954.)

§ 163-38. Copy of, or certificate from roll evidence of voter's rights.—In all suits involving the right to vote, or trying the title to office, or other action in which such rolls are produced in evidence, all of the facts and recitals therein shall be taken as prima facie evidence of such facts and recitals, and if the right of any voter upon such rolls to vote is challenged, either his certificate or a certified copy of such permanent roll shall be deemed prima facie evidence of his right to vote. (Rev., s. 4331; 1901, c. 550, s. 7; C. S. 5955.)

§ 163-39. Registration of voters removing residence.—Whenever any voter so registered shall remove from one precinct to another in the same county, or from one county to another in the state, he shall make application for registration, and upon production of his certificate of his being on the permanent roll, as provided in this article, under the hand and seal of either the clerk of the superior court or of the secretary of state, and proof of his identity, the proper officer charged with the registration of voters shall register his name and make record of the same as in cases of original registration under this chapter. (Rev., s. 4332; 1901, c. 550, s. 8; C. S. 5956.)

§ 163-40. Educational qualification not applicable to permanent registrants.—Any person holding a certificate of registration, as herein provided, shall be entitled to register in any county in this state, notwithstanding his inability to read and write: Provided, that he shall be otherwise qualified as an elector. (Rev., s. 4333; 1901, c. 550, s. 9; C. S. 5957.)

§ 163-41. State board of elections furnishes necessary blanks.—The state board of elections shall procure, provide, and furnish to the several officers named in this article and charged with duties under it, all such books, blanks, and other printed matter as may be necessary to carry into effect the provisions of this article. (Rev., s. 4334; 1901, c. 550, s. 10; 1921, c. 181, s. 4; C. S. 5958.)

Editor's Note.—The duties now devolving upon the board of elections, were, prior to the amendment of 1921, imposed upon the Secretary of State.

§ 163-42. Books constitute roll in secretary of state's office.—The books containing the permanent roll of registered voters, sent to the office of the secretary of state by clerks of the courts of the several counties, shall be and constitute the permanent roll of registered voters, required by this article to be kept in the office of the secretary of state, and such books shall be deemed a full and complete compliance with the requirements of this article. It shall be the duty of the several clerks of the court, within thirty days after the close of each registration hereafter to be held, up to the first day of December, one thousand nine hundred and eight, to forward to the secretary of state the names of all persons registering under article six, section four, of the constitution of North Carolina, as required by this article, and it shall be the duty of the secretary of state to record such names in the permanent roll of registered voters for the several counties. (Rev., s. 4335; 1903, c. 178; C. S. 5959.)

Art. 9. New State-Wide Registration of Voters.

§ 163-43. State-wide revision of registration books and relisting of voters.—Prior to the next state-wide primary election held after March 30, 1939 there shall be a revision made of the registration books and a relisting of the voters in each and every precinct in the state in the manner hereinafter provided. On the first Saturday following the appointment of the members of the county board of elections preceding the one thousand nine hundred and forty primary election, the members of each county board of elections shall, after due notice of their appointment has been received, meet at eleven o'clock A. M. in the office of the clerk of the superior court of the county and, after first taking their oath of office, shall organize by electing one member as chairman and another member as secretary of said board. The said board shall at this meeting authorize the revision of the registration books and the relisting of the voters in each precinct in the county in accordance with the provisions of this article. The clerk of the superior court shall, at this meeting, deliver to the chairman of the county board of elections three new registration books and one new poll book for each precinct in the county, which new books shall have been furnished to said clerk of the superior court by the state board of elections prior thereto together with a copy of this article. The cost of printing and distribution of said new books shall be paid for by the state out of the contingency and emergency fund. The said clerk of the superior court shall, at this meeting, deliver to the said chairman of the county board of elections the old registration books for each precinct in the county together with the poll books used in each precinct in the one thousand nine hundred and thirty-six and one thousand nine hundred and thirty-eight general elections, and he shall take a receipt from said chairman for the same. At this meeting the county board of elections shall authorize and direct the chairman of the county board of elections, with the assistance of the registrars and any other necessary assistance to proceed with the relisting of the voters in the county, the cost of which shall be paid for by the board of county commissioners out of the county funds, but which shall be held to as low an amount as is consistent with the purposes of this article. The said chairman of the board of elections shall begin said work within eight days after said meeting and supervise the same until it is completed. (1939, c. 263, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 356.

§ 163-44. "General election registration book" for each precinct.—For each precinct the chairman shall have copied in a new registration book, to be known and labeled as "The General Election Registration Book," the names only of all registered electors who are shown by the poll book to have voted in such precinct in either the one thousand nine hundred and thirty-six or the one thousand nine hundred and thirty-eight general election or the primary election, except electors who are known by the chairman to have died or moved their voting residence, and to record in said book opposite each name, information available with reference to the race, age, residence, place of birth and the township, county and state from whence he has removed, in the event of a removal. The party affiliation of the voters shall not be entered in this general election registration book. When this is completed, there shall be prepared for each precinct in duplicate a list of all the registered voters whose names were not transferred to the new general election registration book for the reason that such electors did not appear, according to the poll books, to have voted in either the general election or the primary election of one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight. The said chairman of the county board of elections shall thereafter publish said lists once a week for at least two consecutive weeks in a county journal or in his discretion have said lists posted at the courthouse door of said county at least two weeks prior to the opening of the regular primary registration period notifying all persons on said lists that their names would be erased from the registration books unless such persons personally appeared before their respective registrars during the regular registration period and showed their right to remain on the registration book and vote as qualified electors in said precinct. In the event that either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight poll books for a precinct are lost and cannot be found then the chairman shall order a new registration of voters in such precinct before the primary election. In all counties having had a new county-wide registration of voters, either in the year one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, the said chairman in said county is authorized to transfer to the new registration books the names of all persons registered therein regardless of whether any of the persons so registered voted in neither of said elections or primary elections of one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, except that the chairman shall remove from the books the names of all persons known by the chairman to have died or moved their voting residence elsewhere since said registration was held: Provided, however, that if the registration books in those counties having had a new registration within the time above mentioned do not show the party affiliation of the voter together with the other required information then the chairman shall order a new registration therein. In instances where the party affiliation is shown part of the time and is not shown in some cases, then the procedure set forth in § 163-46 shall be followed: Provided, further, that in those counties having had a new county-wide registration of voters either in the year one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, which registration, revision and relisting of voters was performed in substantial compliance with the terms of this article, in the opinion of the chairman of the state board of elections the said chairman will not be required to comply with the terms and provisions of this article. (1939, c. 263, s. 2.)

§ 163-45. New registration in discretion of county board.—In lieu of the procedure prescribed

in this article, any county board of elections in its discretion, may order a new registration of the voters in that county, or in any precinct or precincts therein: Provided, that in all cases the three registration books provided for in this article shall be made so that there shall be a general election registration book and a separate primary registration book. (1939, c. 263, s. 2½.)

§ 163-46. Required information may be supplied by registered persons who voted in 1936 or 1938 general election.—Where the registration books do not show in part the voters party affiliation, or age, race, residence, place of birth, etc., and the poll book for the precinct shows that such persons voted in either the one thousand nine hundred and thirty-six or the one thousand nine hundred and thirty-eight general election, or primary election, then the said chairman shall prepare a list of all such registered persons—including all of those absent from the county and employed outside of the county—and shall immediately mail a blank form to each of such persons whose address is given or known, instructing them to fill in the requested information on the blank return form enclosed and to return the same to the said chairman or registrar of the precinct by the close of the registration period or their names will be removed from the registration book. It shall then be the duty of the registrar to remove from the registration book the names of all such persons who fail to return the blank return form with the requested information by the close of the registration period. All blank return forms of this kind so received by the registrars shall be kept until after the primary election and thereafter filed with the said chairman along with the precinct returns as part of the public records in the chairman's office: Provided, however, that the provisions of this section shall not be mandatory as to any voter when the chairman of the county board of elections with the assistance of the registrars, or from any available source of information can obtain the facts, set out in said section, required to be obtained by the election laws of the state; but in all cases the party affiliation shall be shown on the primary registration books in order for the voter to participate in the primary election.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in the precinct, should appear at the polling place on election or primary day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the general election registration book and on the primary registration book if he declares his party affiliation as provided in § 163-50, and he shall be allowed to vote in said precinct as before. (1939, c. 263, s. 3.)

§ 163-47. Return of registration and poll books to chairman of county board.—On the day of the canvass of votes the registration books herein provided for shall be returned together with the poll books by the registrar to the chairman of the county board of elections who shall have the care and custody of the same until they are placed in the hands of the registrar for the purpose of registration of voters or holding subsequent primary or general elections. Said chairman of the county board of elections shall keep said books in a safe and secure place, a fire-proof vault if possible. (1939, c. 263, s. 3½.)

§ 163-48. Democratic and Republican primary registration books. — After the completion of the transfer of the names of registered electors to the general election registration book, as above provided, the chairman of the county board of elections shall then transcribe to another new registration book to be labeled and known as "The Democratic Primary Registration Book," the names of all registered democrats who are shown by the poll books to have voted in either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight general election or primary election, and on another registration book shall transcribe the names of all registered republicans who voted in either of the above specified elections, which book shall be known and labeled as the "Republican Primary Registration Book." The names of all electors registered on the old books without any party affiliation being given, or who are registered as independents, or who fail to show their age, race, place of birth, residence, etc., shall not be transcribed to either party primary registration book until the said chairman or registrar shall have received back the blank return form from such electors as above provided for giving the requested information, or shall have obtained said information otherwise as hereinbefore provided in § 163-46.

Only the party primary registration book of the party participating in a primary election shall be used at the polls at a primary election and if only one party so participates then the other party primary registration book shall not be used or kept at the polls on primary day but shall, after the close of the registration period, be transmitted to the chairman of the county board of elections along with the general election registration book. At a general election, only the general election registration book shall be used at the polls on election day, and after the close of the registration period the two party primary registration books shall be transmitted to the said chairman. In all registrations hereafter held before a primary or an election, the registrars shall register all qualified applicants for registration in both the general election registration book and also in the party primary book of the party with which the elector professes affiliation, but the party affiliations shall not be recorded in the general election registration book. Any applicant for registration who refuses to state his or her party affiliation shall not be registered in a party primary registration book and shall not be permitted to vote in a primary until the affiliation is stated and so recorded in the primary book of such party. (1939, c. 263, s. 4.)

§ 163-49. Transfer of persons registered under the "Grandfather Clause."—The chairman of the county board of elections shall transcribe to the new registration books the names of all persons who are recorded as having registered under the Grandfather Clause of the constitution of

North Carolina, regardless of whether such persons voted in either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight election. The said chairman, however, shall not transcribe to the new books the names of any persons so registered who are known to have died or moved their voting residence elsewhere. (1939, c. 263, s. 5.)

§ 163-50. Change of party affiliation.—No registered elector shall be permitted to change his party affiliation for a primary or second primary after the close of the registration period. Any elector who desires to change his party affiliation for a primary from the registration book on which registered to that of another party shall, during the registration period only, go to the registrar of his precinct and request that such change be made on the party primary books. Before being permitted to change his party affiliation, for the purpose of participating in a primary election, however, such elector shall be required by the registrar to take the oath of party loyalty to the party to which he wishes to now affiliate, and the registrar shall thereupon administer to the said elector the following oath:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the ..... party to the ..... party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God.

If at any time the chairman of the board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the primary registration books then and in all such events the chairman of the county board of elections or the registrar, having the custody of the registration book may make the necessary correction upon the voter taking the oath of party loyalty in substance of the form set forth in this section. (1939, c. 263, s. 6.)

§ 163-51. Willful violations made misdemeanor.—Any chairman of a county board of elections who willfully and knowingly refuses or fails to comply with the provisions of this article with respect to his duties as herein specified shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine, imprisonment, or both, in the discretion of the court.

Any registrar who wilfully and knowingly registers an elector in the wrong party primary registration book contrary to the direction of the voter; or any registrar who willfully and knowingly refuses to make the change in the affiliation from one party primary book to another party primary book at the request of an elector who has taken the oath prescribed in § 163-50; or any registrar who willfully and knowingly permits any person to vote in the primary of a party in whose registration book such person is not registered; or any registrar who willfully and knowingly fails to comply with any of the duties placed upon him by this article shall be guilty of a misdemeanor and shall be punished by a fine, imprisonment, or both, in the discretion of the court. (1939, c. 263, s. 7.)

§ 163-52. Removal of chairman of county board for violations; appointment of successor.—The state board of elections shall have the authority to summarily remove any chairman of a county board of elections who fails or refuses to comply with any of the duties placed upon him by the provisions of this article, and shall thereupon request the chairman of the state executive committee to recommend a person to succeed the member removed from said county board of elections, which said person shall thereupon be appointed by the state board of elections as the chairman of such county board of elections. (1939, c. 263, s. 8.)

Art. 10. Absent Voters.

§ 163-53. Registration of voters expecting to be absent during registration period.—Any citizen of the state, not duly registered, who may be qualified to vote under the constitution and laws of this state, and who expects to be absent from the county in which he lives during the usual period provided for registration of voters, may be registered as herein provided. The State Board of Elections shall furnish to the chairman of the county board of elections in each county a book for the registration of absent electors, which book shall contain separate columns for the name of elector, name of precinct in which elector resides, age, place of birth, race, and precinct in which elector last resided. It shall be the duty of the chairman of the board of elections in each county to register on said county registration book any qualified elector who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the voting precinct in which he resides during the usual registration period, if found to be otherwise entitled to registration, in the same manner as now provided by law for the registration of voters before the precinct registrar in the usual registration period. The Chairman of the county board of elections shall, immediately after the appointment of a registrar or registrars for any election to be held in his county, either legalized primary or general election, either for the county or for any political subdivision thereof, certify to the respective registrars in each of such precincts the names, age, and residence, place of birth, etc., of any electors registered on the said county registration book and thereby entitled to vote in such precinct; and it shall be the duty of the registrar in every such precinct to enter upon the regular registration book for such precinct the names of all such electors so certified to him by the chairman of the county board of elections, marking opposite the names of such electors the words "Registered before chairman county board of elections"; and electors so registered shall be entitled to vote in any election in such precinct in the same manner as if registered by the precinct registrar. (1917, c. 23, s. 2; C. S. 5961.)

§ 163-54. Absentee voting in general elections.—Any qualified voter of the state who finds that he will be absent from the county in which he is

entitled to vote during the day of the holding of any general election, or who by reason of sickness or other physical disability will be unable to travel from his home, or place of confinement, to the voting place in his precinct, may vote in any such general election, in the manner as hereinafter provided. (1939, c. 159, s. 1.)

Local Modification.—Jackson: 1939, c. 309; Sampson: 1941, c. 167.

Editor's Note.—For cases decided under the former law, see Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346, holding law valid; Davis v. Board, 186 N. C. 227, 119 S. E. 372, holding provision requiring certificate or affidavit to be mandatory; State v. Jackson, 183 N. C. 695, 110 S. E. 593, holding that persons within county were not entitled to vote as absentees; Bouldin v. Davis, 200 N. C. 24, 156 S. E. 103, holding that jurat was prima facie evidence only that ballots had been sworn to; Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897, holding law applicable to municipal elections.

The provision of the former law that election laws be construed in favor of the right to vote was held not to apply when the elector desires to avail himself of a special privilege and does not, of his own volition, comply with the conditions precedent prescribed by the statute, which gives him the right to do so. Davis v. County Board, 186 N. C. 227, 119 S. E. 372.

As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N. C. Law Rev. 355.

§ 163-55. Written application for official ballot.—Such voter, not more than thirty days, nor less than two days prior to the date of such general election shall make application, in person, by some member of his or her immediate family (husband and wife, brother and sister, parent and child only) or by mail, in writing, to the chairman of the county board of elections of his county, for an official ballot to be voted in such general election. Provided that said two days minimum shall not apply to voters becoming unexpectedly physically disabled to attend the polls. Provided further, that the thirty days maximum specified in this section above shall not apply to a qualified registered voter who is in the military, naval or other armed forces of the United States, and an application for an absentee ballot from such member of the armed or naval force shall not be required to be made on the form herein prescribed but may be informally made in writing, by card or letter, signed by the voter and mailed direct to the chairman of the county board of elections of the county in which voter resides. Provided further that the provisions of this section shall be in addition to and not exclusive of the method of applying for ballots hereinbefore provided for.

Such application shall be made on a blank to be furnished by the chairman of the county board of elections and shall be substantially in the following form:

Application for Absentee Voter's Ballot

I, ..., do hereby certify that I am a duly qualified voter in ..... precinct, ... Township, in the County of ....., North Carolina, and that I am entitled to vote in the general election to be held therein on the ..... day of ..... 19.....:

(a) That I will be absent from the county during the day of the election;

(b) That by reason of sickness, or other physical disability, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct;

(Strike out whichever of (a) or (b) is inappropriate)

and I hereby make application for the official ballot, or ballots, to be voted by me in such general election, and that I will return said ballot, or ballots, to the official issuing the same, before the date of said general election.

Dated.....

P. O. Address.....

(Signed).....

Witness: .....

There shall be printed as part of the application a certificate to be executed by the chairman of the county board of elections as follows:

Certificate of Chairman of Election Board

I, ..., chairman of the county board of elections of ..... County, do hereby certify that the above application was received by me from ....., on the ..... day of ....., 19....., by personal delivery to me by the voter or by a member of his or her immediate family, or by mail addressed to me; that this application is number ....., and that I have delivered, or caused to be delivered at my direction and under my supervision, in person to ....., the said voter, or ....., a member of his or her immediate family, or have mailed to him, or her, at the designated post office address, the official ballot with the name of the applicant certified on said ballot or ballots, and that I delivered, or caused to be delivered at my direction and under my supervision, in person, or to said member of his or her immediate family, or mailed, to the voter a container envelope for said ballot, bearing the same number with the name of the voter and his voting precinct entered thereon; and that I also, at the same time, furnished a return envelope, bearing my name and address, in which the ballot could be returned to me.

I further certify that this application was registered by me, in a register furnished for that purpose by the state board of elections, on the day that it was received and the ballot issued, and that it bears the same number on the register as this application and the container envelope furnished.

Dated.....

(Signed).....

Chairman, ... County.

Board of Elections.

On the back of said application there shall be printed §§ 163-65 and 163-66. (1939, c. 159, s. 2; 1943, c. 751, s. 1.)

Local Modification.—Sampson: 1941, c. 167.

Editor's Note.—The 1943 amendment added the second and third provisos to the first paragraph.

§ 163-56. Issuance of official ballot.—Upon receipt of such application (provided it shall be received not more than thirty days, nor less than two days prior to such general election, except as hereinbefore provided), the chairman of the county board of elections, after entering on the register to be supplied to him for that purpose, by the state board of elections, the name of the voter, the number of the application, the precinct in which the applicant certified he is a qualified

voter, the reason assigned as entitling the voter to the absentee ballot, the date of the receipt of the application, the date of the delivery of the ballot, and whether the ballot was delivered in person to the voter, to a member of his or her immediate family, or by mail, shall deliver in person, only, or to a member of his or her immediate family, or mail to the applicant at the designated post office address, an official ballot, with a container envelope, and a return envelope bearing the name, title, and address of the chairman issuing same.

It shall be the duty of the chairman of the county board of elections issuing such ballot, to place on the back thereof, by stamp, in writing, or otherwise, a certificate as follows:

I certify that this ballot was delivered in person to ..... the voter who applied for same or to a member of his immediate family for him, or mailed to his post office address and whose application is on file in my office. That the container envelope furnished with the ballot bears the same number as the application upon which this ballot was issued.

(Signed).....

Chairman ..... County Board of Elections

(1939, c. 159, s. 3.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-57. Container envelopes provided for absentee ballots; affidavit of absent voter.—It shall be the duty of the said chairman of the county board of elections to fold the ballots, enclose them in the container return envelope furnished by him, which envelope shall bear on one side thereof, written by said chairman, the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and on the other side thereof the return address of the chairman together with a printed affidavit as follows:

Affidavit of Absentee or Sick Voter

State of ..... County of ..... I, ..., do solemnly swear that I am a resident and qualified voter in ..... Precinct, ... County, North Carolina; that I will be absent from my county on the day of the general election on November .....; (or that due to illness or physical disability I will be unable to travel to the voting place on election day). I further swear that I made application for this absentee ballot, or same was made for me by some member of my immediate family, and that I marked the ballots enclosed herein, or the same were marked for me in my presence and according to my instructions.

.....

Signature of voter.

Sworn to and subscribed before me this ..... day of ....., 19.....

(Seal) .....

Signature and title of Officer.

(Acknowledgment of servicemen may be taken before any commissioned officer). (1939, c. 159, s. 4; 1943, c. 751, s. 2.)

Local Modification.—Sampson: 1941, c. 167.

Editor's Note.—The 1943 amendment rewrote this section.

§ 163-58. Instructions for voting absentee ballots.—In using such ballot the absent voter shall make and subscribe to the appropriate affidavit prescribed in § 163-57, before an officer authorized by law to administer oaths, having an official seal, which seal shall be affixed, and in the presence of such officer, mark the ballot, or ballots, or cause the same to be marked in his presence according to his instructions, and shall sign or cause to be signed on the back or margin of said ballot, or ballots, his or her name; and the ballot, or ballots, shall then in the presence of the officer be folded by the voter or attendant, so that each ballot will be separate and then in the presence of such officer be placed in the container envelope, and the container envelope securely sealed. The container envelope, with the ballot enclosed, shall be placed in the return envelope and shall be mailed by the voter to the chairman of the county board of elections issuing the ballot, if the voter is absent from the county. If the voter is within the county at the time he signs the affidavit and marks the ballot, the container envelope, with the ballot enclosed, shall be placed in the return envelope and mailed or delivered by the voter or some member of his or her family in person to the chairman of the county board of elections issuing the ballot. Such envelope containing the ballot must be in the hands of the chairman of the county board of elections by three o'clock, P. M. on the day of the general election. No ballots received after that time shall be voted or counted: Provided that in the case of voters who are members of the armed forces of the United States the signature of the Commanding Officer, or any commissioned officer, of the voter, as witness to the execution of any certificate required by this or any other section of this article to be under oath, shall have the force and effect of the jurat of an officer with a seal. (1939, c. 159, s. 5; 1941, c. 248; 1943, c. 736.)

Local Modification.—Sampson: 1941, c. 167.

Editor's Note.—The 1941 amendment added the proviso at the end of this section. The 1943 amendment rewrote the second sentence and inserted the third sentence.

§ 163-59. List of applications made in triplicate; certificate of correctness.—On the morning of the day before any general election, the chairman of the county board of elections shall make a list, in triplicate, of all applications received by him from voters to whom he has issued absent voters ballots, and mail said list, with the original of all applications received by him, by registered mail, to the chairman of the state board of elections, at Raleigh, North Carolina, and post one copy thereof at a conspicuous place at the courthouse door; reserving for himself the duplicate of said list. On said list he shall make, under oath, a certificate as follows:

I, ..., chairman of the county board of elections of ..... county, do hereby certify that the foregoing is a list of all applications filed with me for absent voters ballots to be voted in the election, on the ..... day of ....., 19.....; and I further certify that I have issued ballots to no other persons than those listed therein, whose original applications are enclosed and filed herewith; and I further certify that I did not deliver any of the ballots to any other person than to the elector,

personally, or a member of his, or her, immediate family, or by mail addressed to the voter.

(Signed).....

Chairman ..... County Board of Elections

Dated.....

Sworn to and subscribed before me this ..... day of ....., 19.....

Witness my hand and official seal .....

Title of Officer

(1939, c. 159, s. 6; 1943, c. 751, s. 3.)

Local Modification.—Sampson: 1941, c. 167.

Editor's Note.—The 1943 amendment struck out the words "on blanks furnished by the state board of elections for that purpose" formerly appearing after the word "triplicate" in line five.

§ 163-60. Delivery of absentee ballots and list thereof to registrars; list to be posted.—On the morning of the day of a general election, the chairman of the county board of elections shall deliver, or cause to be delivered, to each registrar in the county, a list of all the absentee ballots received by him from absent voters for such precinct, and at the same time there shall be delivered to the registrars all of the absentee container return envelopes unopened for such precinct which the chairman has received back from the voters. The registrar shall post said list of absentee voters in a public place at the polls where it may be inspected by any voter, which list shall be posted by twelve o'clock noon on election day. (1939, c. 159, s. 7; 1943, c. 751, s. 4.)

Local Modification.—Sampson: 1941, c. 167.

Editor's Note.—The 1943 amendment rewrote this section.

§ 163-61. Ballots deemed voted upon delivery to precinct officials; opening, depositing and recording; rejected ballots; challenges.—Absent voters ballots shall be deemed to be voted when delivered to the precinct officials, unless upon being opened and inspected it shall appear that the affidavit and jurat, or either, are not in due form, or that the name on the container envelope, the ballot and the chairman's certificate do not correspond. In either of which events, the ballot shall not be voted, nor counted. At any time during the day or, if more convenient, immediately upon the closing of the polls for the voting of voters in person, the recording of the absent voters names on the poll book and depositing the ballot in the ballot box shall be begun and the procedure shall be as follows:

(1) The name of the voter as it appears on the affidavit shall be called by one of the judges of the elections. If it be found that he is a qualified voter of the precinct, and no challenge is offered to the vote, the name shall then be recorded on the poll book, with the notation—"Absent Voter." A judge of elections shall then open the envelope by slitting it with a sharp instrument in such manner as not to destroy, tear or obliterate any part of the affidavit; the ballot shall be removed from the envelope without unfolding the same so as to disclose how the ballot is marked, and if the signature of the voter on the ballot or ballots corresponds with the name on the envelope and with the name set out in the chairman's certificate on the back of the ballot, such ballot, without examination as to how it is marked, shall be deposited in the appropriate ballot box, as other ballots are deposited; provided, however, that if the name on the envelope and the name on the ballot and in the chairman's certificate on the back of the ballot do not correspond, or if the affidavit and jurat are not in due form, said ballot shall not be deposited in the ballot box, nor counted, but returned to its envelope and marked —"Rejected."

(2) If an absent voter's ballot is challenged and the challenge is sustained, the ballot shall be returned to its envelope and marked "Challenge Sustained" and returned as provided for the return of rejected ballots.

All envelopes shall be carefully preserved, and, with ballots marked "Rejected" and "Challenge Sustained," shall be filed with the chairman of the county board of elections, at the time the returns from said precinct are filed, and shall be preserved, intact, by the chairman of the county board of elections for a period of six months, or longer if any contest shall then be pending concerning the validity of any of the absentee ballots so delivered to him. (1939, c. 159, s. 8.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-62. Challenged voter granted right of hearing before county board.—The absent voter, whose ballot has been challenged, shall, upon notice, have the right to appear before the county board of elections on canvass day and be given the opportunity to sustain the validity, and if its validity is sustained, his ballot shall be counted and added to the returns from the proper precincts. (1939, c. 159, s. 9.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-63. Register of applications declared a public record.—The register of applications for absent voters ballots, required to be kept by the chairman of the county board of elections, shall constitute a public record and shall be opened to the inspection of any elector of the county, at any time within thirty days before and thirty days after any general election, or at any other time when good and sufficient reason may be assigned for such inspection. (1939, c. 159, s. 10.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-64. Certification without administering oath made misdemeanor.—Any person authorized to administer oaths, who wilfully signs a certificate that any person has subscribed and sworn to an affidavit for use in obtaining an absent voters application, or absent voters affidavit, or any other purported affidavit referred to and required by this article, when, as a matter of fact, he has not administered the oath to such person, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 11.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-65. False statements under oath made misdemeanor.—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement, under oath, is required to be made by the provisions of this article, such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than sixty

days, or both, in the discretion of the court. (1939, c. 159, s. 12.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-66. False statements not under oath made misdemeanor.—If any person, for the purpose of obtaining or voting any official ballot hereunder, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 13.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-67. Custody of applications, ballots, etc.—The chairman of the county board of elections in each county shall be the sole custodian of blank applications for absent voters ballots, the official ballots, blank certificates and envelopes, and he shall issue same only in strict accordance with the provisions of this article. The issuance of such absent voters ballots is the responsibility and duty of the chairman of the county board of elections. Blank applications for absent voters ballots may be delivered to any elector applying for same. He shall keep all records and make all reports, promptly, required by him by the terms of this article.

The wilful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 14.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-68. Violations not otherwise provided for made misdemeanor.—If any person shall willfully violate any of the provisions of this article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1939, c. 159, s. 15.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-69. Reports of violations to attorney general and solicitor.—It shall be the duty of the state board of elections to report to the attorney general of North Carolina, and to the solicitor of the appropriate judicial district, any violation of this article, or the failure of any person charged with a duty hereunder to comply with and perform such duty, and it shall be the duty of the solicitor to cause such person to be prosecuted therefor. (1939, c. 159, s. 16.)

Local Modification.—Sampson: 1941, c. 167.

Art. 11. Absentee Voting in Primaries by Voters in Military and Naval Service.

§ 163-70. Voting by persons in armed forces; act void upon repeal of Selective Service Act.—Any qualified voter entitled to vote in the primary of any political party, who, on the date of such primary, is in the military, naval or other armed forces of the United States may vote in the primary of the party of his affiliation in the manner as hereinafter provided.

This act shall be null and void on or after the repeal of the Selective Service Act of one thousand nine hundred and forty by the Congress of the United States of America. (1941, c. 346, ss. 1, 1-a.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 480.

§ 163-71. Application for ballot; blanks furnished; name of applicant and other information entered on register.—Such voter at any time before the date of the primary may make an application in writing duly signed by him or signed in his name by a member of his immediate family (wife, brother, sister, parent or child) to the chairman of the county board of elections of his county for an official primary ballot of the party of his affiliation as shown by the party primary registration books.

Said application shall show the precinct in which the applicant is registered and entitled to vote and the company or other armed unit of which he is a member.

The county board of elections shall furnish appropriate application blanks to any such voter or the immediate family of such on request. The application, however, shall not be required to be on such form but may be informally made in writing signed by the voter or signed in his name by a member of his immediate family as herein defined.

Upon the receipt of such application the chairman of the county board of elections of the county of the voter's residence shall enter on a register kept for that purpose the name of the applicant, his party affiliation and the precinct in which applicant is entitled to vote as shown by the application. (1941, c. 346, ss. 2, 3.)

§ 163-72. Ballot mailed to applicant; form of certificate on ballot.—The chairman of the county board of elections after registering said application shall mail to the applicant the official primary ballot of the political party with which the applicant is affiliated, certifying on said ballot that it was furnished to the voter, naming him, whose application for the ballot was made to the chairman of the county board signing the same.

On the back of the ballot a certificate shall be printed in the following words:

I, ..., a duly registered Democrat—Republican (Strike whichever is inappropriate) in .....Precinct, ...County. do hereby certify that I am a qualified voter of said Precinct; that I am in the Armed forces of the United States, a member of ..... Company or unit and am sending this ballot duly marked by me to the Chairman of the County Board of Elections of the County of my residence to be voted in the forthcoming Primary of said party.

Witness my hand in the presence of my commanding officer this the ..... day of ....., 19..

.....

Witnesses:

.....
Name of Officer.

.....
Title and Unit.

(1941, c. 346, ss. 4, 5.)

§ 163-73. Envelope for return of ballot.—The chairman of the county board of elections shall send with the official ballot an envelope for the return of the ballot addressed to the chairman and having printed thereon the following form:

This envelope contains the ballot of ....., a member of the Armed forces of the United States to be voted in .....Precinct, ... County, in the Primary of the ..... Party to be held on the ..... day of ....., 19...

.....
Signature of Voter.

(1941, c. 346, s. 6.)

§ 163-74. Voting of ballots; delivery to appropriate precincts, unchallenged ballots deposited and counted.—The voter receiving said ballot may vote same by properly marking the ballot, completing the certificate on the back thereof and signing his name to said certificate in the presence of his commanding officer or a commissioned officer who shall sign his name thereto as witness to the signature of the voter.

The ballot shall then be placed in the envelope furnished, securely sealed, the voter completing and signing the certificate on the back of the envelope and mailing the same to the chairman of the county board of elections by United States mail.

The chairman of the county board of elections on the day of the primary shall deliver or cause to be delivered to the appropriate precinct all primary ballots received by him from members of the armed forces of the United States. Said ballots shall be delivered in the envelope in which received and without the seals being broken.

All ballots delivered to the precinct officials by the chairman of the county board of elections shall be deemed voted at three o'clock on the day of the primary except such as may have been successfully challenged. Such ballot shall not be voted, however, unless the voter is duly registered on the primary books of the political party in whose primary he offers to vote.

At any time after three o'clock or the close of the polls all unchallenged ballots shall be deposited in the appropriate ballot box and counted as and in the same manner as other ballots are counted. (1941, c. 346, ss. 7-10.)

§ 163-75. Preservation of envelopes in which ballots transmitted.—The precinct officials with the returns of the primary shall deliver to the chairman of the county board of elections all envelopes from which absentee ballots have been voted and said envelopes with all applications received by the chairman of the county board of elections on which he has issued ballots shall be preserved for at least six months after the primary and longer if there should be reason or necessity therefor. (1941, c. 346, s. 11.)

§ 163-76. Register of ballots a public record; posting list.—The register of the ballots issued by the chairman shall be a public record open to inspection by any voter of the county at any time.

A list of all ballots received at a precinct to be voted therein shall be posted at a conspicuous place about the polls as soon as practical after receipt of the ballots and before they are voted. (1941, c. 346, ss. 12, 13.)

§ 163-77. Unlawful voting made misdemeanor.—Any person who shall vote or attempt to vote absentee ballot in any primary, not then being a member of the armed forces of the United States, shall be guilty of a misdemeanor and punished by fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months or both in the discretion of the court. (1941, c. 346, s. 14.)

Art. 11A. Absentee Registration and Voting in General Elections by Persons in Military or Naval Service.

§ 163-77.1. Persons in armed forces may register and vote by mail under article.—Every individual absent from the county of his residence and serving in the land or naval forces of the United States, including the members of the army nurse corps, the navy nurse corps, the women's navy reserve, and the women's army auxiliary corps and merchant marine, who is eligible to register for and is qualified to vote at any election held under the laws of this state, shall be entitled to register and vote in the manner hereinafter provided. (1943, c. 503, s. 1.)

§ 163-77.2. Application made to secretary of state; transmitted to chairman of county election board.—Such absent member of the United States armed forces, absent from his residence county, may make an application, in writing, at any time prior to an election on the form prescribed in Public Law seven hundred and twelve of the Seventy-seventh Congress, to the secretary of state, for absentee ballots to be voted in the election, and the secretary of state shall, after making a record of the name and residence of such applicant, transmit such application to the office of the state board of elections. The state board of elections shall, after the receipt of such application from the secretary of state, transmit said application to the chairman of the county board of elections of the county in which applicant resides, with all necessary instructions to said county chairman as to his duties hereunder. (1943, c. 503, s. 2.)

§ 163-77.3. Duties of county chairman upon receipt of application; registration and issuance of absentee ballots.—It shall be the duty of the chairman of the county board of elections upon receipt of said application from the state board of elections to:

(a) If the applicant is found by the chairman of the county board of elections to be registered in the registration book of the precinct in which applicant advises he is residing, the said chairman shall mail such applicant one official absentee ballot of each kind being used in the election, together with a container return envelope for the return of the ballot the same as required by § 163-57.

(b) If the applicant is found by the chairman not to be registered in the registration book of the voting precinct in which the applicant declares he is residing, upon the chairman determining the resident precinct of such applicant and that he is eligible under article six of the state constitution and the statutory laws relating thereto to be registered, then the said chairman may register such applicant in the registration

book furnished and kept by him under the provisions of § 163-56 according to precincts.

When the chairman of the county board of elections has registered said applicant in said registration book, he shall thereupon mail to the applicant one official absentee ballot of each kind being used in the election, including candidates for all federal, state, district, county and local offices and for constitutional amendments, together with a container return envelope for the return of the ballots to the chairman the same as required by § 163-57. (1943, c. 503, s. 3.)

§ 163-77.4. Chairman to prepare list of persons registered; list to be posted at precinct.—The chairman of the county board of elections shall prepare in duplicate a list of the names of all persons who have applied for absentee ballots under the said federal act and whose names he has registered on said absentee registration book. One copy of this list shall be delivered by said chairman, together with a copy of the list of names of all other absentee ballots which he is required by § 163-60 to deliver, to the registrar of each precinct on the morning of the election, which shall be posted by the registrar in a public place at the voting precinct where it may be inspected by any voter. This list shall be entitled "List of applicants under the federal act for absentee ballots registered by chairman of the county board of elections." One copy shall be kept by such chairman. (1943, c. 503, s. 4.)

§ 163-77.5. List constitutes valid registration; names not to be placed on regular registration books.—The chairman of the county board of elections' list as delivered to the registrars of the various precincts shall constitute the only precinct registration of the members of the armed forces registering under the provisions of this article, and the posting of such list by the registrar at the precinct shall be sufficient to validate the ballots of such absentee voters when such ballots are in all other respects regular, and the registrars shall not register on the regular election registration books of the precincts the names of such voters registered under the provisions of this article. (1943, c. 503, s. 5.)

§ 163-77.6. Chairman may register qualified persons who apply by mail direct to him for an absentee ballot.—If an unregistered applicant for an absentee ballot in the said armed forces applies in writing direct to the chairman of the county board of elections instead of through the secretary of state, the said chairman may likewise register said applicant in his registration book and mail him the absentee ballot if the chairman determines that said applicant is qualified to register under article six of the state constitution and the statutory laws enacted relating thereto and shows that he or she is a member of the United States armed forces as above described in § 163-77.1. (1943, c. 503, s. 6.)

§ 163-77.7. Article 10 on absentee voting applicable except as otherwise provided herein.—Except as herein otherwise provided, the provisions of article 10 of this chapter, relating to absentee voting in general elections, shall apply as to the form of the absentee ballot, the certificates, envelopes, and manner of depositing and voting of such ballots, counting of ballots and certifying results, et cetera. (1943, c. 503, s. 7.)

§ 163-77.8. State election board to supervise administration of article; power to make regulations.—The state board of elections is hereby given full power and authority to supervise the administration of this article, and in case sufficient provisions may not appear to have been made herein, said board of elections may make such reasonable rules and regulations as are necessary to carry out the true intent and purpose of this article, not in conflict with the provisions of the law relating thereto. (1943, c. 503, s. 8.)

§ 163-77.9. Application by Congress of federal act to primary elections; power of state board to conform thereto.—In the event the Congress of the United States should change the provisions of the federal law by extending its provisions to apply to primary elections as well as to general elections, or should otherwise amend the law pertaining to the same, the state board of elections is hereby given sufficient power and authority to promulgate whatever rules and regulations it may deem necessary to conform thereto, including making the provisions of this article applicable to primary elections the same as to general elections. (1943, c. 503, s. 9.)

§ 163-77.10. Printing and distribution of absentee ballots and supplies.—In order to fully carry out the purposes and intentions of this article, the state board of elections and the various county boards of elections, as the case may be, are authorized, empowered and directed to have printed, and in the hands of the proper election officials, all necessary ballots, together with the container return envelope, not later than the first day of August immediately preceding the ensuing general election, and in the event this article is made applicable to primary elections, not later than ten days after the time has expired for the filing for candidacy by county officers. (1943, c. 503, s. 10.)

§ 163-77.11. Expenses of administering article; how paid.—The expenses of administering the provisions of this article by the state board of elections shall be paid for by allotment from the state contingency and emergency fund, unless or until the same is paid by the federal treasury under the provisions of the said federal act. (1943, c. 503, s. 11.)

§ 163-77.12. Article inapplicable to persons after discharge from service; re-registration required.—Upon any member of the armed forces, as hereinbefore defined, being discharged therefrom, he or she shall no longer be entitled to the benefits of the provisions of this article, and if such person registered under the provisions of this article, he or she shall be required to re-register in person the same as any other person before being entitled to vote in any election. (1943, c. 503, s. 12.)

Art. 12. Challenges.

§ 163-78. Registrar to attend polling place for challenges.—It shall be the duty of the registrar to attend the polling place of his township or precinct with the registration books on Saturday pre-

ceding the election, from the hour of nine o'clock a. m. till the hour of three o'clock p. m., when and where the said books shall be open for the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite the name of the person so objected to, the word "Challenged," and shall appoint a time and place, before the election day, when he, together with the judges of election, shall hear and decide said objection, giving personal notice of such challenge to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence: Provided, nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrar shall erase his name from the books. (Rev., s. 4339; 1901, c. 89, s. 19; C. S. 5972.)

Absence of Officer in Charge for a Short Time.—That one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, does not vitiate the election. State v. Nicholson, 102 N. C. 465, 9 S. E. 545.

Remedy for Irregular Registration.—Where it is alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the plaintiffs seek mandamus to compel a proper registration, and the statute and the charter of the city under which the election is to be held provided for challenge to voters so registered, mandamus being a proceeding in equity will not be issued, there being an adequate remedy at law by way of challenge provided by statute. Glenn v. Culbreth, 197 N. C. 675, 676, 152 S. E. 332.

§ 163-79. How challenges heard. — When any person is challenged, the judges and registrar shall explain to him the qualifications of an elector, and shall examine him as to his qualifications; and if the person insists that he is qualified and shall prove his identity with the person in whose name he offers to vote, and his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony, under oath, of at least one elector, one of the judges or the registrar shall tender to him the following oath or affirmation:

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years old, and that you have resided in this state for one year, and in this precinct (ward or township) for four months next preceding this election, and that you are not disqualified from voting by the constitution and laws of this state; that your name is (here insert name given), and that in such name you were duly registered as a voter of this township; and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God.

And if he refuses to take such oath, when tendered, his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: Provided, that after such oath or affirmation shall have been taken, the registrar and judges may, nevertheless, refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualification of a person offering to vote. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in this section, the registrar or one of the judges shall write on the poll books, at the end of such person's name the word "Sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars and judges of election, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to. (Rev., s. 4340; 1901, c. 89, s. 22; Ex. Sess. 1920, c. 93, s. 2, IV; C. S. 5973.)

§ 163-80. Challenge as felon; answer not used on prosecution. — If any person is challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution. (Rev., s. 3388; 1901, c. 89, s. 71; C. S. 5974.)

Art. 13. Conduct of Elections.

§ 163-81. Special elections.—Every election held in pursuance of a writ from the governor shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers holding and the persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections. (Rev., s. 4341; 1901, c. 89, s. 75; C. S. 5975.)

§ 163-82. Power of election officers to maintain order.—The registrar and judges of election in each ward or precinct, the board of elections of each county, and the state board of elections shall respectively possess full power and authority to maintain order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose, and if any person shall refuse to obey the lawful commands of any such registrar or judges of election, county boards of elections, or state board of elections, or by disorderly conduct in their hearing or presence shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days, and such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such state or county boards of elections in writing, and the keeper of such jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment. (Rev., s. 4376; 1901, c. 89, s. 72; C. S. 5977.)

§ 163-83. Voter may deposit his own ballot. —

The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses. (Rev., s. 4343; 1901, c. 89, s. 24; C. S. 5979.)

Choice as to Voting.—The provisions of our State Constitution, Art. VI, sec. 6, making the distinction that the elector shall vote by ballot, and an election by the General Assembly shall be viva voce, gives under our statute, the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar, or one of the judges of election, deposit it for him. Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346.

Art. 14. Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ 163-84. Proceedings when polls close; counting of ballots. — At the time for closing the polls the registrar shall announce that the polls are closed, but any qualified electors who are in the process of voting, or are in line within the voting enclosure waiting to vote, shall be allowed to vote before the polls close. After the polls are closed the registrar shall then proceed to open one ballot box at a time for the purpose of counting the ballots in that box in the presence of all election officials, witnesses and watchers, if there are any present.

The counting of ballots shall be conducted as follows: One of the ballots shall be taken out of the ballot box by one of the judges and opened in full view of all the judges and witnesses. If the judges and registrar all agree as to how the ballot shall be counted, one of them shall place it where it can be seen by any one present and shall read aloud distinctly the names of the candidates voted for and the vote on any issue submitted; and the tally-man shall tally the same directly on the tally sheets. In the event the registrar and judges cannot agree as to how the ballot shall be counted, such ballot shall not be counted, but shall be placed in an envelope and marked "disputed ballots" and returned to the county board of elections.

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice.

The counting of ballots shall be continuous until completed. From the time the ballot box is opened and the count of votes begun, until the votes are counted and returns are made out, signed and certified as herein required, and given to the presiding judge or registrar for delivery to the county board as required herein, the registrar and judges of election in each precinct shall not separate, nor shall a registrar or judge leave the polling place except from unavoidable necessity. In case of illness or unavoidable necessity, the board of elections may substitute another qualified person for any precinct official so incapacitated. (1933, c. 165, s. 8.)

Editor's Note.—The following cases were decided under section 5983 of the Consolidated Statutes, now repealed, which provided for the counting of ballots. These cases seem applicable to the present law as the provisions of former section 5983 are substantially set forth in the instant section.

Counting by Other Persons than the Officers of Election.—While it is irregular to permit other persons than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. State v. Calvert, 98 N. C. 580, 4 S. E. 127.

Effect of Voting for Too Many Candidates.—The statute does not contemplate throwing out the whole ballot for voting one ticket for too many candidates, its language distinguishing between the ballot and the ticket, of several of which (each office voted for being a separate ticket on the same ballot) the ballot is made up. Hence a ballot for one claiming the office of register of deeds, thrown out because containing two unmarked names, instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, the elector's choice for such office being properly indicated. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163.

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163.

Two Candidates with the Same Name—Evidence of Identification.—If there be two candidates for different offices having the same name, and a ticket be found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. Wilson v. Peterson, 69 N. C. 113.

§ 163-85. How precinct returns are to be made and canvassed.—When the results of the counting of the ballots have been ascertained, such results shall be embodied in a duplicate statement to be prepared by the registrar and judges on forms provided by the county board of elections and certified to by said officers. One of the statements of the voting in the precinct shall be placed in a sealed envelope and delivered to the registrar or judge selected by them for the purpose of delivery to the county board of elections, at its meeting to be held on the second day after the election or primary. The other duplicate statement shall be mailed by one of the other precinct election officers to the chairman of the county board of elections immediately.

The county board of elections shall meet on the second day next after every primary or election, at eleven o'clock A. M. of that day, at the courthouse of the county, for the purpose of canvassing the votes cast in the county and the preparation of the county abstracts. Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver those returns at the meeting of the county board of elections by twelve o'clock A. M. on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. In the event any precinct returns have not been received by the county board by twelve o'clock A. M. on the first day of its meeting, or if any returns are incomplete or defective, it shall have authority to dispatch an officer to the residence of such precinct officials for the purpose of securing the proper returns for such precinct. (1933, c. 165, s. 8.)

Editor's Note.—This section and § 163-86 were rewritten by acts of 1933, by abolishing the county board of canvassers and assigning the duties of canvassing the returns, preparing the abstracts and certificates of the results of the elections to the county board of elections. See 11 N. C. Law Rev. 228.

§ 163-86. County board of elections to canvass returns and declare results.—The county board of elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate,

the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer. (1933, c. 165, s. 8.)

Editor's Note.—The cases below were decided before this section was rewritten in 1933 and the duties of the board of canvassers assigned to the board of elections. However, they seem applicable to the present law.

Judicial Powers of Board of Canvassers.—The county board of canvassers are vested with statutory authority to judicially pass upon all facts relative to the election and to judicially determine and declare the results, and with the exercise of this discretion the courts will not interfere, except in an action to try title to the office by quo warranto. However, since by the Federal Constitution, Art. I, § 5, power is given to both houses of Congress to pass upon the election of members, an action in the nature of quo warranto can not be brought to determine which candidate was elected to Congress. Britt v. Board, 172 N. C. 797, 90 S. E. 1005.

In the dissenting opinion of Rowland v. Board, 184 N. C. 78, 113 S. E. 629, Clark, C. J., said: "In this section the power and authority of the county board are broadened to judicially pass upon all facts relative to the election, not merely the returns, and to judicially determine and declare the results of the same. So that what the court below has held to be the whole duty of the board is stated by the Legislature to be in addition to the larger duty of passing upon "all facts" relative to the election, and there is the still further judicial function of sending for "papers and persons" and "examining the same."

The returns made by the precinct officials constitute but a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers as an essential part of the election machinery, which board, after judicially determining the results, must issue a certificate of election to the successful candidate upon which he may qualify and enter into the discharge of the duties of the office. State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234.

Returns Prima Facie Correct.—In proceedings in the nature of a quo warranto, to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers, must be taken as prima facie correct. State v. Jackson, 183 N. C. 695, 110 S. E. 593.

Same—Subject to Collateral Attack.—The decision or judgments of the county board of canvassers are not of such conclusiveness of finality as to exclude collateral attack, and the use of the word "judicially" in this section does not affect the construction. State v. Midgett, 151 N. C. 1, 65 S. E. 441.

The correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers, can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. State v. Midgett, 151 N. C. 1, 65 S. E. 441.

Jurisdiction of Superior Court for Quo Warranto Not Ousted.—The act of the county canvassers in declaring the result of an election to public office, under this section, cannot have the effect of ousting the jurisdiction of the Superior Court in quo warranto or information in the nature thereof. Harkrader v. Lawrence, 190 N. C. 441, 130 S. E. 35.

Mandamus to Reconvene Board of Canvassers.—As to whether a board of canvassers can be compelled by mandamus to reconvene after its final adjournment, quaere; and semble, it can be done theretofore only for the purpose of requiring it to complete its labors, but not to reconsider its action. Britt v. Board, 172 N. C. 797, 90 S. E. 1005.

Supplementary Returns after Adjournments of Registrar and Poll-holders.—Additional or supplemental returns made up by the county board of canvassers after the registrar and poll-holders had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. Britt v. Board, 172 N. C. 797, 90 S. E. 1005.

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234.

§ 163-87. What returns placed on same abstract.—The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. President and vice president.
2. Governor and all state officers; justices of the supreme court; judges of the superior court; and United States senator.
3. Representatives in congress.
4. Solicitor.
5. Senators and representatives of the general assembly.
6. County officers.
7. Township officers.

(1933, c. 165, s. 8.)

§ 163-88. Preparation of original abstracts; where filed.—When the canvass has been completed, the county board of elections shall prepare on forms furnished by the state original statements of the results showing:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States, when a presidential election is held.
2. Upon another sheet an abstract of votes for Governor, and all state officers, judges of the supreme court, judges of the superior court and United States senator.
3. Upon another sheet an abstract of votes for representatives to congress.
4. Upon another sheet an abstract of votes for solicitor.
5. Upon another sheet an abstract of votes for state senators and representatives in the general assembly.
6. Upon another sheet an abstract of votes for county officers.
7. Upon another sheet an abstract of votes for township officers for each township in the county.
8. Upon another sheet an abstract of votes for all constitutional amendments and propositions submitted to the people. Each of these abstracts shall be so prepared as to show the total number of votes cast for each candidate of each political party for each office in each precinct in the county.

Each of these original abstracts shall be signed by the members of the county board of elections with their certificate as to their correctness, and each of the original abstracts together with the original precinct returns shall be filed with the clerk of the superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8.)

§ 163-89. Duplicate abstracts to be sent to state board of elections; penalty for failure to comply.—When the county boards of elections shall have completed the original abstracts, they shall also prepare separate duplicate abstracts for all offices for which the state board of elections is required to canvass the votes and declare the results, which shall include the following: For president and vice-president; for state officers and United States senator; for representatives to congress; for solicitors; and for state senators in senatorial districts composed of more than one county; and for amendments and propositions submitted.

When said duplicate abstracts shall have been

prepared, the county board of elections shall sign an affidavit on each abstract that they are true and correct; then the chairman of said board shall mail said duplicate abstracts, within five days after the primary or election is held, to the chairman of the state board of elections at Raleigh, so that said abstracts shall be received by the chairman of the state board of elections within one week after the primary or election.

The chairman of the county board of elections, failing or neglecting to transmit said abstracts to the chairman of the state board of elections within the time above prescribed shall be guilty of a misdemeanor and subject to a fine of one thousand dollars: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-90. Clerk of superior court to send statement of votes to secretary of state in general election.—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the secretary of state, upon blanks furnished to him by the state for that purpose, a statement of the votes cast in his county for all national, state and district officers, and for and against constitutional amendments and propositions submitted to the people. The clerk of superior court shall at the same time also certify under his official seal to the secretary of state a list of all the persons voted for as members of the state senate and house of representatives and all county officers, together with the votes cast for each and their postoffice address.

The clerk of the superior court, failing or neglecting to transmit these returns to the secretary of state within the time herein provided, shall be subject to a fine of five hundred dollars and be guilty of a misdemeanor: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-91. Who declared elected by county board; proclamation of result.—In the general election, the person having the greatest number of legal votes for a county or township office, or for the house of representatives, or for the state senate in a district composed of only one county, shall be declared elected by the county board of elections. But, if two or more county candidates, having the greatest number of votes, shall have an equal number the county board of elections shall determine which shall be elected.

When the county board of elections shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each. (1933, c. 165, s. 8.)

Editor's Note.—The cases discussed below were decided prior to the act of 1933. The provisions of the former statute on this subject are now substantially set forth in the instant section.

Finding of Board Prima Facie Correct.—The finding by the board of canvassers as to the number of votes received by a contestant in an election is prima facie correct. State v. Flynt, 159 N. C. 87, 74 S. E. 817.

There is a final and conclusive presumption in favor of the correctness of the result of an election as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. Wallace v. Salisbury, 147 N. C. 58, 60 S. E. 713.

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234.

§ 163-92. Chairman of county board of elections to furnish county officers certificate of election.—The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the house of representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified. (1933, c. 165, s. 8.)

Art. 15. Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-93. State board of elections to canvass returns for higher offices.—The state board of elections shall constitute the legal canvassing board for the state of all national, state and district offices, including the office of state senator in those districts consisting of more than one county. No member of the state board of elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9.)

Supervisory Powers of Board.—The state board of elections has general supervision over the primaries and elections in the state, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the elections laws by county boards of elections, and the duty of the state board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592.

§ 163-94. Meeting of state board of elections to canvass returns of the election.—The state board of elections shall meet in the city of Raleigh on the Tuesday following the third Monday after each general election held in this state under the provisions of this chapter, in the hall of the house of representatives, at eleven o'clock A. M. for the purpose of canvassing the votes cast in all the counties of the state for all national, state and district officers and to determine whom they ascertain and declare by the count to be elected to the respective offices, and shall prepare abstracts of same as hereinafter provided. At this meeting, the board shall examine the county abstracts, if they shall have been received from all of the counties, and if all have not been they may adjourn, not exceeding ten days for the purpose of obtaining the abstracts and returns from the missing counties, and when they have all been received the board shall proceed with the canvass, which shall be conducted publicly in the hall of the house of representatives. In obtaining the abstracts from the counties whose abstracts have not been received by the date of this meeting, the board is authorized to obtain from the clerk of the superior court or the county board of elections, at

the expense of such counties, the original abstracts or returns, or if they have been forwarded, copies of them. The state board of elections shall be authorized to enforce the penalties provided by law for the failure of a clerk of a superior court or a chairman of the county board of elections to comply with the law in making their returns of an election. (1933, c. 165, s. 9.)

§ 163-95. Meeting of state board of elections to canvass returns of a special election for congressmen.—In all cases of special elections ordered by the governor to fill vacancies in the representation of the state in congress as provided for in § 163-105, the state board of elections may meet as soon as the chairman of said board shall have received returns from all of the counties entitled to vote in said special elections for the purpose of canvassing the returns of said special election and for preparing an abstract of same. It shall be the duty of the chairman of the state board of elections to fix the day of meeting which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly so that the same may be received within the ten days. (1933, c. 165, s. 9.)

§ 163-96. Board to prepare abstracts and declare results of elections.—The state board of elections, at the conclusion of its canvass of the general election, shall cause to be prepared the following abstracts:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States when an election is held for same.

2. Upon another sheet an abstract of votes for governor and all state officers, justices of the supreme court, judges of the superior court, and United States senators.

3. Upon another sheet an abstract of votes for representatives to congress for the several congressional districts in the state.

4. Upon another sheet an abstract of votes for solicitor in the several judicial districts in the state.

5. Upon another sheet an abstract of votes for state senators in the several senatorial districts in the state, where such districts are composed of more than one county.

6. Upon another sheet an abstract of votes for and against any constitutional amendments or propositions submitted to the people.

These abstracts so prepared by said board shall state the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively receive the votes, the number of votes each receive, and whom said board shall ascertain and judicially determine and declare by the count to be elected to the office. These abstracts shall be signed by the state board of elections in their official capacity and have the great seal of the state affixed thereto. (1933, c. 165, s. 9.)

§ 163-97. Results certified to the secretary of state; certificate of election issued.—After the state board of elections shall have ascertained the result of the election as hereinbefore provided, they shall cause the result to be certified to the secretary of state, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

The state board of elections shall also file with the secretary of state the original abstracts prepared by it, also the original county abstracts to be filed in his office. (1933, c. 165, s. 9.)

§ 163-98. Secretary of state to record abstracts.—The secretary of state shall record the abstracts filed with him by the state board of elections in a book to be kept by him for recording the results of elections and to be called the election book, and shall also file the county abstracts. (1933, c. 165, s. 9.)

Art. 16. State Officers, Senators and Congressmen.

§ 163-99. Contested elections — how tie broken.—The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto by the state board of elections, but if two or more be equal and highest in votes for the said office, then one of them shall be chosen by joint ballot of both houses of the general assembly. In contested elections, the state board of elections shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly. (Rev., s. 4363; 1901, c. 89, s. 44; 1915, c. 121, s. 1; 1927, c. 260, s. 14; 1933, c. 165, s. 10; C. S. 5999.)

Editor's Note.—By the amendment of 1927 some of the old provisions of this section were curtailed and one new provision was added thereto. Prior to the amendment, the section contained provisions for opening in the house of representatives the returns of the executive officers of the State and of the United States' senators. Provisions were also made to cover the contingency of absence of returns or defective returns. None of these appear in the section as amended. The requirements that the state board of elections shall certify to the Speaker of the House a statement of facts were added by the 1927 amendment.

§ 163-100. Regular elections for senators.—United States senators to fill vacancies caused by the expirations of regular terms shall be elected by the people at the last regular election before each vacancy shall occur as now provided for state officers, and the tickets shall be furnished, blanks sent out and returns made as for state officers, and the returns canvassed and results declared in the same way. (1913, c. 114, s. 3; C. S. 6001.)

Editor's Note.—This and the two following sections were enacted in 1913 in consequence of the 17th Amendment to the Constitution of the United States, ratified May 31, 1913, which provides that United States senators shall be elected by the people of each state. Prior to this amendment, United States senators were chosen by the legislatures of the several states.

§ 163-101. Governor to fill vacancies until general election.—Whenever there shall be a vacancy in the office of United States senator from this state caused by death, resignation, or otherwise than by expiration of a term, the governor shall appoint to fill the vacancy till there shall be an election. (1913, c. 114, s. 1; 1929, c. 12, s. 2; C. S. 6003.)

Editor's Note.—Public Laws 1929, chap. 12, s. 2, provided that this section should be reenacted.

§ 163-102. Election of senator to fill unexpired term.—If such vacancy shall occur more than

thirty days before any general state election, the governor shall issue his writ for the election by the people, at the next general election, of a senator to fill the unexpired part of the term, and said election shall take effect from the date of the canvassing of the returns, which shall take place at the same time and in the same way as the canvassing of the returns for state officers. (1913, c. 114, s. 2; C. S. 6002.)

§ 163-103. Congressional districts specified. — For the purpose of selecting representatives to the Congress of the United States, the State of North Carolina shall be divided into twelve (12) districts as follows:

First District: Camden, Chowan, Currituck, Beaufort, Dare, Gates, Hertford, Perquimans, Pitt, Pasquotank, Hyde, Tyrrell, Martin, and Washington counties.

Second District: Bertie, Edgecombe, Greene, Halifax, Lenoir, Northampton, Warren, and Wilson counties.

Third District: Craven, Duplin, Jones, Onslow, Pender, Pamlico, Sampson, Wayne, and Carteret counties.

Fourth District: Chatham, Franklin, Johnston, Nash, Randolph, Wake, and Vance counties.

Fifth District: Caswell, Forsyth, Granville, Person, Rockingham, Stokes, and Surry counties.

Sixth District: Alamance, Durham, Guilford, and Orange counties.

Seventh District: Bladen, Brunswick, Columbus, Cumberland, Harnett, New Hanover, and Robeson counties.

Eighth District: Anson, Davie, Davidson, Hoke, Lee, Montgomery, Moore, Richmond, Scotland, Union, Wilkes, and Yadkin counties.

Ninth District: Ashe, Alleghany, Alexander, Cabarrus, Caldwell, Iredell, Rowan, Stanly, and Watauga counties.

Tenth District: Avery, Burke, Catawba, Lincoln, Mecklenburg, and Mitchell counties.

Eleventh District: Cleveland, Gaston, McDowell, Madison, Polk, Rutherford, and Yancey counties.

Twelfth District: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania counties. (Rev., s. 4366; 1911, c. 97; 1931, c. 216; 1941, c. 3; C. S. 6004.)

Editor's Note.—Prior to the Act of 1931 there were ten congressional districts.

The amendment of 1941 changed the number of districts from eleven to twelve, and specifically repealed the old section and the 1931 amendment.

§ 163-104. Election after reapportionment of congressmen.—Whenever, by a new apportionment of representatives among the several states, the number of representatives in the congress of the United States from North Carolina shall be either increased or decreased, and neither the congress nor the general assembly shall provide for the election of the same, then if the said representatives shall be increased, the increased number shall be elected by the qualified voters of the whole state, and shall be voted for on one ballot, and the representatives from the several congressional districts shall be elected by the voters of said districts, respectively, and shall each be voted for on another ballot; but if the number of said representatives shall be decreased as aforesaid, in that event all the representatives in congress shall be elected by the qualified voters of the whole state and shall be voted for on one ballot. (Rev., s. 4368; 1901, c. 89, s. 58; C. S. 6006.)

§ 163-105. Special election for congressmen.—If at any time after the expiration of any congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy; and the election shall be conducted in like manner as regular elections. (Rev., s. 4369; 1901, c. 89, s. 60; C. S. 6007.)

§ 163-106. Certificate of election for congressmen.—Every person duly elected a representative to congress, upon obtaining a certificate of his election from the secretary of state, shall procure from the governor a commission, certifying his appointment as a representative of the state, which the governor shall issue on such certificate being produced. (Rev., s. 4370; 1901, c. 89, s. 61; C. S. 6008.)

Art. 17. Election of Presidential Electors.

§ 163-107. Conduct of presidential election. — The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of state officers, except as herein otherwise expressed. (Rev., s. 4371; 1901, c. 89, s. 79; 1933, c. 165, s. 11; C. S. 6009.)

§ 163-108. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. (Rev., s. 4372; 1901, c. 89, s. 78; 1933, c. 165, s. 11; C. S. 6010.)

Editor's Note.—See 11 N. C. Law Rev. 229, for a discussion of changes made in this section by the Act of 1933.

§ 163-109. How returns for president shall be made.—The county board of elections shall meet at the courthouse on the second day next after every election for president and vice-president, and shall ascertain and determine the number of legal votes cast for the electors for president and vice-president and shall prepare abstracts and make their returns to the state board of elections in the same manner as hereinbefore provided for state officers. (Rev., s. 4373; 1901, c. 89, s. 80; 1927, c. 260, s. 16; 1933, c. 165, s. 11; C. S. 6011.)

§ 163-110. Declaration and proclamation of results by state board; casting of state's votes for president and vice-president. — The state board of elections shall canvass the returns for electors for

president and vice-president at the same time and place as hereinbefore required to be made for state officers, and an abstract for same shall be prepared and certified to the secretary of state in the same manner.

The secretary of state shall, under his hand and seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice-president of the United States as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after his election, at which time the said electors shall meet, and then and there give their votes on behalf of the state of North Carolina for president and vice-president of the United States. In case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the president and vice-president of the United States. And the governor shall, on or before the said first Monday after the second Wednesday in December, make out six lists of the names of the said persons so elected and appointed electors and cause the same to be delivered to them, as directed by the act of congress. (Rev., s. 4374; 1917, c. 176, s. 2; 1901, c. 89, s. 81; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2; C. S. 5916; 6012.)

Editor's Note.—By the amendment of 1935 the meetings were changed from the second Monday of January to the first Monday after the second Wednesday in December.

§ 163-111. Presidential electors; compensation.—Presidential electors shall receive, for their attendance at the meeting of said electors in the city of Raleigh, the sum of $10.00 (ten dollars) per day and traveling expenses at the rate of 5c (five cents) per mile in going to and returning from said meeting. (Rev., s. 2761; 1901, c. 89, s. 84; 1933, c. 5; C. S. 3878.)

Prior to Public Laws 1933, c. 5, this section provided for travelling expenses and compensation the same as allowed members of the General Assembly.

§ 163-112. Penalty for presidential elector failing to attend and vote.—Each elector, with his own consent previously signified, failing to attend and vote for a president and vice-president of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the state five hundred dollars, to be recovered by the attorney-general in the superior court of Wake county. (Rev., s. 4375; 1901, c. 89, s. 83; 1933, c. 165, s. 11; C. S. 6013.)

Art. 18. Miscellaneous Provisions as to General Elections.

§ 163-113. Agreements for rotation of candidates in senatorial districts of more than one county.—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for senator, or any one of the candidates for senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of senator, made as hereinbefore provided, shall be duly certified, by the chairman and secretary of the executive committee of the party making the same, and for the county in which they are made, to the chairmen of the executive committees of such party in all other counties constituting the senatorial district; and no other action shall be deemed necessary to constitute such candidate the nominee of his party for such office. (1911, c. 192; C. S. 6014.)

§ 163-114. Judges and solicitors; commission; when term begins.—Justices of the supreme court, judges of the superior court, and solicitors shall be commissioned by the governor, and their terms of office shall begin on the first day of January next succeeding their election. An election for officers, whose terms shall be about to expire, shall always be held at the general election next preceding the expiration of their terms of office. (Rev. s. 4377; 1901, c. 89, s. 69; C. S. 6015.)

§ 163-115. Registrars to permit copying of poll and registration books.—In any primary or general election held in this State, and at any time prior to the holding of such primary or general election, and while the registration and poll books shall be in the hands of any Registrar, it shall be the duty of such Registrar, on application of any candidate or the chairman of any political party, to permit said poll book or registration book to be copied; provided, such poll book or registration book shall not be removed from the polling place if there, or the residence of such registrar, if there; provided, also, it shall be lawful for such registrar himself to furnish to such applicant, in lieu of the books themselves, a true copy of the same, for which service he shall be entitled to receive one cent per name. Any person wilfully failing or refusing to comply with the provisions and requirements of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 4382; 1901, c. 89, s. 83; 1931, c. 80; C. S. 6016.)

Editor's Note.—The Act of 1931 repealed the former section and enacted the above in lieu thereof.

§ 163-116. Forms for returns sent to proper officers by state board of elections.—The state board of elections shall cause proper forms of returns to be prepared and printed, and send copies thereof, with plain directions as to the manner of endorsing, directing, and transmitting the same to

the seat of government, to all of the returning officers of the state, at least thirty days before the time for holding any election. The said board shall also furnish to the clerk of the superior court of each county all such printed blanks as may be necessary for making the county returns. (Rev., s. 4383; 1901, c. 89, s. 43; 1921, c. 181, s. 5; 1927, c. 260, s. 18; C. S. 6017.)

Editor's Note.—The duties under this section now devolving upon the State Board of Elections, prior to the amendment of 1921 were to be performed by the Secretary of State.

Before the amendment of 1927, the printed blanks were to be furnished to the register of deeds instead of to the clerk of the superior court.

SUBCHAPTER II. PRIMARY ELECTIONS.

Art. 19. Primary Elections.

§ 163-117. Date for holding primaries.—On the last Saturday in May next preceding each general election to be held in November for state officers, representatives in congress, district officers in districts composed of more than one county, and members of the general assembly of North Carolina, or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the state of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a senator for this state in the congress of the United States there shall likewise be nominated the candidate of each political party in this state for such office of United States senator. (1915, c. 101, s. 1; 1917, c. 218; 1939, c. 196; C. S. 6018.)

Editor's Note.—The 1939 amendment substituted the words "last Saturday in May" for the words "first Saturday in June."

Article Is Constitutional.—The primary law, as amended by the Australian ballot law (§§ 163-148 et seq.), is reasonable and constitutional. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

It must be construed in pari materia with article 20 of this chapter. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842; Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

The primary law provides an exclusive method for nomination of candidates for office, and a candidate who has not complied with its provisions is not the nominee of any political party within the law. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

§ 163-118. Primaries governed by general election laws.—Unless otherwise provided in this article, such primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this state, and all the provisions of this chapter and of other laws governing elections not inconsistent with this article shall apply as fully to such primary elections and the acts and things done thereunder as to general elections; and all acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held hereunder. (1915, c. 101, s. 3; 1917, c. 218; C. S. 6020.)

Cited in State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25.

§ 163-119. Notices and pledges of candidates; with whom filed.—Every candidate for selection as the nominee of any political party for the offices of governor and all state officers, justices of the supreme court, the judges of the superior court, United States senators, members of congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the state board of elections, by six o'clock p. m. on or before the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as ..... in the primary election to be held on ..... I affiliate with the ..... party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the ..... party."

Every candidate for selection as the nominee of any political party for the office of state senator in a primary election, member of the house of representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by six o'clock p. m. on or before the sixth Saturday before such primary is to be held a like notice and pledge. (1915, c. 101, s. 6; 1917, c. 218; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; C. S. 6022.)

Editor's Note.—This section was amended in 1933 so as to change the time for filing the notice for candidacy from six weeks to the seventh Saturday before the primary date. See 11 N. C. Law Rev. 230.

The 1937 amendment substituted "tenth" for "seventh" formerly appearing in the ninth line of this section, and "sixth" for "fourth" formerly appearing in the next to the last line.

§ 163-120. Filing fees required of candidates in primary.—At the time of filing a notice of candidacy for nomination for any congressional or state office, including judges of the supreme and superior court and solicitors, each candidate for such office shall pay to the state board of elections a filing fee of one per cent of the annual salary of such office. At the time of filing a notice of candidacy for nomination for any legislative or county office, each candidate for such office shall pay to the county board of elections of the county of their residence a filing fee of one per cent of the annual salary of such office: Provided that all candidates for nomination for any county or township office operated on a fee basis instead of a salary basis shall pay to the county board of elections a filing fee of five dollars, unless the holder of such office has in the year next preceding received in fees a sum in excess of five hundred dollars: In which event the filing fee shall be one per cent of such total amount received; the purpose of this amendment being to raise the filing fees of all county and legislative candidates to the same basis as that of all candidates for state offices; that is, one per cent of the annual salary of the office for the first year; and further to fix a filing fee for candidates for county and township offices operated on a fee basis instead of a salary basis at five dollars, unless the compensation for the office in the year next preceding was in excess of five hundred dollars. (1915, c. 101, s. 4; 1917, c. 218;

1919, c. 139; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; C. S. 6023.)

Local Modification.—Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Editor's Note.—The 1939 amendment changed the filing fee in the second sentence from one-half of one per cent to one per cent. It also changed the proviso.

This section was amended in 1933 so as to change the basis of candidacy fees from a flat sum for each office to a percentage of the salary of the office. See 11 N. C. Law Rev. 230.

Filing Fee Is Not a Tax.—The filing fee required by this section is in no sense a tax within the meaning of Art. II, sec. 14, or a local law as condemned by Art. II, sec. 29, of the Constitution of North Carolina. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

§ 163-121. Fees erroneously paid refunded. — Where a candidate erroneously files a notice of candidacy, accompanied by the proper sum of money, with the state board of elections, instead of with the local county board, and the money is paid into the state treasury; or where a candidate files a notice, accompanied by the sum fixed by law with the state board, the money being paid into the state treasury, and afterwards, but before the time for filing such notices, as fixed by law, shall have expired, he wishes to withdraw his candidacy, then, in both these cases, the money may be refunded to the candidate, upon certificate from the chairman of the state board of elections that the facts exist which entitle him to such refunding. Upon such certificate, the auditor shall give his warrant upon the treasurer of the state, and the treasurer shall pay the same. (1919, c. 50; C. S. 6024.)

§ 163-122. Payment of expense for primary elections.—The expense of printing and distributing the poll and registration books, blanks, ballots for those offices hereinafter provided to be furnished by the state, and the per diem and expenses of the state board of elections while engaged in the discharge of the duties herein imposed, shall be paid by the state; and the expenses of printing and distributing the ballots hereinafter provided to be furnished by the counties, and the per diem and expenses of the county board of elections, and the registrars and judges of election, while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7; 1917, c. 218; 1927, c. 260, s. 21; 1933, c. 165, s. 14; C. S. 6026.)

§ 163-123. Registration of voters. — The regular registration books shall be kept open before the primary election in the same manner and for the same time as is prescribed by law for general elections, and electors may be registered for both primary and general elections.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that he affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the political party in whose primary he proposes to vote and is in good faith a member thereof. (1915, c. 101, s. 5; 1917, c. 218; C. S. 6027.)

Cross Reference.—As to new state-wide registration of voters, see § 163-43.

§ 163-124. Notices filed by candidates to be certified; printing and distribution of ballots.—When the time for filing notices by candidates for nomination shall have expired, the chairman of the state board of elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the secretary of state; and in the senatorial districts composed of more than one county where there is no agreement as provided for in § 163-113, the chairman or secretary of the county board of elections of each county in such senatorial district shall, within three days after the time for filing such notice shall have expired, certify to every other chairman of the county board of elections in such senatorial district the names of all candidates who have filed notice of candidacy in their respective county for the office of the state senator; and said chairman, acting under the direction of the state board of elections and under such rules and regulations as may be prescribed by it, shall, without delay, at the expense of the state, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which ballot shall appear the names of candidates who shall, under the provisions of this article, have filed notice of their candidacy and otherwise complied with the requirements of this article, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections, at least thirty days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the state treasurer out of funds appropriated to the State Board of Elections, in accordance with the Executive Budget Act. Said ballots so printed by the state board of elections shall be for each of the several political parties in the state, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. Three days before the primary election the chairman of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good faith the duties prescribed in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1915, c. 101, s. 8; 1917, c. 218; 1927, c. 260, s. 22; C. S. 6028.)

Editor's Note.—By the amendment of 1927 a provision requiring the chairman of the State Board of Elections to certify to the appropriate county board of elections as

to the facts of notice filed by the candidates for nomination for State Senate in districts composed of two or more counties, which originally appeared in the first part of this section, was stricken, and in lieu thereof the part of the section beginning with the phrase "and in the senatorial districts" and down through the words "office of the state senators" was inserted.

Possession of Ballots.—This section makes it the duty of the county board of elections to keep in its possession official ballots until delivery to the local officials. State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25.

§ 163-125. Only official ballots to be voted; contents and printing of ballots.—There shall be voted in primary elections only the official ballots furnished to the chairmen of the county boards of elections and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties, members of which have filed notice of their candidacy for primary elections. (1915, c. 101, s. 9; 1917, c. 218; C. S. 6029.)

§ 163-126. How primary conducted; voter's rights; polling books; information given; observation allowed.—When an elector offers himself and expresses the desire to vote at a primary held under this article, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as herein defined; but any one may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: Provided, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided herein, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him. Any person who has become of the age of twenty-one years between the time when the books closed for registration and the day of the primary election, and who is otherwise a qualified elector, and who desires to register and vote as a member of a political party, may do so in the manner herein provided.

At the time of voting, the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the state board of elections, which said book shall be provided at the expense of the state for all state primaries and state elections, and upon said book shall be entered, opposite the name of such voter and in proper column provided for the purpose, the name of the political party whose ticket he shall have voted, and said books shall be filed for safe-keeping, until the next election, in the clerk's office of the county in which the ballots are so cast.

It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and in response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires.

At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election: but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of holding such election and the counting of the ballots as he may desire: Provided, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammeled ballot for the candidate or candidates of his choice. (1915, c. 101, s. 11; 1917, c. 218; 1921, c. 181, s. 6; 1923, c. 111, s. 14; C. S. 6031.)

Cross Reference.—See § 163-180.

Editor's Note.—By the amendment of 1923 the name of the third ballot box was changed from "Legislative Primary Box" to "Legislative and County Primary Box," and in this box are to be deposited the ballots cast for the county officers also. Prior to the amendment of 1921 the polling book provided for by the third paragraph of this section was to be furnished at the expense of the state for the first election held under this article, and subsequently at the expense of the several counties. The amendment requires that it be furnished at the expense of the state for all the state primaries and state elections.

Cited in Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592.

§ 163-127. Counting ballots and certifying results.—When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: Provided, the registrars and judges may fix such space as they may consider

reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages, and the result shall be certified to the proper county board of elections and by them to the state board of elections upon blanks to be provided by the state board of elections at the expense of the state within the time and, as near as may be, in the manner provided for the certification of the result of general elections. (1915, c. 101, s. 12; 1917, c. 218; C. S. 6032.)

When Ballot Found in Wrong Box.—In primary elections for county officers the registrar and judges of election are authorized not only to pass upon the qualification of voters therein, but to determine whether a ballot found in the wrong box was placed there by mistake, and, if satisfied of the mistake, to count the ballots for the one for whom they had been cast, in making their returns to the county board. Bell v. County Board, 188 N. C. 311, 124 S. E. 311.

Distinguished from General Elections.—In primary elections the return for county officers must be certified as this section requires to the county board of elections, which shall publish the result, the distinction between elections of this character and general elections being that in the former there is no right to an election to public office which may be put in issue and determined by quo warranto, and no provision for a board of canvassers with power judicially to determine the precint return. Bell v. County Board, 188 N. C. 311, 124 S. E. 311.

§ 163-128. Names of candidates successful at primaries printed on official ballot; where only one candidate.—Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the state or district ballot or, for the state senate in districts composed of two or more counties shall have filed such notice, the board of elections of the state shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 13; 1917, c. 218; C. S. 6033.)

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

§ 163-129. Primaries for county offices; candidates to comply with requirements.—At the time of holding primary elections for state officers, as hereinbefore provided, there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the state for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the state board of elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for nomination for state offices, except in so far as such requirements are modified by the provisions of this article with reference to candidates for primary nominations for county offices. (1915, c. 101, s. 14; 1917, c. 218; C. S. 6034.)

Local Modification.—Ashe: C. S., 6054; 1929, c. 319; Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Graham: C. S., 6054; 1943, c. 349; Macon: C. S., 6054; 1943, c. 349; Watauga: C. S., 6054; 1935, c. 391; 1937, c. 264.

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

§ 163-130. Primaries for county offices; notices of candidacy and official ballots.—The state board of elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for state offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county officers similar in form and otherwise to the ballots hereinbefore provided for state officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of state offices. (1915, c. 101, s. 15; 1917, c. 218; C. S. 6035.)

§ 163-131. Primaries for county offices; voting and returns.—In primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for state offices, and all of the provisions herein contained governing primary elections for state offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results. (1915, c. 101, s. 16; 1917, c. 218; C. S. 6036.)

§ 163-132. Primary ballots; provisions as to names of candidates printed thereon.—It shall be the duty of the state board of elections to print and furnish to the counties for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed for in § 163-124, which official ballots shall have printed thereon the names of candidates for the United States senate, for the national house of representatives, and for governor and for all other state offices, with the exception of the office of solicitor and judge of the superior court. All of these candidates, ballots for which are required to be furnished by the state, may be printed on one form of ballot or they may be printed on a number of forms of ballots as may be decided by the state board of elections.

It shall be the duty of the county board of elections to print and furnish to the voting precincts in the county for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed in § 163-124, which official ballots shall have printed thereon the names of candidates for the following offices in the order in which they are named and shall be

known as the "official primary ballot for judge superior court, solicitor, state senator and county and township offices" when candidates for all of said offices are participating in the primary within the county. Whenever there is no contest for any of the aforesaid offices, then such names will not appear on the county ballot. The county board of elections may print the township ballot separate from the county ballot if it should so desire.

The ballots to be printed by the counties shall be of such width, color, form and printed in such type and on such paper as the state board of elections may direct.

It shall be the duty of the chairman of the state board of elections to certify to the chairman of the county board of elections in each county, by the fourth Saturday before each primary election, the names of such candidates for the nomination for judge of the superior court and solicitor as have filed the required notice and pledge and filing fee with the state board of elections and entitled to have their names placed on the official county ballot, and it shall be the duty of each county chairman to acknowledge receipt within two days after the receipt of the letter of certification to the chairman of the state board of elections so that the state chairman will know that each candidate's name has been properly certified and received. (1915, c. 101, s. 17; 1917, c. 218; 1933, c. 165, s. 16; C. S. 6037.)

Cited in State v. Abernethy, 220 N. C. 226, 231, 17 S. E. (2d) 25.

§ 163-133. Boxes for county officers; how labeled.—All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box." (1915, c. 101, s. 18; 1917, c. 218; C. S. 6038.)

§ 163-134. Sole candidate declared nominee. — In all cases where only one aspirant for nomination by the party with which he affiliates for the state senate in districts composed of only one county or for the house of representatives of the general assembly or for a county office shall have filed the notice of candidacy in this article required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 19; 1917, c. 218; C. S. 6039.)

§ 163-135. Primaries for township and precinct officers.—The several county boards of elections shall provide for holding in their respective counties primary elections for the choice of candidates for the nomination for township and precinct officers, which primary elections shall be held at the same time and places as the primaries for county officers: Provided, that in the counties exempt from the operation of the primary law for the nomination of county officers, township officers may also be nominated in the same manner as county officers within such counties. The expenses for holding primaries for township officers shall be paid for by the counties. (1915, c. 101, s. 20; 1917, c. 218; 1933, c. 165, s. 17; C. S. 6040.)

§ 163-136. Returns of precinct primaries; preservation of ballot.—The registrar and judges of election at each precinct in the state of North Carolina shall certify upon blanks prepared and printed by the state board of elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection, and one shall be filed with the county board of elections to be kept on file by it; and it shall by the duty of the judges and registrars to preserve and keep for two months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The state board of elections, in preparing the printed form for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the state board of elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office. (1915, c. 101, s. 21; 1917, c. 179, s. 1; 1917, c. 218; 1923, c. 111, s. 15; C. S. 6041.)

Editor's Note.—Prior to the amendment of 1923 the judges and the registrars were required to preserve the original ballots for four months instead of two, as it is now provided.

Determination of Results of Primary for County Officers.—In a primary for county officers the registrar and judges of election have the sole power, acting in their ministerial capacity, to determine whether votes cast in the wrong ballot box should be counted; and they may correct their tabulation of the results thereof to the county board of elections before the latter has judicially determined the results; the duties of the latter board being continuous, under the provisions of the statute, and such powers not being functus officio until they have finally determined the results of the election. Bell v. County Board, 188 N. C. 311, 124 S. E. 311.

§ 163-137. County board tabulates results of primaries; returns in duplicate. — The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their respective counties with reference to candidates in the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the state board of elections for the purpose, these returns, in the case of officers other than the state senate in districts

composed of only one county, the house of representatives and county offices, shall be made out for each county in duplicate, and one copy shall be forwarded to the state board of elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the state senate in district composed of only one county, member of the house of representatives and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results. (1915, c. 101, s. 21½; 1917, c. 218; C. S. 6042.)

Sufficient Declaration of Result—Request for Second Primary.—When the provisions of this section have been complied with, the result posted at the courthouse door of the county, the result of the election is sufficiently declared, and the contestant receiving the next highest vote, less than a majority, must file his written request for a second primary within five days thereafter, in accordance with the proviso of section 163-140. Johnston v. Board, 172 N. C. 162, 90 S. E. 143.

Mandamus by Candidate.—Where the county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified, and has accordingly changed its returns and declared the one appearing to have received a smaller vote, the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote, against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars and judges of the precinct, and then to publish and declare the same as the result of the election. Rowland v. Board, 184 N. C. 78, 113 S. E. 629.

Authority of County Board of Elections.—Under our primary law the right of a proposed elector to vote for the party's choice of a county official, in this case a register of deeds, is expressly referred to the precinct registrar and judges of election, without power of review, or otherwise, in the county board of elections, the authority of the county board extending only to supervise or to review "errors in tabulating returns or filling out blanks." Rowland v. Board, 184 N. C. 78, 113 S. E. 629.

Power to Pass on Qualification of Voters.—The primary law to select a party candidate for a county office repeals all laws inconsistent with its provisions, and by incorporating therein certain provisions of the general election law, confers no authority on the county board of electors to pass upon the qualifications of the voters of a precinct, and thereby change the result of the election from that appearing upon the face of the returns it had officially tabulated. Rowland v. Board, 184 N. C. 78, 113 S. E. 629.

§ 163-138. State board tabulates returns and declares nominees.—The state board of elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this article provided that the result shall be declared by the several county boards of election, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the state board of elections the nominee of his political party for such office. (1915, c. 101, s. 22; 1917, c. 218; C. S. 6043.)

§ 163-139. Returns of election boards to be under oath. — The chairman or secretary of each of the county boards of elections and the chairman or secretary of the state board of elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, according to the votes cast and correctly counted by them. (1915, c. 101, s. 23; 1917, c. 218; C. S. 6044.)

§ 163-140. When results determined by plurality or majority; second primaries.—In the case of all officers mentioned in this article, nominations shall be determined by a majority of the votes cast.

If in the case of an office no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: Provided, that if either of such two shall withdraw and decline to run, and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: Provided further, that unless the aspirant receiving the second highest number of votes shall, within five days after the result of such primary election shall have been officially declared, and such aspirant has been notified by the appropriate board of elections, file in writing with the appropriate board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by such appropriate board.

If a second primary be ordered by the state or a county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary, and shall be entitled to vote therein under the provisions of this article. If a nominee for a single office is to be selected, with more than one candidate, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all candidates by two, and any excess of the sum so ascertained shall be a majority within the meaning of this section.

If nominees for two or more offices (constituting a group) are to be selected, and there are more candidates for nomination than there are such offices, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all of such candidates by the number of positions to be filled, and then dividing the result by two. Any excess of the sum so ascertained, shall be the majority within the meaning of this section. If in ascertaining the result in this way, it appears that more candidates have obtained this majority than there are positions to be filled, then those having the highest vote, if beyond the majority just defined, shall be declared the nominees for the positions to be filled. Where candidates for all the offices within such group do not receive a majority as defined and set out in this section, those candidates equal in number to the positions to be filled and having the highest number of votes shall be declared nominated unless a second primary shall be demanded, which may be done by any one or all of the candidates equal in

number to the positions remaining to be filled and having the second highest number of votes. When any one or all of such candidates in the group receiving the second highest number of votes demand a second primary, such second primary shall be held and the names of all those candidates in the group receiving the highest number of votes and all those in the group receiving the second highest number of votes and demanding a second primary shall be put on the ballot for such primary. In no case shall there be a third primary, but the candidates receiving the highest number of votes in the second primary shall be nominated. (1915, c. 101, s. 24; 1917, c. 179, s. 2; 1917, c. 218; 1927, c. 260, s. 23; 1931, c. 254, s. 17; C. S. 6045.)

Editor's Note.—The provisions contained in the last two paragraphs of this section were added by the amendment of 1927, except the last three sentences of the last paragraph which were added by the amendment of 1931.

Effect of Failure to Comply with Provisions within the Time.—Applying the rule of construction that every part of a statute should be given effect when possible, it is Held, that section 24 of the State Primary Law, ch. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices, shall receive a majority of the votes cast, when construed in connection with the proviso of the same section, that the one receiving the next highest vote, under a majority, shall file a request, in writing, with the appropriate board of elections for a second primary, entitles the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure to the one receiving the next highest vote to comply with the provision within the time stated, i. e., within five days after the result of the primary has been officially declared. Johnston v. Board, 172 N. C. 162, 90 S. E. 143.

Same—Mandamus.—Where a candidate for membership in the General Assembly who has received the next highest vote in a legalized primary, but less than a majority of the votes cast, has failed to comply with the proviso of this section, in giving the written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election, the board then orders the second primary, the ministerial duty of recognizing the one receiving the highest vote as the candidate and putting his name on the ticket as such will be enforced by mandamus. Johnston v. Board, 172 N. C. 162, 90 S. E. 143.

The plaintiff in proceedings for mandamus to compel the county board of elections to declare him the successful candidate of his party in a primary election, or that he is entitled to a second primary to select between himself and another candidate for the same office, must show the denial of a present, clear legal right, by the failure of such board to have done so. Umstead v. Board, 192 N. C. 139, 134 S. E. 409.

In order for a candidate for the party nomination for the Legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents receiving the larger number of votes have not received a majority of the votes cast for said nomination, and within five days after the result has been officially declared and he has been notified thereof, he must have filed with the county board of elections a written request that the second primary be called by it. Umstead v. Board, 192 N. C. 139, 134 S. E. 409.

§ 163-141. Attorney-general to aid board by advice and as to forms.—In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the state board of elections and to be made by the state board of elections, and all other forms, it shall be the duty of the state board of elections to call to its aid the attorney-general of the state of North Carolina, and it shall be the duty of the attorney-general to advise and aid in the preparation of all such ballots, books, and forms. (1915, c. 101, s. 25; 1917, c. 218; C. S. 6046.)

§ 163-142. Returns, canvasses, and other acts governed by general election law.—The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the state board of elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the state board of elections for what may seem to them a good cause. (1915, c. 101, s. 26; 1917, c. 218; C. S. 6047.)

§ 163-143. Election board may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the state board of elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results, which shall be done under such rules as the state board of elections shall establish to protect the integrity of the election and the rights of the voters. (1915, c. 101, s. 27; 1917, c. 218; C. S. 6048.)

Applicable in Case of Error.—This section applies only "when, on account of errors in tabulating returns or filling out blanks," the result of the election cannot be accurately known, and confers no authority on the courts, to investigate and pass upon the methods or manner in which the primary may have been conducted. Brown v. Costen, 176 N. C. 63, 67, 96 S. E. 659.

§ 163-144. Political party defined for primary elections.—A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general election, polled at least three per cent of the total vote cast therein for such offices as are described in § 163-1. (1915, c. 101, s. 31; 1917, c. 218; 1933, c. 165, s. 17; C. S. 6052.)

Cross Reference.—As to definition of political party under general election law, see § 163-1.

§ 163-145. Filling vacancies among candidates.—In the event that any person nominated in any primary election as the candidate of a political party for a state office shall die, resign, or for any reason become ineligible or disqualified between the date of such primary election and ensuing general election, the vacancy caused thereby may be filled by the action of the state executive committee of such political party; in the event of such vacancy in the case of a district office, the same may be filled by the action of the executive committee for such district of such political party; and in the event of such vacancy in the case of a county office, or the house of representatives or the state senate in a district composed of only one county, the same may be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurs: Provided, that should a vacancy occur in any office after the pri-

mary has been held, a nomination shall be made in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that after the time for filing notice of candidacy has expired and the candidate who has been declared the nominee for any office shall die before the date of the primary, the vacancy thus created may be filled by nomination in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that if, after the time for filing notice of candidacy has expired, any person who has filed notice of his candidacy in accordance with law, die, and there be only one other person who has filed notice of his candidacy for such office, the board of elections shall reopen the time for filing notice of candidacy, and fix a date upon which the primary election for such office shall be held. (1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218; 1923, c. 111, s. 16; C. S. 6053.)

Editor's Note.—The second and third provisos of this section were added by the amendment of 1923.

§ 163-146. Contests over primary results.—All contests over the results of a primary election shall be determined according to the law applicable to similar contests over the results of a general election. (1933, c. 165, s. 19.)

§ 163-147. Notice of candidacy to indicate vacancy; votes only effective for vacancy indicated.—In any primary when there are two or more vacancies for chief justice and associate justices of the supreme court of North Carolina to be filled by nominations all candidates shall file with the state board of elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective candidate is asking the nomination. All votes cast for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein. (1921, c. 217; C. S. 6055(a).)

SUBCHAPTER III. GENERAL ELECTION LAWS.

Art. 20. Election Laws of 1929.

§ 163-148. Applicable to all subdivisions of State.—The provisions of this article shall be applicable to all counties, cities, towns, townships and school districts in the State of North Carolina, without regard to population or number of inhabitants thereof. (1929, c. 164, s. 2.)

Local Modification.—Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

This article is to be construed in pari materia with article 10 of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897; McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842.

Cited in Harris v. Miller, 208 N. C. 746, 182 S. E. 663; State v. Proctor, 221 N. C. 161, 163, 19 S. E. (2d) 234.

§ 163-149. Preparation and distribution of ballots; definitions.—All ballots cast in general elections for national, State, county, municipal, and district officers in the towns, counties, districts, cities and other political divisions, and in primaries for the nomination of candidates for such offices, shall be printed and distributed at public expense. The printing and distribution of all ballots other than the county or local ballots hereinafter designated and the ballots for elections in cities and towns and the ballots for elections on bonds or other local measures, shall be arranged and handled by the State Board of Elections and shall be paid for by the State; and the printing and distribution of ballots in all county and local elections or primaries shall be arranged and handled by the County Board of Elections and shall be paid for by the respective counties; the printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such election or primary and shall be paid for by such municipality. The term "State elections" as used in this article shall apply to any election held for the choice of Presidential Electors, United States Senators, State, county or district officer or officers. The term "National elections" shall apply to any member of Congress of the United States. The term "city election" shall apply to any municipal election so held in a city or town, and the term "city officers" shall apply to any person to be chosen by the qualified voters at such an election. (1929, c. 164, s. 3.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

§ 163-150. Applicable to all issues submitted to people; form of ballot.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any question or issue is submitted to a vote of the people. And the form of ballot in such elections shall be a statement of the question, with provisions to be answered "Yes" or "No" or "For" or "Against" as the case may be. (1929, c. 164, s. 4.)

§ 163-151. Ballots, provisions as to; names of candidates and issue.—The ballots printed for use under the provisions of this article shall be printed and delivered to the County Boards of Elections at least thirty days previous to the date of election, and shall contain the names of all candidates who have been put in nomination by any primary, convention, mass meeting, or other assembly of any political party in this State, or have duly filed notice of their independent candidacy, and all questions or issues to be voted on. It shall be the duty of the County Board of Elections to have printed all necessary ballots for use under the provisions of this article for county, township, and district elections. It shall be the duty of the State Board of Elections to have printed all necessary ballots for use under the provisions hereof for State and national elections, constitutional amendments and propositions submitted to the vote of the people. (1929, c. 164, s. 5.)

Ballots Assured in Every County.—The language of this section is sufficiently broad to assure official printed ballots in each and every county. McLean v. Durham County Board, 222 N. C. 6, 10, 21 S. E. (2d) 842.

The right of a candidate to have his name printed on the official ballot under this section is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Board, 222 N. C. 6, 10, 21 S. E. (2d) 842.

§ 163-152. Independent candidates put upon ballot, upon petition.—The Boards of Election shall cause to be printed upon said ballots as an independent or non-partisan candidate, the name of any qualified voter who has been requested to be a candidate for office by written petition signed by at least twenty-five per cent of those entitled

to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for, when such petition is accompanied by an affidavit from such proposed candidate that he seeks to become an independent or non-partisan candidate and does not affiliate with any political party: Provided, such petition is filed with said Board of Elections at or before the time prescribed by law for the nomination of candidates by the political parties within the particular political division. The written petition provided herein, in municipal elections shall be signed by at least twenty-five per cent of the votes cast for the candidate running, in the last municipal election, for the particular office. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236.)

Editor's Note.—The Act of 1931 added the last sentence to this section. The amendment, badly worded, apparently means that in municipal elections, the number who must sign the petition must be equal to ten per cent (now twenty-five per cent) of the votes cast for the successful candidate for that office in the last municipal election. 9 N. C. Law Rev., 373.

Prior to the amendment of 1935 the petition could be signed by at least ten per cent instead of twenty-five per cent.

§ 163-153. Becoming candidate after the time fixed for the printing of the official ballot; provision as to ballot.—If any qualified citizen is nominated to fill any vacancy, in any primary or election, after the time fixed herein for the printing of the official ballots, then said names shall not be printed upon said ballots. But, the candidate nominated may, at his own expense, have the Board of elections print a separate ticket upon which the title of the office for which he is a candidate and his own name shall be printed. Such ticket so printed as aforesaid shall be an official ticket. This section relates to all elections, whether nominating primaries, general elections, or others. (1929, c. 164, s. 7; 1931, c. 254, s. 1.)

Editor's Note.—The Act of 1931 struck out the following after the word "But," at the beginning of the second sentence of this section: "in addition to the names printed upon such ballots, there shall be at least one blank space under each office to be voted for in which may be written the candidate's name, or," and also struck out the word "County" before "Board" in the same sentence.

§ 163-154. Withdrawal of candidate. — After the proper officer has been notified of the nomination, as hereinbefore specified, of any candidate for any office, he shall not withdraw same unless upon the written request of the candidate so nominated, made at least thirty days before the day of the election. (1929, c. 164, s. 8.)

§ 163-155. Number of ballots; what ballots shall contain; arrangement.—There shall be seven kinds of ballots, called respectively: official ballot for presidential electors; official ballot for United States senator; official ballot for members of congress; official state ballot; official county ballot; official township ballot; and official ballot on constitutional amendments or other proposition submitted. In addition to these, there shall be a definite form of ballot for primary elections as hereinafter provided and a ballot for municipal elections as hereinafter provided: Provided, further, that the state board of elections, or the county board of elections may, in their discretion, combine any one or more of the ballots for either the primary or the general election. The ballots herein provided for shall be used for the purpose for which their names severally indicate, and not otherwise, that is to say:

(a) On the official presidential ballot, the names of candidates for electors of president and vice-president of the United States of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballot the names, of the candidates for president and vice-president of the United States respectively, of each such political party or group of petitioners, and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for president and vice-president in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

If the state board of elections, in its discretion, should combine the presidential ballot with some other kind of ballots, such as the state, senatorial, or congressional ballots, then in that event, there shall be printed at the left of the names of such candidates for president and vice-president of each party or group, a single voting square large enough so that a voter, desiring to vote for candidates for other officers of another party, may vote for the candidates for president and vice-president together in the one single square. When the presidential ballot is combined with another ballot, instruction number two on the state ballot shall be included with the instructions given herein for the presidential ballot.

On the face of the ballot, at the top, shall be printed in heavy black type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. A vote for the names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aa) On the official ballot for United States senator the names of the nominees or candidates for United States senator, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent

candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aaa) On the official ballot for members of congress, the names of the nominees or candidates for members of congress, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections, with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(b) On the official state ballot shall be printed the names of all candidates for state public offices, including candidates for judges of the superior court, and all other candidates for state offices not otherwise provided for. The names of all such state candidates to go upon the said official ballot which is herein provided, of each party and group of independent candidates, if any, shall be printed in one column and the party column shall be parallel and shall be separated by distinct black lines. At the head of each party column shall be printed the party name and under this shall be a blank circle one-half of an inch in diameter, which party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle." The columns for the independent candidates shall be similar to the party columns, except that above each column shall be printed the words "independent candidate." In each party column the names of all nominees of that party shall be printed in the customary order of the office, and the names of all candidates of each party for any one office shall be printed in a separate section, and at the top of each section shall be printed on one line the title of the office and a direction as to the number of candidates for whom a vote may be cast, unless there shall not be room for the direction, in which case it shall be printed directly below the title. If two or more candidates are nominated for the same office for different terms the term for which each is nominated shall be printed as a part of the title for the office. Each section shall be blocked in by black lines and the voting squares shall be set in a perpendicular column or columns to the left of each candidate's name. The printing on said ballot shall be plain and legible, and in no case shall it exceed in size ten-point type.

On the face of the ballot, at the top, shall be printed in heavy type, the following instructions:

1. To vote a straight party ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. To vote a mixed ticket, or in other words for candidates of different parties, either omit making a cross (X) mark in the party circle at the top and mark in the voting square opposite the name of each candidate on the ballot for whom you wish to vote; or, make a cross (X) mark in the party circle above the name of the party for some of whose candidates you wish to vote, and then mark in the voting squares opposite the names of any candidates of any other party for whom you wish to vote.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

The instructions hereby given for the state ballot shall be used when there are two or more state offices to be filled at an election, or when two or more kinds of ballots as herein given are printed on one ballot.

(c) On the official county ballot shall be printed the names of all candidates for solicitor

for the judicial district in which the county is situated; for member of the general assembly, and all county offices. It shall conform as nearly as possible to the rules prescribed for printing the state official ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(d) The township ballot shall contain the names of the candidates for constable and justices of the peace, and the municipal ballot shall contain the names of all offices to be filled in the municipality at the election for which the ballot is to be used, and shall conform as near as may be to the provisions herein set out with respect to the county ballot.

(e) On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. At the left of each question shall be printed two voting squares, one above the other, each at least one-fourth (¼) inch square. At the left of the upper square shall be printed the word "yes" and at the left of the lower square shall be printed the word "no." At the top of the ballot shall be printed the following instructions:

1. To vote "yes" on any question, make a cross (X) mark in the square to the right of the word "yes."

2. To vote "no" on any question, make a cross (X) mark in the square to the right of the word "no."

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of each ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(f) In primary elections there shall be no provision for designating the choice of a party ticket by one act or mark, but there shall be a separate ballot for each party and of different colors. The ballots containing the names of the respective candidates shall be so printed that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the said ballots shall be distributed impartially and without discrimination. A square shall be to the left of the name of each candidate in which the voter may make a cross (X) mark indicating his choice for each candidate. On the bottom of each ballot in such primary election printed by the state board of elections shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

And on the bottom of each ballot printed by the county board of elections shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(g) In all city or municipal elections and primaries there shall be an official ballot on which shall be printed the names of all candidates for city or town offices. It shall conform as nearly as possible to the rules prescribed for the printing of the official general ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of city clerk. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1.)

Editor's Note.—This section was amended in several particulars by the Act of 1931. The provision as to combining ballots was inserted in the first paragraph, and changes were made as to the instructions, etc., to be printed on the ballots.

The 1939 amendment changed instruction 2 under subsection (b).

§ 163-156. Ballots for each precinct wrapped separately.—All ballots for use in each precinct shall be wrapped in packages, each package to contain whatever number of ballots the chairman of the county board of elections may deem advisable for the respective precincts in his own county, but each package shall have written or stamped thereon the number of ballots contained therein so the registrar will know how many ballots to account for in his precinct. (1929, c. 164, s. 10; 1933, c. 165, s. 22.)

§ 163-157. Number of ballots to be furnished polling places.—There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and twenty-five ballots for every one hundred registered voters at each polling place, or an excess of ballots of twenty-five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22.)

§ 163-158. Ballot boxes. — The County Board of Elections shall provide for each precinct ballot boxes for the official ballots, as herein specified, which boxes shall respectively be plainly marked "Presidential Electors," "Ballot Box Members of Congress," "Ballot Box United States Senator," "Official State Ballot Box," "Official County Ballot Box," "Official Township Ballot Box," and "Official Propositions Ballot Box," and also one additional box for spoiled ballots, to be plainly marked "For Spoiled Ballots." Each box shall be supplied with a lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through, but no larger. (1929, s. 164, s. 12; 1931, c. 254, s. 11.)

Editor's Note.—The Act of 1931 cut out the provision as to providing a box for ballot stubs.

§ 163-159. Sample ballots. — The State Board of Elections shall prepare sample ballots of each kind of ballot printed by the State for the purpose of instructing voters in marking their ballots, which sample ballots shall be printed on colored paper and with the words "Sample Ballots" printed conspicuously thereon and shall distribute the same to the County Boards of Elections.

The County Boards of Elections shall likewise print on colored paper and distribute county and township sample ballots for instructing said voters. (1929, c. 164, s. 13; 1931, c. 254, s. 12.)

Editor's Note.—This section was amended and rewritten by the Act of 1931 to read as set out above.

§ 163-160. Distribution of ballots and boxes.—The County Board of Elections shall deliver to the Registrar in each precinct the proper number of ballots and boxes, as required by the provisions of this article, three days before the day of election, and shall obtain from each Registrar a receipt for same. (1929, c. 164, s. 14.)

§ 163-161. Destroyed or stolen ballots; how replaced; reports as to.—In case the ballots furnished to any precinct in accordance with the provisions of this article shall be destroyed or stolen, it shall be the duty of the County Board of Elections to cause other ballots to be prepared in the form of the ballots so wanting. Within three days after the close of the polls on election days, the Registrars having lost such ballots shall make a written report of the whole circumstances of the loss of the ballots, under oath, to the County Board of Elections. (1929, c. 164, s. 15.)

§ 163-162. Registrars, duties of, compensation; failure to serve.—In addition to the compensation for performance of the duties required in the registration of voters, each Registrar shall receive for his services on election day the sum of five dollars. If any Registrar or Judge of election fails or refuses to serve as herein provided, the officer holding the election shall swear in a bystander of the same political faith as the Registrar not serving, and if none such be present then any other qualified elector. The bystander sworn in to act as Registrar or Judge shall receive the same compensation as the Registrar is entitled to. One of the judges appointed for such purpose by the precinct election officers shall have charge of the ballots and furnish them to the voters in manner hereinafter set forth. The Registrar shall promptly, at the close of the registration period, certify to the County Board of Elections the number of voters registered in his precinct. (1929, c. 164, s. 16; 1939, c. 264.)

§ 163-163. Voting booths; arrangement and number of; provisions as to.—The County Board of Elections in each county whose duty it is to hold the election and appoint polling places therein, as herein provided for, shall cause the same to be suitably provided with a sufficient number of voting booths, equipped with the tables or shelves on which voters may conveniently mark their ballots. Each voting booth shall be at least three feet square and six feet high and shall contain three sides and have a door or curtain in front, which door or curtain shall extend within two feet of the floor; and each booth shall be so arranged that it shall be impossible for one voter in one voting booth to see another voter at another voting booth in the act of marking his ballot. The arrangement shall be such that the ballot boxes and voting booths shall be in plain view of the judges of election. The number of such voting booths shall be not less than one for each hundred voters qualified to vote at such polling places. Each voting booth shall be kept properly lighted and provided with proper supplies and conveniences for marking ballots. The County Board of Elections may provide buildings by lease or otherwise in which the elections are to be conducted, or they may cause a space not more than one hundred feet from the ballot box to be roped off, in which space no person shall be allowed to enter except through a way not exceeding three feet in width for the entrance and exit of voters. They may prescribe the manner in which the place for holding elections shall be prepared in every precinct so as to properly effectuate the purpose of this article. The County Board of Elections shall also be entitled to demand and use any school or other public building for the purpose of holding any election and require that such building be vacated for such purpose. (1929, c. 164, s. 17.)

§ 163-164. Regulations for opening polls; oath of judges and registrars.—The Judges of election and Registrars of each precinct shall meet at the polling places therein at least one-half hour before the time set for opening polls for each election referred to in this article, and shall proceed to arrange the space within the enclosures set apart for election, and to prepare the booths for the orderly and legal conduct of the election. They shall then and there have the official ballot boxes, herein referred to, together with the boxes for ballot stubs and the boxes for spoiled ballots as hereinbefore provided, the sealed packages of official ballots, the registration book, the polling book, and the required supplies. They shall see that the voting booths are supplied with pencils, or pen and ink; unlock the official ballot boxes; see that the same are empty; allow the authorized watchers present and any other electors who may be present to examine said boxes, and shall lock the same again while empty. After such official ballot boxes are relocked they shall not be unlocked or opened until the closing of the polls; and except as authorized by law no ballot or other matter shall be placed in such boxes. Each Judge of election and Registrar shall before the opening of the polls take the following oath:

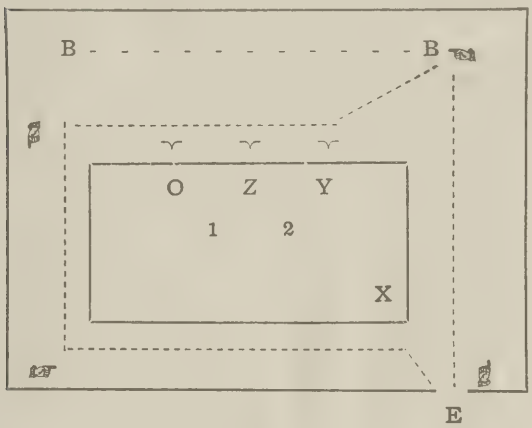
"I do solemnly swear that I will administer the duties of my office without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition, and that I will not keep or make any memorandum of anything occurring within the voting booths, except I be called upon to testify in a judicial proceeding for a violation of the election laws of this State: so help me God."

This oath shall be administered at the time hereinbefore prescribed by the Registrar to the two Judges of election and by one of them to the Registrar. The same oath shall be taken before the Registrar or Judge by every person rendering assistance. They shall then open the sealed package of ballots, and one of the Judges shall make proclamation that the polls are open and of the time when they will be closed. From the time of opening of the polls until the announcement of the result of the canvass of the votes after the close of the polls and the signing of the official returns the official ballot boxes and the other boxes herein provided for and all the official ballots herein provided for

shall be kept within the precinct election enclosures. (1929, c. 164, s. 18.)

§ 163-165. No loitering or electioneering allowed within 50 feet of polls; regulations for voting at polling places; banners or placards; guard rail; diagram.—No person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof, and no political banner, poster, or placard shall be allowed in or upon such polling places during the day of the election. The election officials and ballot boxes shall at all times be in plain view of the qualified voters who are present, and a guard rail shall be placed not nearer than ten feet nor further than twenty feet from the said election officials and ballot boxes.

The arrangement of the polling place shall be substantially according to the following diagram, and shall conform as nearly thereto as the building or other place in which said election is held will permit:



E. Entrance to voting place.
X. Judge with ballots and box for spoiled ballots.
B. Voting booths.
Y. Polls book.
Z. Ballot box.
O. Box for stubs.
1, 2. Other election officials.
- - - - - Direction of entry and exit of voter.

(1929, c. 164, s. 19.)

§ 163-166. Delivery of ballot to voter; testing registration.—The voter shall enter through the entrance provided, and shall forthwith give to the Judge of election his name and residence. One of the Judges shall thereupon announce the name and residence of the voter in distinct tone of voice. The Registrar shall at once announce whether the name of such voter is duly registered. If he be registered, and be not challenged, or if he be challenged and the challenge decided in his favor, or if he take the requisite oath and be lawfully entitled to vote, the proper Judge of election shall prepare for him one official ballot of each kind, folded by such judge in the proper manner for voting, which is: first, bring the bottom of the ballot up to the margin of the printing at the top of the ballot, allowing the margin to overlap; and second, fold both sides of the center, so that when folded the face of the ballot, except the one inch margin at the top thereof, shall be concealed, and so that the ballot shall be not more than four inches wide. Such Judge shall then instruct the voter to refold the ballot in the same creases when he has marked it. (1929, c. 164, s. 20; 1931, c. 254, s. 13.)

Editor's Note.—The Act of 1931 cut out the last sentence of this section which read as follows: "Such judge shall then with pen and ink mark upon the top margin of the face thereof the number of the voter upon the polling list and the initials of such judge's name, and shall thereupon deliver the ballot or ballots to the voter. No person other than such designated judge shall deliver to any voter any ballot."

§ 163-167. Marking ballots by voter. — The voter shall then go to one of the voting booths and shall therein prepare his ballot by marking in the appropriate margin or place a cross (X) mark opposite the name of the candidate or party of his choice for each office to be filled, or by filling the name of the candidate of his choice in the blank space provided therefor, and marking a cross (X) opposite thereto. The voter may designate choice of candidate by a cross (X) or by a check mark, or other clear indicative mark. (1929, c. 164, s. 21.)

§ 163-168. Folding and depositing of ballots; signature of voter if challenged; delivery of poll books to chairman of county board of elections.—When the voter shall have prepared his ballot or ballots, he shall leave the voting booth with his ballot folded so as to conceal the face of the ballot, and keep it so folded, shall proceed at once to the judge of election designated to receive ballots and shall offer them to such judge who shall then deposit the ballots in the proper boxes: Provided, however, that if the voter shall have been challenged and the challenge be decided in the voter's favor, before depositing the ballot or ballots in the proper boxes, the voter shall write his name on the ballot or ballots for identification in the event that any action should be taken later in regard to the voter's right to vote. After voting, the voter shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain for purposes other than voting. No ballots except official ballots bearing the official endorsement shall be allowed to be deposited in the ballot boxes or to be counted. No official ballot folded shall be unfolded outside of the voting booth until it is to be counted. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots. When a person shall have received an official ballot from the judge, he shall be deemed to have begun the act of voting, and if he leave the guard-rail before the deposit of his ballot in the box he shall not be entitled to pass again within the guard-rail for the purpose of voting.

The poll books required to be kept by the judges of elections shall be signed by the judge at the close of the election, and delivered to the registrar, who shall deliver them to the chairman of the county board of elections. (1929, c. 164, s 22; 1931, c. 254, s. 14; 1939, c. 263, s. 3½.)

Editor's Note.—The Act of 1931 amended and rewrote this section to read as set out above.

§ 163-169. Manner and time of voting.—On receiving his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone.

unless he be one that is entitled to assistance as hereinafter provided, to one of the voting booths, and without undue delay unfold and mark his ballots. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters are waiting. It shall be unlawful purposely to deface or tear an official ballot in any manner, or to erase any name or mark written thereon by a voter If a voter wrongly mark or deface or tear a ballot he may obtain others successively one at a time, but not more than three of any one kind, upon returning to the Judge each ballot so spoiled. (1929, c. 164, s. 23.)

§ 163-170. Who allowed in room or enclosure; peace officers. — No person other than voters in the act of voting shall be allowed in the room or enclosure in which said ballot box and booths are, except the officers of election and official markers as hereinafter provided. In case of cities having duly enrolled policemen or peace officers, the city authorities may designate the officers to keep the peace at the polls on the outside of the enclosure in which is the ballot box. But in no event shall said policemen or peace officers come nearer to said entrance than ten feet. or enter the room or enclosure in which is the ballot box, unless specially requested to do so by the officers holding the elections, and then only for the purpose of preventing disorder; and at any time when requested to do so by said officers holding the elections, the said policemen shall retire from the room or enclosure in which is the ballot box, and to a point not nearer than ten feet to the aforesaid entrance. (1929, c. 164, s. 24.)

Local Modification.—Cumberland: 1937, c. 426.

§ 163-171. Ballots not taken from polls; other ballots for spoiled ballots; delivery to County Board of Elections.—No person shall take or remove any ballots from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one to the Registrar, and the Registrar shall deposit said spoiled ballot in the box kept for the purpose by him. Within three days after each election or primary the Registrar of each precinct shall deliver to the County Board of Elections in an envelope to be furnished by the County Board of Elections for such purpose the spoiled ballots so deposited at such precinct, and shall at the same time in another envelope furnished for such purpose, deliver to the said County Board of Elections the unused ballots from said precinct. The County Board of Elections shall thereupon make a check to ascertain whether the total of such spoiled ballots and such unused ballots when added to the number of ballots cast at such precinct shall equal the total number of ballots furnished to the Registrar of such precinct prior to such election or primary. (1929, c. 164, s. 25.)

§ 163-172. Assistance to voters in elections.— Prior to the date of any election hereunder the county board of elections, together with the registrar of each precinct of each county, shall designate for each precinct therein a sufficient number of persons of good moral character and of the requisite educational qualifications, who shall be bona fide electors of the precinct for which they are appointed, to act as markers, whose duty it shall be to assist voters in the preparation of their ballots. The assistants or markers so appointed by the said county board of elections shall be so appointed as to give fair representation to each political party whose candidates appear upon the ballot. The chairman of the county organization of any political party may, not more than ten days before any election to be held, hereunder, submit to the county board of elections the names of not less than ten qualified voters in any voting precinct of the county, and thereupon the marker or markers appointed to represent such party in said election at said voting precinct shall be selected from among those so named. Such persons shall remain within the enclosure prepared for the holding of elections, but shall not come within ten feet of the guard-rail, except when going to or returning from the booth with any elector who has requested assistance. Such marker or assistant shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way, and shall not make or keep any memorandum of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person how in any particular such voter marked his ballot, unless he, or they, be called upon to testify in a judicial proceeding for a violation of the election laws. Every such marker or assistant, together with the registrar and judge of election, shall, before the opening of the polls, take and subscribe an oath that he will not, in any manner, seek to persuade or induce any voter to vote for or against any particular candidate, or for or against any particular proposition, and that he will not make or keep any memorandum of anything occurring within the booth, and will not disclose the same, unless he be called upon to testify in a judicial proceeding for a violation of the election laws of this state. The said oath, after first being taken by the registrar, may be administered by him to the two judges of election and to the markers or assistants, as herein provided: Provided, that in all general elections held under the provisions of this article any voter may select another member of his or her family who shall have the right to accompany such voter into the voting booth and assist in the preparation of the ballot, but immediately after rendering such assistance the person so assisting shall vacate the booth and withdraw from the voting arena. This section is not applicable to primary elections. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note.—Public Laws 1939, c. 352, s. 1, repealed this and section 163-173 in so far as said sections apply to primaries and in lieu thereof enacted section 163-174.

§ 163-173. Aid to persons suffering from physical disability or illiteracy.—Any person who, on account of physical disability, is obviously unable to enter the booth without assistance, or who on account of such disability, or because of illiteracy, or for any other good reason, shall request assistance from the registrar

or judges of election, may, upon such declaration and upon his own request, have assistance from any one of the markers or assistants provided for in § 163-172. The voter may indicate which of the markers he desires to assist him; whereupon the registrar shall direct that the marker or assistant so indicated by the voter accompany said voter into the booth and give him such aid as may be requested in the preparation of his ballot, whereupon said marker or assistant shall withdraw from said booth and to his place within the rail, and shall not accompany the voter to the ballot box unless assistance be required on account of physical infirmity and such assistance is requested by the voter, or have any further conversation with said voter prior to the time that he deposits his ballot. In the event the voter does not request the assistance of any particular marker or assistant, then the registrar shall appoint from among the official markers or assistants some person to aid the voter in preparing his ballot. This section is not applicable to primary elections. (1929, c. 164, s. 27; 1939, c. 352, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note.—See note under § 163-172.

§ 163-174. Assistance to illiterate or disabled voter in primary.—Any qualified voter entitled to vote in any primary, but who by reason of any physical disability or illiteracy is unable to mark his ballot may upon statement to the registrar of his incapacity and upon his request be aided by a near relative (husband or wife, brother or sister, parent or child, grandparent or grandchild), who shall be admitted to the booth with such voter, or if no near relative is present such voter may call to his assistance any other voter of his precinct who has not given aid to another voter, and who shall likewise be admitted to the booth with such voter: Provided that if the voter needs and is entitled to the assistance as herein provided for, and there is no near relative present, or anyone else authorized hereunder to give assistance, the voter may call to his assistance the registrar or one of the judges of the election: Provided, further, that any voter may upon his request be accompanied into the voting booth by a near relative (as above defined), and obtain such assistance from said member of the family as he may desire whether disabled or not. It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary to any voter otherwise than as is herein provided for. (1939, c. 352, s. 2.)

Local Modification.—Cumberland, Wilson: 1939, c. 402.

§ 163-175. Method of marking ballots; improperly marked ballots not counted; when.—The voter shall observe the following rules in marking his ballot:

1. If the elector desires to vote a straight ticket, or in other words, for each and every candidate of one party for whatever office nominated, he shall, either—

(a) Make a cross mark in the circular space below the name of the party at the head of the ticket; or

(b) Make a cross mark on the left of and opposite the name of each and every candidate of such party in the blank space provided therefor.

2. If the elector desires to vote a mixed ticket, or in other words for candidates of different parties, he shall, either,

(a) Omit making a cross mark in the party circle above the name of any party and make a cross mark in the voting square opposite the name of each candidate for whom he desires to vote on whatever ticket he may be; or

(b) Make a cross mark in the party circle above the name of the party for some of whose candidates he desires to vote, and then make a cross mark in the voting square opposite the name of any candidates of any other party for whom he may desire to vote, in which case, the cross mark in the party circle above the name of a party will cast the elector's vote for every candidate on the ticket of such party, except for offices for which candidates are marked on other party tickets, and the cross marks before the names of such candidates will cast the elector's vote for them.

3. If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place, and making a cross (x) mark in the blank space at the left of the name so written in. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used.

4. If the elector marks more names than there are persons to be elected to an office, or, if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office but shall be returned as a blank vote for such office.

5. If a voter shall do any act extrinsic to the ballot itself, such as enclosing any paper or other article in the folded ballot, such ballot shall be void.

6. No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

7. Every elector who does not vote a ballot delivered by the election officer shall, before leaving the polling place, return such ballot to such officer.

8. A cross (x) mark shall consist of any straight line crossing any other straight line at an angle within a voting circle or square. A voter may designate his choice of candidate by the cross (x) mark or by a check mark, or any other clear indicative mark. Any ballot which is defaced or torn by the voter shall be void. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2.)

Editor's Note.—The 1939 amendment added paragraph (b) of subsection 2, and made slight changes in the wording of paragraph (a).

§ 163-176. Offenses of voters; interference with voters; penalty.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place or any person who shall interfere with, or attempt to interfere with any voter when inside said enclosed space, or when marking his ballot, or who shall remain longer

than the specified time allowed by this article in the booth, after being notified that his time has expired, or who shall endeavor to induce any voter, while within the enclosure, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the enclosure, in marking his ballot, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; and election officers shall cause any person committing any of the offenses herein set forth to be arrested and shall cause charges to be preferred against the person so offending, in a court of competent jurisdiction. (1929, c. 164, s. 29.)

§ 163-177. Offenses of election officers. — Any judge of election or registrar, or other election officer, after having qualified, who wilfully and knowingly refuses or fails to perform the duties herein prescribed, or who wilfully and knowingly violates the provisions of this article, shall be guilty of a misdemeanor and subject to a fine, or to imprisonment in the county jail not less than ten nor more than ninety days, at the discretion of the court. (1929, c. 164, s. 30.)

§ 163-178. Reading and numbering the ballots; certificate of result; delivery of boxes to Board of Elections.—When the polls are closed the Registrar and Judge shall, in the presence of the watchers appointed by the respective executive committees of the several political parties and any other electors of the precinct who choose to be present open the box and count and record the number of the votes received by each candidate and on each question or measure. The said Judge of election and Registrar shall not adjourn or postpone the canvass of the vote in such precinct until it shall be fully completed. The Judges of election may, at their discretion, open the ballots of absent electors immediately after the close of the polls, subject to the rights of challenge now allowed by law. A certificate setting forth the results of such election shall be signed by the Registrar and Judges of election. Upon the close of the counting of the ballots, as herein provided, the said election official shall replace said ballots in the official ballot box and lock the same. The ballot box shall then be delivered to such place as may be designated by the county board of elections. (1929, c. 164, s. 32.)

§ 163-179. Hours of primaries and elections. — In all primary and general elections held in this state, including all local and municipal elections, the polls shall open at six-thirty o'clock A. M. and shall close at the hour of six-thirty o'clock P. M. Eastern Standard Time. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222.)

Editor's Note.—Prior to the 1937 amendment this section provided that in all elections the polls should be open from sunrise until sunset. The 1941 amendment changed the hours of opening and closing from 7 A. M. and 7 P. M., as provided by the 1937 amendment, to 6:30 A. M. and 6:30 P. M., respectively.

§ 163-180. Application to all primary elections; repeal of conflicting law; one-party primary officials selected from party.—The provisions of this article shall apply to any and all primary elections held in this State, or in any county thereof, as fully as it applies to general elections, as herein provided, and § 163-126 is hereby repealed, in so far as it conflicts with this article, the intent being to provide the same laws for the conduct of primaries as for general elections.

Provided, further, that in any primary election held under the provisions of this article, when only one political party participates in such primary, then, all of the election officials selected for holding such primary shall be chosen only from the political party so participating. (1929, c. 164, s. 34.)

§ 163-181. Assistants at polls; when allowed and amount to be paid. — The county board of elections may appoint one clerk or assistant at any precinct in the county which has as many as five hundred qualified registered voters on the registration books in such precinct, and one additional such clerk or assistant for each additional five hundred qualified registered voters at such precinct. No other clerk or assistant shall be appointed for any precinct except as herein set out. Such assistants and clerks shall, in all cases, be qualified voters of the ward, or precinct, for which they are appointed, and they shall be paid the same compensation as is provided by law for the judges of election to be paid. (1929, c. 164, s. 35; 1933, c. 165, s. 24.)

§ 163-182. Watchers; challengers.—Each political party or independent candidate named on the ballot may, by a writing signed by the county chairman of such political party, or, as the case may be, by the independent candidate or his manager, filed with one of the Judges of election, appoint two watchers to attend each polling place. Such watchers shall serve also as challengers; Provided, that no person shall be appointed as a watcher who is not of good moral character; and the Judges of election and registrar may for good cause shown reject any appointee and require that another be appointed. Such watchers shall in no case enter the guard-rail, but may be present at the opening of the boxes and the canvass of the ballots at the close of the election. Provided that any elector when the name of any elector is called by the judges of election, may exercise the right of challenging the elector's right to vote and when he or she does so then such challenger may enter the election space to make good such challenge and then retire at once when such challenge is heard. (1929, c. 164, s. 36.)

§ 163-183. Supervision over primaries and elections; regulations.—The State Board of Elections shall have general supervision over the primaries and elections provided for herein, and may delegate its authority to county boards appointed by it, and in case where sufficient provision may not appear to have been made herein may make such regulations and provisions as it may deem necessary: Provided, none of the same shall be in conflict with any of the provisions of this article. (1929, c. 164, s. 37.)

§ 163-184. Ballots furnished absentee electors; when deemed voted before sunset; deposit in boxes.—The ballots to be furnished absentee electors under the provisions of article 10 shall be the same as the official ballots hereinbefore desig-

nated. No vote of an absent elector shall be counted unless upon the official ballot printed as prescribed in this article.

Any absentee ballots received by the registrar during the hours now fixed by law for the receipt thereof shall be deemed to be voted before sunset, and, if the convenience of the voters or officers holding the election will be promoted thereby, may in their discretion be opened and deposited in the box immediately after the closing of the polls. (1929, c. 164, s. 39.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

§ 163-185. Fraud in connection with absentee vote; forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast, or to be cast, under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly. (1929, c. 164, s. 40.)

§ 163-186. Public officials violating subchapter disqualified from holding office and voting. — Any public official who knowingly and wilfully violates any of the provisions of this article, and thereby aids in any way the illegal casting or attempting to cast a vote, or who shall connive to nullify any provision of this article in order that fraud may be perpetrated, shall upon conviction therefor be disqualified from holding office in the State of North Carolina, and shall be disqualified from exercising the right of franchise, as now provided in case of conviction for felony. (1929, c. 164, s. 41.)

§ 163-187. Definitions as applied to municipal primaries and elections.—With respect to all municipal primaries and elections, wherever in this article appear the words "county board of elections" shall be deemed to be written the words "city or town governing body;" and wherever appear the words "chairman of board of elections" shall be deemed to be written the words "mayor of town or city." (1929, c. 164, s. 42.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

Cited in State v. Proctor, 221 N. C. 161, 163, 19 S. E. (2d) 234.

Art. 21. Corrupt Practices Act of 1931.

§ 163-188. Title of article.—This article may be cited as the Corrupt Practices Act of one thousand nine hundred thirty-one. (1931, c. 348, s. 1.)

Editor's Note.—This article makes more effective the control of the state over corrupt practices in primaries and elections. 9 N. C. Law Rev. 371.

§ 163-189. Definitions. — When used in this article:

(a) The term "Candidate" means an individual whose name is presented for any office to be voted upon on any ballot at any primary, general or special election;

(b) The term "campaign committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any primary, general or special election;

(c) The term "contribution" means any gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give, subscribe for, pay, loan, advance or deposit any money or other thing of value to or for the benefit of any candidate at any primary, general or special election, and whether or not said contract, promise or agreement is legally enforceable;

(d) The term "expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything else of value whatsoever, and includes a contract, promise or agreement to pay, distribute, give, loan, advance, or deposit any money or anything of value whatsoever, and whether or not such contract, promise or agreement is legally enforceable;

(e) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2.)

§ 163-190. Detailed accounts to be kept by candidates and others.—It shall be the duty of every candidate and the chairman and treasurer of any and every campaign committee to keep a detailed and exact account of:

(1) All contributions made to or for such candidate or committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such candidate or committee;

(4) The name and address of every person to whom any such expenditure is made, and the date thereof. (1931, c. 348, s. 3.)

§ 163-191. Detailed accounting to candidates of persons receiving contributions.—Every person who receives a contribution for a candidate or for a campaign committee in any primary, general or special election shall render such candidate or campaign committee, within five days after receipt of such contribution, a detailed account thereof, including the name and address of the person making such contribution. (1931, c. 348, s. 4.)

§ 163-192. Detailed accounting of persons making expenditures. — Every person who makes any expenditure in behalf of any candidate or campaign committee in any primary, general or special election shall render to such candidate or campaign committee, within five days after making such expenditure, a detailed account thereof, including the name and address of the person to whom such expenditure was made. (1931, c. 348, s. 5.)

§ 163-193. Statements under oath of pre-primary expenses of candidates; report after primary.—It shall be the duty of every person who shall be a candidate for nomination in any primary for any Federal, State or district office, or for the State Senate in a district composed of more than one county, except where there shall be agreement for rotation as provided in § 163-113, to file, under oath, ten days before such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by any one for him, and of all contributions made to him, directly or indi-

rectly, and also to file, under oath, within twenty days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by any one else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditure as set out in § 163-194. And it shall be the duty of every person who shall be a candidate for nomination for the State Senate, except those to whom the preceding sentence applies, for the House of Representatives, and for any county office, to file a like statement with the clerk of the Superior Court of the county of his residence at the times hereinbefore prescribed for filing such statements by candidates for Federal, State and district officers as set out in the preceding sentence. (1931, c. 348, s. 6.)

§ 163-194. Contents of such statements. — The statement of contributions and expenditures as required by the preceding section shall be itemized as follows:

(1) The name and address of each person who has made a contribution to or for such candidate or to or for his campaign committee within the calendar year, together with the amount and date of such contribution;

(2) The total sum of all contributions made to or for such candidate or to or for his campaign committee during the calendar year;

(3) The name and address of each person to whom, during the calendar year, an expenditure has been made by or in behalf of such candidate or by or in behalf of his campaign committee, and the amount, date, and purpose of such expenditure;

(4) The name and address of each person by whom an expenditure has been made during the calendar year in behalf of such candidate or his campaign committee and reported to such candidate or campaign committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made during the calendar year in behalf of such candidate or his campaign committee by any person and reported to such candidate or his campaign committee, and the amount, date, and purpose of such expenditure;

(6) The total sum of all expenditures made by such candidate or his campaign committee, or any person in his behalf during the calendar year. (1931, c. 348, s. 7.)

§ 163-195. Statements required of campaign committees covering more than one county; verification of statements required.—A like statement as that required in the preceding section shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than fifteen days nor less than ten days before any primary, general or special election, and not more than twenty days after any such primary, general or special election, if said campaign committee is making expenditures in more than one county; and if such campaign committee is making expenditures in only one county, a like or similar report so itemized shall be made within the same periods to the clerk of the Superior Court of such county.

All of the statements or reports of contributions or expenditures as in this article required of any candidate or campaign committee must be verified by the oath or affirmation of the person filing such statement or report, taken before any officer authorized to administer oaths. (1931. c. 348, s. 8.)

§ 163-196. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections to prepare the books, tickets and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections.

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppress any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to make any contribution or expenditure to aid, or in behalf of any candidate or campaign committee, in any primary, general or special election, unless the same be reported immediately to such candidate or campaign committee, to the end that it may be included by him or it in the reports required of him by law;

(8) For any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-193 to 163-195, or for any campaign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer;

(9) For any candidate for any political office to receive contributions or to make expenditures, or to assent to or to permit contribution or expenditures in behalf of his candidacy in any primary, whether the same be done before or after

said primary is held, in excess of the following sums:

A candidate for Governor and United States Senator	$12,000
A candidate for Congressman	6,000
A candidate for Lieutenant Governor	2,500
A candidate for any other elective State office, one-half of the amount of the annual salary of such office	
A candidate for the General Assembly, either the Senate or the House of Representatives	600

Any candidate for any district, county or other office not hereinbefore named, one-half the annual salary of that office as it may be at the time of such primary: Provided, however, all candidates may lawfully pay, in addition to these amounts, their transportation expenses, board and lodging bills while campaigning for nomination to such office, and the sums so expended need not be reported in the reports hereinbefore required: Provided further, that in any second primary for any of said offices, said candidate or candidates may spend in such second primary one-half of the amounts as above set out;

(10) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(11) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(12) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(13) For any chairman of a county board of elections or other returning officer to fail or neglect, wilfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(14) For any register of deeds or clerk of the Superior Court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement in a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(15) For any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly, to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this sub-section shall, in addition to being guilty of a misdemeanor as hereinbefore set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof;

(16) For any person wilfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9.)

§ 163-197. Certain acts declared felonies. — Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's Prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the Court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voted for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of the election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ticket, or to do any fraudulent act, or knowingly and fraudulently omit to do any act or make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person, convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;

(7) For any person with intent to commit a fraud to register or vote at more than one box or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure or alteration in any registration or poll books with intent to commit a fraud;

(10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, poll holder, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services.

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting. (Rev., c. 3401; 1901, c. 89, s. 13; 1913, c. 164, s. 2; 1931, c. 348, s. 10; 1943, c. 543; C. S. 4186.)

Editor's Note.—The 1943 amendment inserted the words "or person" in subsection (9).

§ 163-198. Compelling self-incriminating testimony; person so testifying excused from prosecution.—No person shall be excused from attending or testifying or producing any books, papers or other documents before any Court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of the two preceding sections, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of the said two preceding sections; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11.)

Editor's Note.—For a general discussion of the limits to self-incrimination, see 15 N. C. Law Rev. 229.

§ 163-199. Duty of Attorney General and solicitors to investigate violations of article.—It shall be the duty of the Attorney General, the solicitors of the several judicial districts, and all prosecuting attorneys of Courts inferior to the Superior Court, to make diligent inquiry and investigation with respect to any violations of this article, and said officers are authorized and empowered to subpoena and compel the attendance of any person or persons before them for the purpose of making such inquiry and investigation. (1931, c. 348, s. 12.)

§ 163-200. Duty of Secretary of State and Superior Court Clerks to call for required statements and report violations. — It shall be the duty of the Secretary of State and the several clerks of the Superior Court to call upon the candidates and chairmen and treasurers of campaign committees for the reports required to be made to them by §§ 163-193 to 163-195. If any candidate or chairman or treasurer of a campaign committee shall fail or neglect to make to the Secretary of State the reports required by said sections, then the Secretary of State shall bring such failure to the attention of the Attorney General, whose duty it shall then be to initiate a prosecution against such candidate or chairman or treasurer of such campaign committee for such violation of this article. If the Attorney General shall be a candidate in any such primary or election, such duty as herein required to be performed by him with respect to any contest in which he participates shall be performed by the solicitor of the judicial district of which Wake County is a part. If a candidate or the chairman or treasurer of a campaign committee fails to make the report to the clerk of the Superior Court as required by said sections, then said clerk of the Superior Court shall bring such failure to the attention of the solicitor of the district in which such county is a part, and said solicitor shall institute a prosecution for violation of this article. (1931, c. 348, s. 13.)

Art. 22. Other Offenses against the Elective Franchise.

§ 163-201. Intimidation of voters by officers made misdemeanor.—It shall be unlawful for any person holding any office, position, or employment in the state government, or under and with any department, institution, bureau, board, commission, or other state agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine and/or imprisonment, in the discretion of the court. (1933, c. 165, s. 25.)

§ 163-202. Disposing of liquor at or near polling places.—If any person shall give away or shall sell

any intoxicating liquor, except for medical purposes and upon the prescription of practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than one thousand dollars. (Rev., s. 3389; 1901, c. 89, s. 76, c. 531; C. S. 4188.)

Editor's Note.—In State v. Edwards, 134 N. C. 636, 46 S. E. 766, the court discusses the former provisions regulating this subject. The Act of 1901, ch. 89, sec. 76, omitted the words "or sell" from the section and hence it was decided that it was no offense for a person who has a license, to sell liquors on an election day, although they could not be given away. This case of State v. Edwards, supra, was decided in 1904 and by Public Laws 1905, ch. 531, the words "or shall sell" were again inserted in the section.

Form of Indictment.—An indictment for selling or giving away spiritous liquors during a public election should set forth the name of the person to whom the liquor was sold or given; also the indictment should negative the selling upon "the prescription of a practicing physician and for medical purposes," which is allowed by the act. State v. Stamey, 71 N. C. 202.

§ 163-203. False oath of voter in registering. — If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of that law and article six, section four, of the constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years. (Rev., s. 3392; 1901, c. 550, s. 12; C. S. 4191.)

§ 163-204. Willful failure of registration officer to discharge duty.—If any officer charged with any duty under the permanent registration law willfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years. (Rev., s. 3393; 1901, c. 550, s. 11; C. S. 4194.)

§ 163-205. Repealed by Session Laws 1943, c. 543.

§ 163-206. Using funds of insurance companies for political purposes.—No insurance company or association, including fraternal beneficiary associations, doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars. Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The insurance commissioner may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C. S. 4199.)

Division XIX. Concerning the General Statutes of North Carolina.

Chapter 164. Concerning the General Statutes of North Carolina.

§ 164-1. Title of revision.—This revision shall be known as the "General Statutes of North Carolina" and may be cited in either of the following ways: "General Statutes of North Carolina"; or "General Statutes"; or "G. S.".

§ 164-2. Effect as to repealing other statutes.—All public and general statutes not contained in the General Statutes of North Carolina are hereby repealed with the exceptions and limitations hereafter mentioned in this chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the General Statutes of North Carolina or by the omission of any repealing statute from the General Statutes. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed to repeal any conflicting provisions of the General Statutes of North Carolina.

§ 164-3. Repeal not to affect rights accrued or suits commenced.—The repeal of the statutes described in § 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-4. Offenses, penalties and liabilities not affected.—No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ 164-5. Pending actions and proceedings not affected.—No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-6. Effect of repeal on persons holding office.—All persons who at the time the General Statutes of North Carolina becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ 164-7. Statutes not repealed.—The General Statutes of North Carolina shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of the General Statutes, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of the General Statutes.

§ 164-8. General Statutes of North Carolina effective December 31, 1943.—All provisions, chapters, subdivisions of chapters and sections contained in the General Statutes of North Carolina shall be in force from and after the thirty-first day of December one thousand nine hundred and forty-three.

§ 164-9. Completion of General Statutes by division of legislative drafting and codification of statutes.—The division of legislative drafting and codification of statutes of the state department of justice, under the direction and supervision of the attorney general, shall complete and perfect the General Statutes, as enacted by the General Assembly of 1943, by changing all references therein to the "Code," "North Carolina Code," "Code of 1943" or "North Carolina Code of 1943" to read "General Statutes," and by causing to be inserted therein all such general public statutes as may be enacted at the 1943 session of the General Assembly and all amendments, in their proper places in sections under the appropriate chapter and subdivisions of chapters, and by deleting all sections or portions of sections found to be expressly repealed, or found to be repealed by virtue of the repeal of any cognate sections or parts of sections of the Consolidated Statutes or session laws, and by deleting repealed provisions and substituting in lieu thereof all proper amendments of the General Statutes or of cognate sections of the Consolidated Statutes or session laws; and the division is hereby authorized to change the number of sections and chapters, transfer sections, chapters and subdivisions of chapters and make such other corrections which do not change the law, as may be found by the division necessary in making an accurate, clear, and orderly statement of said laws. After the completion of such codification of the general and public laws of 1943, such laws, as they appear in the printed volumes of the General Statutes, shall be deemed an accurate codification of the statutes of 1943 contained therein. (1943, c. 15, s. 3.)