

THE GENERAL STATUTES OF NORTH CAROLINA

1959 CUMULATIVE SUPPLEMENT

To Recompiled Volume

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

UNDER THE DIRECTION OF
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Volume 3A

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Preface

This Cumulative Supplement to recompiled volume 3A contains the general laws of a permanent nature enacted at the 1953, 1955, 1956, 1957 and 1959 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. The index, appearing in volume 4B of the Cumulative Supplement, is confined mainly to new laws and such amendatory laws as are not reflected in the original index.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1953, 1955, 1956, 1957 and 1959 Sessions of the General Assembly affecting chapters 106 through 116 of the General Statutes.

Annotations.

Sources of the annotations:

- North Carolina Reports volumes 233 (p. 313)-250 (p. 377).
- Federal Reporter 2nd Series volumes 186 (p. 745)-265 (p. 656).
- Federal Supplement volumes 95 (p. 249)-172 (p. 272).
- United States Reports volumes 340 (p. 367)-359 (p. 343).
- Supreme Court Reporter volumes 71 (p. 474)-79 (p. 943).
- North Carolina Law Review volumes 29 (p. 227)-37 (p. 232).

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ARTICLE 1.

Department of Agriculture.

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§ 106-11. **Salary of Commissioner of Agriculture.**—The salary of the Commissioner of Agriculture shall be twelve thousand dollars (\$12,000.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the sal-

ary to the present amount from the time that the Commissioner took the oath of

office and began serving the term for which he was elected in 1952.

The 1957 amendment increased the salary from \$10,000.00 to \$12,000.00 from the

time the Commissioner took the oath of office and began serving the term for which he was elected in 1956.

Part 3. Powers and Duties of Department and Board.

§ 106-15. **Agricultural Research Station and branch stations.**—The work of investigation in agriculture required in this chapter may be designated by the Board of Agriculture as an Agricultural Research Station, and the four research farms now in operation be and the same are hereby designated and established as branch research stations, to be conducted as at present under the auspices of the Board of Agriculture and out of its funds. (1907, c. 876, s. 5; C. S., s. 4682; 1955, c. 276, s. 1.)

Editor's Note.—The 1955 amendment substituted the word "research" for the words "experiment" and "test." Prior to

the amendment the Agricultural Research Station was known as the Agricultural Experiment Station.

§ 106-16. **Purchase and sale of research farms; use of proceeds.**—The Board of Agriculture is authorized to sell, at its discretion, any lands which the State may now own or may hereafter acquire for the purpose of conducting research farms. The Board is also authorized to purchase additional lands to be used for the purpose of conducting research farms at such place or places as in the discretion of the Board may seem expedient. No such sales or purchases shall be made except upon the approval of the Governor and Council of State upon the recommendation of the Advisory Budget Commission. (1909, c. 97; 1917, c. 45; C. S., s. 4683; 1953, c. 1337; 1955, c. 276, s. 2.)

Editor's Note. — The 1953 amendment rewrote this section.

The 1955 amendment changed the words "test farms" to read "research farms."

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

Such "research farm" when acquired and established shall be operated, managed and controlled as other "research farms" in the State. (1927, c. 182, ss 1, 2; 1955, c. 276, s. 2.)

Editor's Note.—The 1955 amendment struck out the word "test" wherever it

appeared in this section and inserted in lieu thereof the word "research."

§ 106-18. **Peanut research farm.** — The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a research farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said research farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut research farm as may be necessary for its proper conduct and in the same way as is now being done for the other research farms in the State. The research farm shall be established, operated and controlled by the Department of Agriculture as the other research farms for the study of other farm crops. (1937, c. 218; 1955, c. 276, s. 2.)

Editor's Note.—The 1955 amendment struck out the word "test" wherever it

appeared in this section and inserted in lieu thereof the word "research."

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§ 106-50.3. Definitions.

(f) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in or claimed to have value in promoting plant growth by a manufacturer or contractor.

(q) In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages.

(r) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person who for hire or reward applies commercial fertilizer to the soil of a consumer; provided that this shall not apply to any consumer applying commercial fertilizer to only the land that he owns or to which he otherwise holds rights, for the production of his own crops. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2.)

Editor's Note.—The 1955 amendment struck out the word "being" formerly appearing before the word "stated" in line three of subsection (q). The 1959 amendment rewrote subsection (f) and added subsection (r). As the rest of the section was not affected by the amendments it is not set out.

§ 106-50.4. Registration of brands and licensing of manufacturers and contractors. —

(a) Each brand of commercial fertilizer and manipulated manure shall be registered before being offered for sale, sold, or distributed in this State. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of \$2.00 per brand and grade as a registration fee. Upon approval by the Commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July 1st of each year. The application shall include the following information:

- (1) The name and address of the person guaranteeing registration.
- (2) The brand.
- (3) The grade.
- (4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form; provided that the Commissioner of Agriculture may vary this order and form for small packages of twenty-five (25) pounds and less:

a. In mixed fertilizers (other than those branded for tobacco):

- Total nitrogen — per cent
- (Optional) water insoluble nitrogen — per cent
- percentage of total in multiples of five.
- Available phosphoric acid — per cent
- Soluble or available potash — per cent
- Whether the fertilizer is acid-forming or nonacid-forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

b. In mixed fertilizer (branded for tobacco):

Field Fertilizer

- Total nitrogen — per cent
- (Optional) nitrogen in the form of nitrate — per cent
- percentage of total in multiples of five.
- Water insoluble nitrogen — per cent
- percentage of total in multiples of five.
- Available phosphoric acid — per cent
- Soluble or available potash — per cent

Maximum chlorine	—	per cent
Total magnesium oxide	—	per cent
Plant Bed Fertilizer		
Total nitrogen	—	per cent
(Optional) nitrogen in the form of nitrate	—	per cent
percentage of total in multiples of five.		
(Optional) water insoluble nitrogen	—	per cent
percentage of total in multiples of five.		
Available phosphoric acid	—	per cent
Soluble or available potash	—	per cent
Maximum chlorine	—	per cent
Total magnesium oxide	—	per cent

All fertilizer branded for tobacco must contain magnesium equivalent to a minimum of two per cent magnesium oxide for field fertilizer, and one per cent magnesium oxide for plant bed fertilizer. Whether the fertilizer is acid-forming or non-acid-forming.

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

c. In fertilizer materials (if claimed):

Total nitrogen	—	per cent
Available phosphoric acid	—	per cent
In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.		
Soluble or available potash	—	per cent
Other recognized plant food	—	per cent

d. In manipulated manures.

Total nitrogen	—	per cent
Available phosphoric acid	—	per cent
Soluble or available potash	—	per cent
(The manures from which nitrogen, phosphoric acid, and potash are derived.)		

- (5) The sources from which the nitrogen, phosphoric acid, and potash are derived.
- (6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed; excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.
- (7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$) per 100 pounds of fertilizer and in increments of $\frac{1}{4}$, $\frac{1}{2}$, and multiples of $\frac{1}{2}$ pound per 100 pounds of fertilizer. The guarantee will be considered both a minimum and a maximum guarantee. The analysis guarantee shall be on a separate tag as prescribed by the Commissioner.
- (8) Additional plant food elements, compounds, or classes of compounds, de-

terminable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixing with other materials shall both the terms total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration; that if the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review and/or by such other means as he may deem advisable.

(d) Any person, firm or corporation wishing to become a fertilizer manufacturer or contractor, as defined in this article, shall before engaging in such business secure a license from the Commissioner of Agriculture. Such person, firm or corporation shall make application for such license on forms to be furnished by the Commissioner submitting such information as to his proposed operation as the Commissioner may prescribe. Such license shall be renewable annually on the first day of July. Such license may be revoked for a violation of any provisions of this article, or of any rule or regulation adopted by the Board of Agriculture. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5.)

Editor's Note.—

The 1959 amendment rewrote the intro-

ductory paragraph of (a) (4) and added subsection (d).

§ 106-50.5. **Labeling.** — (a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by paragraph (a), with the exception of item (5), of § 106-50.4 printed either (1) on tags to be affixed to the end of the package or (2) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the container shall not be less than 2 inches in height for containers of 100 pounds or more; not less than 1 inch for containers of 50 to 99 pounds; and not less than 1/2 inch for packages of less than 50 pounds. In case of fertilizers sold in containers on which the brand or other designations of the

distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(1955, c. 354, s. 2.)

Editor's Note.—The 1955 amendment substituted "to" for "and" between the figures "50" and "99" in line ten of subsection (a). As the rest of the section was not affected by the amendment it is not set out.

§ 106-50.6. Inspection fees.—(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents (25¢) per ton on all commercial fertilizers in packages of more than five pounds of such commercial fertilizer. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars (\$25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton as provided herein. The Commissioner, with the advice and consent of the Board of Agriculture is hereby empowered to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System.—Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each and every distributor shall report the tonnage sold monthly under oath and on forms furnished by the Commissioner. Such reports shall be made and inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after the fifteen-day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars (\$1,000.00) or securities acceptable to the Commissioner of a value of at least one thousand dollars (\$1,000.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7.)

Editor's Note.—

The 1959 amendment struck out former subsections (a) to (d) and substituted in lieu thereof present subsection (a). It also substituted present subsection (b) in place of former subsections (e) to (k).

§ 106-50.7. Sampling, inspection and testing.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(1955, c. 354, s. 3.)

Editor's Note.—The 1955 amendment section was not affected by the amendment rewrote subsection (c). As the rest of the it is not set out.

§ 106-50.8. Plant food deficiency.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner: Provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after twelve months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4.)

Editor's Note.—The 1955 amendment by the amendment only subsection (c) is rewrote the last sentence of subsection (c). set out.
As the rest of the section was not affected

§ 106-50.11. Grade list.—The Board of Agriculture, after a public hearing open to all interested parties, and upon approval by the director of the agricultural experiment station, shall, prior to June 30th of each year or as early as practicable thereafter, promulgate a list of grades of mixed fertilizer adequate to meet the agricultural needs of the State. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration: Provided, that the requirements of this section shall not apply to mixed fertilizers in packages of twenty-five (25) pounds and less. The Commissioner may revise this list of grades by conforming to the procedure prescribed in this section.

It is provided, however, that any distributor may be permitted to sell one but not exceeding one grade of specialty fertilizer not on the current approved list. The Commissioner may, in his discretion, require a sample label to be submitted before registering such fertilizer. (1947, c. 1086, s. 11; 1951, c. 1026, s. 8; 1959, c. 706, s. 8.)

Editor's Note.—

The 1959 amendment inserted the proviso in the first paragraph.

§ 106-50.14. Publication of information concerning fertilizers.—The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State as compared with the analyses guaranteed under §§ 106-50.4 and 106-50.5: Provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9.)

Editor's Note. — The 1959 amendment inserted in line six the words "or offered for sale."

§ 106-50.18. "Stop sale", etc., orders. — It shall be the duty of the Commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said commercial fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5.)

Editor's Note.—The 1955 amendment substituted "has" for "had" in line six of this section.

§ 106-50.20. Punishment for violations.

(k) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G. S. 106-50.6 before selling, offering or exposing for sale or distributing commercial fertilizers in this State.

(l) Failure of any manufacturer or contractor to procure a license under the provisions of G. S. 106-50.4 (d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11.)

Editor's Note. — The 1959 amendment rewrote subsection (k) and added subsection (l). As the rest of the section was not affected by the amendment it is not set out.

ARTICLE 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§ 106-65.3. Prohibited acts.

(4) The economic poisons commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white or lightly colored powder economic poison which the Board of Agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the Board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if it determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health. (1953, c. 675, s. 11.)

Editor's Note.— subsection a. As only this paragraph was affected by the amendment the rest of the section is not set out.

ARTICLE 4B.

Aircraft Application of Pesticides.

§ 106-65.13. Definitions.—For the purposes of this article:

a. The term "pesticide" or "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or

viruses, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest.

b. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

c. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating fungi or plant disease.

d. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

e. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example but not limited to, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, but not limited to, spiders, mites, ticks, centipedes, and wood lice.

f. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, but not limited to, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

g. The term "weed" means any plant or plant part which grows where not wanted.

h. The term "person" means any individual, firm, partnership, association, corporation, company, joint stock association, or body politic, or any organized group of persons whether incorporated or not; and includes any trustee, receiver, assignee, or other similar representative thereof.

i. The term "Commissioner" means the Commissioner of Agriculture.

j. The term "Board of Agriculture" means the North Carolina Board of Agriculture.

k. The term "custom application of pesticides" means any application of pesticides by aircraft.

l. The term "aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air. (1953, c. 1333.)

Editor's Note. — The act inserting this article became effective July 1, 1953.

§ 106-65.14. **Licenses.**—a. It shall be unlawful for any person to engage in custom application of pesticides within this State at any time without a license issued by the Commissioner. Application for a license shall be made to the Commissioner and each application shall contain information regarding the applicant's qualifications and proposed operations and such other relevant matters as may be required pursuant to regulations promulgated by the Board of Agriculture.

b. The Commissioner may require the applicant to show, upon examination, that he possesses adequate knowledge concerning the proper use and application of pesticides, and the dangers involved and precautions to be taken in connection with their application. If the applicant is other than an individual, the applicant shall designate an officer, member, or technician of the organization to take the examination, such designee to be subject to the approval of the Commissioner. If the extent of the applicant's operations warrant it, the Commissioner may require more than one officer, member, or technician to take the examination.

c. If the Commissioner finds the applicant qualified, the Commissioner shall issue a license, which shall authorize the licensee to perform custom application of pesticides within this State. The license may restrict the applicant to the use of a certain type or types of materials if the Commissioner finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Commissioner shall inform the applicant in writing of the reasons

therefor. All licenses issued under this article shall expire on December 31 of each year and may be renewed upon the filing of a new application therefor.

d. The Commissioner may suspend, pending inquiry, for not longer than ten days, and, after opportunity for a hearing, may revoke or modify the provisions of any license issued under this section, if he finds as a fact that the licensee is no longer qualified or has engaged in fraudulent business practices in the custom application of pesticides, or has made any custom application in a faulty, careless, or negligent manner, or has violated any of the provisions of this article or regulations made thereunder.

e. The Commissioner may require, under such rules and regulations as may be promulgated under this article, from each applicant a liability bond against damage to person or property by aircraft and a reasonable performance bond with sufficient surety satisfactory to the Commissioner, which performance bond is to secure the performance of contractual obligations of the licensee with respect to custom application of pesticides. Any person injured by the breach of any such obligation or any person damaged by such aircraft shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained.

f. Any person aggrieved by any action of the Commissioner may within ten days after notice thereof request a review of said action by the Board of Agriculture. If no request for review is so made, the decision of the Commissioner shall be final. If a review is so requested, the Board of Agriculture shall promptly review the action of the Commissioner and either affirm or overrule his action. If the Board of Agriculture affirms the Commissioner, it shall find the facts of the case and the aggrieved person may within thirty days after notice thereof appeal to the superior court of the county in which such person resides or to the Superior Court of Wake County and the matter may be heard in or out of chambers. Notice of the appeal shall be served on the Commissioner and within ten days thereafter the Commissioner shall certify and file in the court to which the appeal is taken a transcript of any record pertaining thereto, including a transcript of evidence received. The court shall have jurisdiction to affirm, set aside or modify the action of the Board of Agriculture, provided, that the findings of fact as made by said Board, if supported by evidence, shall be conclusive.

Any license which has been suspended or revoked by the Commissioner or Board of Agriculture shall remain suspended or revoked until the laws, and regulations of the Board of Agriculture, have been complied with or until the decision or action of said Commissioner or Board has been set aside by court action. (1953, c. 1333.)

§ 106-65.15. Regulations, materials and methods of application.—The Board of Agriculture, after public hearing, may adopt regulations prohibiting the use of materials or methods in custom application of pesticides to the extent necessary to protect health or property and may make such other regulations as it may deem necessary to carry out the provisions of this article. Provided, however, such regulations shall not be inconsistent with regulations issued by this State or by the federal government respecting safety in air navigation or operation of aircraft and before issuing any regulations directly related to any matter within the jurisdiction of any other official of this State, the Commissioner shall consult with that official with reference thereto. (1953, c. 1333.)

§ 106-65.16. Reports.—The Board of Agriculture may by regulation require any licensee to maintain records and furnish reports giving information with respect to particular applications of pesticides and such other relevant information as the Board of Agriculture may deem necessary. (1953, c. 1333.)

§ 106-65.17. Information.—The Commissioner may, in cooperation with the North Carolina Agricultural Experiment Station, publish information regard-

ing injury which may result from improper application or handling of pesticides and the methods and precautions designed to prevent such injury. (1953, c. 1333.)

§ 106-65.18. **Penalties.**—Any person violating the provisions of this article or the regulations issued hereunder shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned or both in the discretion of the court. (1953, c. 1333.)

§ 106-65.19. **Enforcement.**—For the purpose of carrying out the provisions of this article the Commissioner may enter upon any public or private premises at reasonable times in order to have access for the purpose of inspecting any aircraft or materials subject to this article. (1953, c. 1333.)

§ 106-65.20. **Delegation of duties.**—The functions vested in the Commissioner by this article may be delegated by him to such employees of the Department of Agriculture or other qualified persons as the Commissioner may from time to time designate for such purposes. (1953, c. 1333.)

§ 106-65.21. **Co-operation.**—The Commissioner may co-operate with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this article and of securing uniformity of regulations. (1953, c. 1333.)

ARTICLE 4C.

Structural Pest Control Act.

§ 106-65.22. **Title.**—This article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955". (1955, c. 1017.)

Editor's Note.—The act inserting this article became effective July 1, 1955.

§ 106-65.23. **Structural Pest Control Commission created; membership, terms and vacancies; organization and quorum; compensation and expenses.**—There is hereby created a Structural Pest Control Commission. The members of the Commission created by this article shall be selected and appointed by the Governor. It shall consist of five members who shall be composed of a representative of the Division of Entomology of the State Department of Agriculture, a representative from the Entomology Faculty of North Carolina State College, a representative of the State Department of Agriculture, and two members of the pest control industry at large who are residents of the State of North Carolina, but not affiliates of the same company. The terms of all members of such board shall be three years, unless sooner terminated by the appointing authority, except that the initial board members shall be appointed, one for a term expiring July 1, 1956, two for a term expiring July 1, 1957, and two for a term expiring July 1, 1958. No member of the board who is a member of the pest control industry at large and who was appointed for a full three-year term shall succeed himself, nor shall both board members from the pest control industry be replaced the same year. This prohibition against succession does not apply to the representatives of the State Department of Agriculture nor the representative of the Entomology Faculty of North Carolina State College. If a vacancy occurs in said Commission, another commissioner shall be appointed by the Governor to fill the unexpired term. The Commission shall elect from its membership a chairman who shall be elected annually by members of the Commission by a majority vote. Each member shall receive ten dollars (\$10.00) per diem while actually attending to work of the Commission and shall be reimbursed for his necessary traveling and other expenses incurred in the performance of his duties. Three members of said Commission shall constitute a quorum but no action at any meet-

ing shall be taken without three votes in accord. The Commission is authorized, in its discretion, to employ a secretary to perform clerical duties in the implementation of this article, said secretary to be paid out of funds collected by the Commission pursuant to the provisions of this article. (1955, c. 1017; 1957, c. 1243, s. 1.)

Editor's Note.—The 1957 amendment added the last sentence.

§ 106-65.24. **Definitions.**—For the purposes of this article, the following terms, when used in the article or the rules and regulations, or orders made pursuant thereto shall be construed respectively to mean:

(1) "Structural pest control" means the control of wood-destroying organisms or household pests (such as moths, roaches, and bedbugs), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, rodenticides and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings and other structures, (including household structures, commercial buildings and other structures in all stages of construction) and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(2) "Commission" refers to the Structural Pest Control Commission created by this article.

(3) "Licensee," as used in this article, shall mean the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(4) The term "employee" as used in this article, shall mean any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood destroying organisms.

(5) The term "branch office," as used in this article, shall mean and include any place of doing business which has two or more employees engaged full time in the control of insect pests, rodents, or wood destroying organisms.

(6) "Applicant" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this article.

(7) "Fumigants" mean any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(8) "Insecticides" are substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(9) "Rodenticides" are substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(10) "Repellents" are substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed be-

cause of capacity for preventing the entrance or attack of pests. (1955, c. 1017; 1957, c. 1243, s. 2.)

Editor's Note.—The 1957 amendment rewrote paragraph (1).

§ 106-65.25. **Phases of structural pest control; license required; exceptions.**—(a) Structural pest control is divided into the following phases:

- (1) Control of wood-destroying organisms by any method other than fumigation,
- (2) Control of household pests by any method other than fumigation,
- (3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Commission.

(b) This article shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation, under the direct supervision of the person who owns or is in charge of the property on which work is being done. This article shall not apply to agents or agencies of the Federal, State or local governments. (1955, c. 1017; 1957, c. 1243, s. 3.)

Editor's Note.—The 1957 amendment rewrote subsection (a) and stated the phases of structural pest control.

§ 106-65.26. **Qualifications of applicants for license.**—An applicant for a license must present satisfactory evidence to the Commission concerning his qualifications for such license. The basic qualifications shall be: (a) Two years as an employee or owner-operator in the field of structural pest control, control of wood destroying organisms or fumigation, for which license is applied, or (b) one or more years training in specialized pest control, control of wood destroying organisms or fumigation under university or college supervision may be substituted for practical experience (each year of such training may be substituted for one-half year of practical experience), or (c) a degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision, (d) all applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood destroying organisms or fumigation. (1955, c. 1017.)

§ 106-65.27. **Examination of applicants; fee; license not transferable.**—(a) All applicants must pass a satisfactory oral or written examination. Frequency of such examinations shall be at the discretion of the Commission, based upon the number of applications received, provided that a minimum of two examinations shall be held annually. The examinations will cover phases of structural pest control (control of wood destroying organisms, household pests and fumigation). The Commission shall give one examination for one fee covering structural pest control, or any one of the following phases: Control of household pests, or control of wood destroying organisms, or fumigation.

The Commission shall be entitled to collect from each qualified person who makes application to take the examination to become a registered structural pest control operator, wood destroying organism control operator, or fumigator, the sum of twenty-five dollars (\$25.00), which shall be in full for the examination. Any and all examinations may be taken at the same time for the payment of one fee and in case the applicant shall not be licensed, he or she shall have the right

to take one additional examination at a regularly scheduled examination, without the payment of an additional fee.

(b) A business license shall not be transferable. When there is a change in the status of the qualified person operating under a business license, the business establishment or business entity, or branch office, whether it be an individual, firm, partnership, corporation, association, or any organization or any combination thereof, shall have 90 days or until the next meeting of the Commission following the expiration of said 90-day period to designate a person to qualify under the provisions of this article. (1955, c. 1017.)

§ 106-65.28. Revocation of license.—Any license may be revoked by a majority vote of the Commission, after notice and hearings as specified in § 106-65.32, and for the following causes: (a) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted. (b) Failure of the license holder to give the Commission, or its authorized representatives, upon request, true information regarding methods and materials used, work performed, where such information is essential to the administration of this article. (c) Failure of the license holder to make registrations herein required or failure to pay the registration fees. (d) Any misrepresentation in the application for a license. (1955, c. 1017.)

§ 106-65.29. Rules and regulations.—The Commission is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017.)

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.—For the enforcement of the provisions of this article, the State Commissioner of Agriculture is hereby authorized and empowered to appoint one or more qualified inspectors, the salaries and traveling expenses for whom shall be paid only from funds of the Commission. Said inspectors shall be known as "Structural Pest Control Inspectors of the State Department of Agriculture." The State Commissioner of Agriculture shall enforce compliance with the provisions of this article by making or causing to be made periodical and unannounced inspections of work done by individuals, firms, partnerships, corporations, associations, or any other organizations or any combination thereof, engaged in the business of structural pest control, wood destroying organism control, or fumigation in the State of North Carolina, and it shall be the further duty of the inspectors of the State of North Carolina to promptly and diligently report to the State Commissioner of Agriculture all violations of the provisions of this article or of any other law now or hereafter enacted regulating or governing the practice of structural pest control, wood destroying organisms control or fumigation or the operation of a structural pest control business in the State of North Carolina: Provided nothing herein contained shall be construed to authorize inspection of any property without the permission of the owner or occupant.

Every nonresident owner shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of this article or any liabilities arising hereunder. (1955, c. 1017.)

§ 106-65.31. Annual license fee; registration of solicitors and servicemen; identification card for employees.—The fee for the issuance of an annual license for any phase of structural pest control under this article shall be fifty dollars (\$50.00); provided, that when or any time after the fee for

a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for a fee of twenty-five dollars (\$25.00) per license. Licenses shall expire on June 30 of each year and shall be renewable annually upon the payment of the required fee; provided, that if any license holder fails to renew said license before August 1 of each year, then he may be required to pay a penalty of ten dollars (\$10.00), in addition to ordinary license fees. The license holder shall register with the Commissioner of Agriculture or his duly appointed representative the names of all solicitors and servicemen (not common laborers) and shall pay to said Commissioner a registration fee of one dollar (\$1.00) at the time each name is registered, which shall be within 30 days after employment. All registrations expire when the license expires. Each employee for whom application is made and fee is paid shall be issued an identification card, which shall be carried on his or her person at all times when performing work. Said identification card shall be displayed upon demand to the person or persons for whom such work is being performed. The licensee shall be responsible for making application for an operator's identification card for any regularly employed serviceman, salesman or estimator.

It shall be unlawful for a serviceman, salesman, or estimator to actually engage in the performance of work covered by this article without having such identification card in his possession, provided that the licensee shall have 30 days after employing a serviceman, salesman, or estimator within which to apply for operator's identification card. The operator's identification card provided for hereunder shall be effective only while the serviceman, salesman, or estimator shall remain in the employ of the licensee making the original application. (1955, c. 1017; 1957, c. 1243, s. 4.)

Editor's Note.—The 1957 amendment rewrote the first paragraph.

§ 106-65.32. Proceedings and hearings under article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.—Proceedings under this article shall be taken by the Structural Pest Control Commission for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Commission, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Commission shall serve notice by registered mail of the time, place of hearing, and a copy of the charges upon the accused at least 30 days before the date of the hearing. The Commission for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Commission and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Commission under the seal of the Commission and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Commission shall be under oath or affirmation.

A record of all hearings and judgments shall be kept by the secretary of the Commission and in the event of suspension or revocation of license, the Commission shall, within ten days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county. (1955, c. 1017; 1957, c. 1243, s. 5.)

Editor's Note.—The 1957 amendment judgment in the judgment docket of said added at the end of the second paragraph county." the words "and the clerk shall file said

§ 106-65.33. **Penalty for violation.**—Any person violating any of the provisions of this article or any rules or regulations made by the Commission pursuant to this article, shall be deemed guilty of a misdemeanor and upon conviction shall be punished as prescribed in § 14-3 of the General Statutes of North Carolina. (1955, c. 1017; 1957, c. 1243, s. 6.)

Editor's Note.—The 1957 amendment inserted the words "or any rules or regulations made by the Commission pursuant to this article."

§ 106-65.34. **Annual report to Governor.**—Annually as of July 1, the Commission shall submit to the Governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the Commission, attested by affidavit of its chairman, a copy of which statement shall be filed with the Secretary of State. (1955, c. 1017.)

§ 106-65.35. **Exceptions as to provisions for written examination by licensees.**—The provisions of this article as to examinations required of applicants for a business license shall not apply to any proposed licensee who has been actively engaged in and maintained a place of business for the purpose of controlling or exterminating insect pests, rodents, or control of wood destroying organisms by the use of chemicals, for a period of six months next preceding July 1, 1955, either as an owner, or designated person in charge of a place of business, and who is maintaining a place of business in the State of North Carolina July 1, 1955. The above provisions apply also to discharged service personnel or former members of the armed forces who apply for said business licenses within six months of their discharge if satisfactory evidence is submitted that the applicant was actively engaged in said work as set forth above in the State of North Carolina immediately preceding the beginning of such service with the armed forces. The above provisions as to the issuance of a license under this section shall be limited to the issuance of one license to a designated licensee at each business entity or branch office thereof, if said entity or branch office was in existence at least six months prior to July 1, 1955. (1955, c. 1017.)

ARTICLE 5A.

Marketing of Farmers Stock Peanuts.

§ 106-67.1. **Purpose of article.**—The purpose of this article is to promote fair trade practices among growers, handlers and buyers in the selling and buying of farmers stock peanuts, so as to ensure fair grading, weighing, labeling, inspecting and computing of purchase price. (1957, c. 1053, s. 1.)

§ 106-67.2. **Licenses to buy peanuts required; purchases for seed exempted.**—Each person, firm or corporation that buys one (1) ton or more of farmers stock peanuts from producers for his account or the account of others during any calendar year shall obtain a license from the Commissioner of Agriculture each year to conduct such business. This article shall not apply to purchasers who buy peanuts for seed purposes only. (1957, c. 1053, s. 2.)

§ 106-67.3. **Issuance of license; fee; effective period; use of fees collected.**—(a) The Commissioner of Agriculture shall issue a license to any person, firm or corporation desiring to buy farmers stock peanuts upon the receipt of a prescribed application accompanied by a ten dollar (\$10.00) license fee; provided, however, that the Commissioner may withhold the issuance of a license to any applicant who has been convicted of violating any provision of this article until the Commissioner has been given reasonable assurance that the applicant will comply with the provisions of this article and the rules and regulations adopted pursuant thereto.

(b) The effective period of the license shall be from July 1 through June 30 of each year.

(c) The moneys collected for license fees shall be used only for the administration and enforcement of the provisions of this article. (1957, c. 1053, s. 2.)

§ 106-67.4. **Advisory Committee.**—The Commissioner of Agriculture shall appoint an Advisory Committee consisting of five members: Two members to represent North Carolina peanut growers, at least one of whom shall represent the membership of the North Carolina Peanut Growers' Association; one member to represent the Cooperative Marketing Association serving the peanut growers of North Carolina; one member to represent the North Carolina peanut commission buyers; and one member to represent the peanut millers and shellers of North Carolina. The term of office of each member shall commence on July 1 of each year, or as soon thereafter as he is appointed and continue to the following June 30.

The duties of this Committee shall be to act in an advisory capacity to the Commissioner of Agriculture and the North Carolina State Board of Agriculture in formulating rules and regulations and in other matters relating to the administration of this article. (1957, c. 1053, s. 3.)

§ 106-67.5. **False certificates, etc.; false representations.**—It shall be unlawful for any person, firm or corporation knowingly to falsely make, issue, alter, forge or counterfeit any official certificate, memorandum, or falsely represent the weight, grade class quantity or condition or to knowingly represent that the peanuts have been officially inspected or graded (by an authorized government inspector or grader) when such product in fact has not been so graded or inspected. (1957, c. 1053, s. 4.)

§ 106-67.6. **Inspections and investigations by Commissioner.**—In order to carry out the purposes of this article effectively, the Commissioner of Agriculture is authorized to inspect or investigate transactions for the sale or delivery of farmers stock peanuts to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage and other facilities and articles connected with the business of handlers of farmers stock peanuts. (1957, c. 1053, s. 5.)

§ 106-67.7. **Rules and regulations.**—The North Carolina State Board of Agriculture is hereby authorized to adopt such reasonable rules and regulations as may be necessary for the proper administration and enforcement of this article. (1957, c. 1053, s. 6.)

§ 106-67.8. **Penalty; suspension of license.**—Any person, firm or corporation violating any provision of this article, or any regulation adopted pursuant to this article, shall be guilty of a simple misdemeanor punishable by a fine of not more than fifty dollars or imprisonment for not more than thirty days, in the discretion of the court.

The Commissioner of Agriculture is hereby authorized to suspend the license of any person, firm or corporation, upon being convicted of violating any provision of this article, for any period of the remaining part of the licensed year within his discretion. (1957, c. 1053, s. 7.)

ARTICLE 9.

Commercial Feeding Stuffs.

§ 106-93. **Packages to be marked with statement of specified particulars; methods of analysis.**—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this State shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly

certifying the weight of the package; the name, brand, or trademark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein: Provided, that minerals and other materials not valuable for their protein and fat content shall be labeled in accordance with rules and regulations promulgated by the State Board of Agriculture. The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis. (1909, c. 149, s. 1; C. S., s. 4724; 1949, c. 638, s. 1; 1953, c. 698, s. 3; 1955, c. 868, s. 1.)

Editor's Note.—

The 1953 amendment deleted the words "and the percentage of carbohydrates" formerly appearing immediately after the word "protein" in line ten.

The 1955 amendment inserted the refer-

ence to "sound laboratory practices" in the next to the last sentence and added "of the United States" at the end of the sentence. It also substituted "the Board" for "said Association" in the last sentence.

§ 106-94. Weight of packages prescribed. — All concentrated commercial feeding stuffs, except that in bags or packages of five pounds or less, shall be in standard weight bags or packages of ten, twenty-five, fifty, seventy-five, eighty, one hundred, one hundred and twenty-five, one hundred and fifty, one hundred and seventy-five, and two hundred pounds. (1909, c. 149, s. 1; C. S., s. 4725; 1943, c. 225, s. 1; 1953, c. 1113.)

Editor's Note.—

The 1953 amendment added "eighty" to the list of weights.

§ 106-95.1. Custom-mixed feed.—A "custom-mixed feed" is a feed composed of grains or other feed materials grown or stored on the farm of a person, firm, or corporation engaged in farming and ground and mixed with a concentrate or base, for the sole purpose of being fed to the livestock, domestic animals or poultry of the said person, firm or corporation: Provided, this section shall not be construed as prohibiting a farmer from using grain grown or stored on neighboring farms when moved directly by him or his employee to a mill, to his own farm, or to a neighboring storage facility. (1959, c. 1057, s. 1.)

Editor's Note. — The act inserting this section is effective as of Jan. 1, 1960.

§ 106-96. Copy of statement and sample filed for registration. — Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-93, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the Commissioner of Agriculture an annual registration fee of one dollar (\$1.00), payable at the time of registration: Provided, that for each brand of commercial feeding stuff marketed in packages of five pounds or less, there shall be paid to the Commissioner of Agriculture an annual registration fee of twenty-five dollars (\$25.00): Provided, further, that manufacturers, importers, jobbers, agents, or sellers who pay the twenty-five dollars (\$25.00) regis-

tration fee prescribed by the above provision on any feeding stuff, shall not be liable for the tonnage fee, prescribed by § 106-99, on the feeding stuff on which said twenty-five dollar (\$25.00) fee is paid.

All registration fees are payable at the time of registration, and shall be payment in full of registration fees through December thirty-first of the year in which paid. All such feeds must be registered anew each year: Provided, that nothing in this section shall be construed as applying to grain or other feed materials supplied by a farmer and used in custom-mixed feed as defined in G. S. 106-95.1. (1909, c. 149, s. 3; C. S., s. 4727; 1939, c. 354, s. 2; 1943, c. 225, s. 2; 1959, c. 1057, ss. 2, 3.)

Editor's Note.—

The 1959 amendment, effective Jan. 1, 1960, deleted the words "bearing a distinguishing name or trademark" formerly fol-

lowing "feeding stuff" in line three of the first paragraph. It also added the proviso to the second paragraph.

§ 106-99. Inspection tax on feeding stuffs. — Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in this article, shall pay to the Commissioner of Agriculture an inspection tax of twenty-five cents (25c) per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the Commissioner of Agriculture stating that all charges specified in this section have been paid. This shall apply to all commercial feeding stuff furnished, supplied or used, for the growing or feeding under contract or agreement, of livestock, domestic animals and poultry, and shall also apply to any feeding stuffs which are produced by the purchase of grain or other materials and the grinding and mixing of same with concentrated commercial feeding stuff being used as a supplement or base. The requirements of this section, however, are subject to the following conditions:

(1) If the concentrated commercial feeding stuff, used as a supplement or a base, has already been taxed under this article and the inspection tax paid, then the amount paid shall be deducted from the gross amount of tax due on the total feeding stuff produced.

(2) Any person, firm or corporation producing his or its own grain or other material and grinding and mixing same with a concentrated commercial feeding stuff as a supplement or base for the purpose of feeding his or its own livestock, domestic animals and poultry shall not be subject to the increased inspection tax as provided herein for mixtures of feeding stuff.

(3) Whenever any concentrated commercial feeding stuff is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same.

(4) Nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale or distribution, if the seller shall send to the Commissioner of Agriculture for each such sale or shipment, at the time of shipment or delivery, a statement that it is to be used only in the manufacture of registered feeds. Such statement shall give the name and address of the manufacturer, date of sale or shipment, name and address of manufacturer to whom sold or shipped, amount shipped, size of packages, and name of feeding stuff.

(5) The Commissioner of Agriculture, upon demand, shall redeem inspection tags or stamps returned to him within a time fixed by the Board of Agriculture; but such tags or stamps submitted for redemption shall be accompanied by an affidavit that they have not been used. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1953, c. 698, s. 1; 1955, c. 868, s. 2.)

Editor's Note.—

The 1953 amendment rewrote the first part of the first paragraph.

The 1955 amendment rewrote the former first paragraph of this section to constitute

the present section and removed all of the former second paragraph to constitute § 106-99.1.

As to law effective from Jan. 1, 1960, see the succeeding same numbered section.

§ 106-99. Inspection tax on feeding stuffs.—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in this article, shall pay to the Commissioner of Agriculture an inspection tax of twenty-five cents (25c) per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State. This shall apply to all commercial feeding stuff furnished, supplied or used, for the growing or feeding under contract or agreement, of livestock, domestic animals and poultry, and shall also apply to any feeding stuffs which are produced by the purchase of grain or other materials and the grinding and mixing of same with concentrated commercial feeding stuff being used as a supplement or base. The requirements of this section, however, are subject to the following conditions:

- (1) If the concentrated commercial feeding stuff, used as a supplement or a base, has already been taxed under this article and the inspection tax paid, then the amount paid shall be deducted from the gross amount of tax due on the total feeding stuff produced.
- (2) Only that portion of a custom-mixed feed supplied by a farmer and used in custom-mixed feeds as defined in G. S. 106-95.1 shall be exempt from the feed inspection tax as provided for in this article.
- (3) Whenever any concentrated commercial feeding stuff is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section.
- (4) Nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff to importers, manufacturers or manipulators who mix registered concentrated commercial feeding stuff for sale or distribution, if the seller shall send to the Commissioner of Agriculture for each such sale or shipment, at the time of shipment or delivery, a statement that it is to be used only in the manufacture of registered feeds. Such statement shall give the name and address of the manufacturer, date of sale or shipment, name and address of manufacturer to whom sold or shipped, amount shipped, size of packages, and name of feeding stuff.
- (5) The Commissioner of Agriculture, upon demand, shall redeem inspection tags or stamps returned to him on or before April 1, 1960; but such tags or stamps submitted for redemption shall be accompanied by an affidavit that they have not been used. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1953, c. 698, s. 1; 1955, c. 868, s. 2; 1959, c. 1057, ss. 4-8.)

Editor's Note.—

The 1959 amendment, effective Jan. 1,

1960, deleted from the first sentence and subdivision (3) the references to tax tags

or stamps. It also rewrote subdivisions (2) and (5) and made changes in subdivision (4). As to law effective until Dec. 31, 1959, see the preceding same numbered section.

§ 106-99.1. Reporting system. — Any manufacturer, importer, jobber, firm, corporation or person who distributes concentrated commercial feeding stuffs in this State may make application to the Commissioner of Agriculture for a permit to report the tonnage of feeding stuffs sold and pay the inspection tax of twenty-five cents (25¢) per ton as hereinbefore mentioned, as the basis of said report, in lieu of affixing or furnishing inspection fee tags or stamps. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on the tenth of each month, covering the tonnage and kind of commercial feeding stuffs sold during the past month. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars (\$1000.00) or securities acceptable to the Commissioner of a value of at least one thousand dollars (\$1000.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1955, c. 868, s. 3.)

Editor's Note. — Prior to the 1955 amendment the contents of this section were covered by § 106-99. As to law effective from Jan. 1, 1960, see the succeeding same numbered section.

§ 106-99.1. Reporting system. — Each manufacturer, importer, jobber, firm, corporation, or person who distributes concentrated commercial feeding stuffs in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of feeding stuffs sold and shall pay to the North Carolina Department of Agriculture an inspection tax of twenty-five cents (25¢) per ton. The Commissioner of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the tax paid. Each and every distributor shall report the tonnage sold monthly under oath and on forms furnished by the Commissioner. Such reports shall be made and the inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial feeding stuffs sold during the preceding month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit,

and if the inspection fee be unpaid after the fifteen-day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of five hundred dollars (\$500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars (\$500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1955, c. 868, s. 3; 1959, c. 1057, s. 9.)

Editor's Note. — The 1959 amendment, As to law effective until Dec. 31, 1959, see effective Jan. 1, 1960, rewrote this section. the preceding same numbered section.

§ 106-102.1. Misbranding; penalty; payable to purchaser; value of feed; deficiencies of weight.

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

If the fiber content of any lot of feed shall exceed the maximum guarantee by more than two per cent (2%) (two units), a penalty shall be assessed equal to ten per cent (10%) of the value of the feed; provided, if the fiber content of any lot of dairy or dairy cow feed shall exceed a maximum guarantee of fifteen per cent (15%), a penalty shall be assessed equal to ten per cent (10%) of the value of the feed.

If the microscopic analysis or any other analysis reveals that the feed is mislabeled, the Commissioner may, in his discretion, assess a penalty equal to ten per cent (10%) of the value of the feed.

(1953, c. 698, s. 2; 1955, c. 868, ss. 4, 5.)

Editor's Note. — The 1953 amendment substituted at the end of the second paragraph the words "the Commissioner may, in his discretion, assess a penalty equal to twice the value of the deficiency" for the words "the penalty shall be twice the value of the deficiency."

The 1955 amendment added the proviso to the third paragraph, and inserted in the fourth paragraph the words "or any other analysis."

As only the second, third and fourth paragraphs were changed by the amendments the rest of the section is not set out.

§ 106-104. Sales without permit. — Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this State any concentrated commercial feeding stuff without having applied for and been issued a permit as required by G. S. 106-99.1 shall be guilty of a violation of the provisions of this article. (1909, c. 149, s. 10; C. S., s. 4735; 1959, c. 1057, s. 10.)

Editor's Note. — The 1959 amendment, effective Jan. 1, 1960, rewrote this section.

ARTICLE 12.

Food, Drugs and Cosmetics.§ 106-136. **Cosmetics deemed adulterated.**

Cited in *Hanrahan v. Walgreen Co.*, 243 N. C. 268, 90 S. E. (2d) 392 (1955).

§ 106-137. **Cosmetics deemed misbranded.**

Cited in *Hanrahan v. Walgreen Co.*, 243 N. C. 268, 90 S. E. (2d) 392 (1955).

§ 106-138. **False advertising.**

Cited in *Hanrahan v. Walgreen Co.*, 243 N. C. 268, 90 S. E. (2d) 392 (1955).

ARTICLE 13.

Canned Dog Foods.

§ 106-146. **Labeling of canned dog food required.** — Every can of dog food sold, offered or exposed for sale within this State shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the can; the name, brand or trademark under which the article is sold; the name and address of the manufacturer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein. (1939, c. 307, s. 1; 1941, c. 290, s. 1; 1955, c. 267, s. 1.)

Editor's Note.—

The 1955 amendment struck out the words "provided, that all canned dog foods shall be in cans of one-half pound, or one pound, or multiples of one pound." It also

deleted from the end of the section the words "all three constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States."

§ 106-152. **Adoption of standards, etc.**—The Board of Agriculture is empowered to adopt standards for canned dog foods and such rules and regulations as may be necessary for the enforcement of this article, and to prescribe methods of analysis, which methods shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. (1939, c. 307, s. 7; 1955, c. 267, s. 2.)

Editor's Note.—

The 1955 amendment added the provision relating to methods of analysis.

§ 106-156. **Violations made misdemeanor.** — Any manufacturer, importer, jobber, agent or dealer who shall violate any of the provisions of this article, or the rules and regulations issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense, nor more than two hundred dollars for each subsequent offense. (1939, c. 307, s. 11; 1955, c. 267, s. 3.)

Editor's Note.—The 1955 amendment inserted in line three the words "or the rules and regulations issued thereunder."

ARTICLE 14.

State Inspection of Slaughterhouses.§ 106-161. **Municipalities, inspection of meats.**

Local Modification.—Rowan and city of Salisbury: 1953, c. 594, s. 1.

ARTICLE 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

§ 106-168.1. **Definitions.**—For the purposes of this article, unless the context or subject matter otherwise clearly requires.

a. "Person" means any individual, partnership, firm, association or corporation.

b. "Rendering operation" means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.

c. "Raw material" means inedible whole or portion of animal or poultry carcasses.

d. "Rendering plant" means the building or buildings in which raw material is processed and the premises upon which said building or buildings used in connection with such processing are located.

e. "Collector" means any person, as defined in this section, who collects raw material for the purpose of selling the same to any renderer for further processing. (1953, c. 732.)

§ 106-168.2. **License required.**—No person shall engage in rendering operations unless such person shall hold a valid license to do so issued as hereinafter provided. (1953, c. 732.)

§ 106-168.3. **Exemptions.**—Nothing in this article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732.)

§ 106-168.4. **Application for license.**—Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner", on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953. The applicant shall pay a fee of \$50.00 with each application, which said fee shall be the only charge made in connection with licensure. (1953, c. 732.)

§ 106-168.5. **Duties of the Commissioner upon receipt of application; inspection committee.**—Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee", which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the State Health Director and who shall be an employee of the State Board of Health, and one member who shall be designated by the Director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13.)

Editor's Note.—The 1957 amendment, "State Health Director" for "State Health effective January 1, 1958, substituted Officer" in line seven.

§ 106-168.6. Inspection by committee; certificate of specific findings.—The committee upon notification by the Commissioner shall promptly inspect the plans, specifications, and selected site in the case of proposed rendering plants and shall inspect the buildings, grounds, and equipment of established rendering plants. If the committee finds that the plans, specifications, and selected site in the case of proposed plants, or the buildings, grounds, and equipment in the case of established plants, comply with the requirements of this article and the rules and regulations promulgated by the Commissioner not inconsistent therewith, it shall certify its findings in writing and forward same to the Commissioner. If there is a failure in any respect to meet such requirements, the committee shall notify the applicant in writing of such deficiencies and the committee shall within a reasonable time to be determined by the Commissioner make a second inspection. If the specified defects are remedied, the committee shall thereupon certify its findings in writing to the Commissioner. Not more than two inspections shall be required of the committee under any one application. (1953, c. 732.)

§ 106-168.7. Issuance of license.—Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a license to the applicant to conduct rendering operations as specified in the application. A license shall be valid until revoked for cause as hereinafter provided. (1953, c. 732.)

§ 106-168.8. Minimum standards for conducting rendering operations.—The following minimum standards shall be required for all rendering operations subject to the provisions of this article:

a. Buildings utilized in connection with the rendering plant shall be of sufficient size and shape to accommodate all phases of actual or intended processing. Adequate partitions shall be installed therein so as to eliminate any contact between raw materials and finished products and so as to preclude contamination of finished products. The buildings shall be constructed in a manner and of materials which will insure adequate drainage and sanitation in all phases of operation.

b. Raw material upon arrival at the rendering plant shall be unloaded into a building for processing. All raw material shall be processed by approved methods within twenty-four hours after delivery to the rendering plant.

c. Processing equipment shall be airtight, except for proper escapes for vapors caused by the cooking process.

d. Cooking vapors shall be controlled and disposed of by approved methods.

e. Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping from the truck. Such vehicles shall have body sides of sufficient height that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.

f. All vehicles and containers used in transporting raw material shall be disinfected at the earliest practicable time after unloading, and shall, in any event, be disinfected before again being taken upon a public highway or before leaving the rendering plant. Approved facilities and materials for disinfection shall be carried on vehicles transporting carcasses. Employees shall be required to wear rubber boots which shall be disinfected prior to entry to a farm.

g. Approved facilities, means and methods for disinfection shall be available at the rendering plant at all times. Employees and employees' clothing coming in contact with raw material shall be disinfected before coming in contact with any finished products, or any portion of the plant in which the same are located. Rodent and fly control measures shall be practiced as a further means of prevention of the spread of disease. (1953, c. 732.)

§ 106-168.9. **Transportation by licensee.**—Any person holding a license under the provisions of this article, or acting as a collector as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this article. (1953, c. 732.)

§ 106-168.10. **Disposal of diseased animals.**— Any person holding a license under the provisions of this article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals. (1953, c. 732.)

§ 106-168.11. **Authority of agents of licensee.**—Authority granted to any person holding a valid license under the provisions of this article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting. (1953, c. 732.)

§ 106-168.12. **Commissioner authorized to adopt rules and regulations.**—The Commissioner of Agriculture is hereby authorized to make and establish reasonable rules and regulations, not inconsistent with the provisions of this article, after consulting the committee, for the proper administration and enforcement thereof. (1953, c. 732.)

§ 106-168.13. **Effect of failure to comply.**—Failure to comply with the provisions of this article or rules and regulations not inconsistent therewith shall be cause for revocation of license, if such failure shall not be remedied within a reasonable time after notice to the licensee. Any person whose license is revoked may reapply for a license in the manner provided in this article for an initial application, except that the Commissioner shall not be required to cause the rendering plant and equipment of the applicant to be inspected by the committee until the expiration of thirty days from the date of revocation. (1953, c. 732.)

§ 106-168.14. **Collectors subject to certain provisions.**—Any collector, as defined in this article, shall be subject to the provisions of subsection e and subsection f of G. S. 106-168.8 and the provisions of G. S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto. (1953, c. 732.)

§ 106-168.15. **Violation a misdemeanor.**—Any person conducting rendering operations or collecting raw material in violation of the provisions of this article shall be guilty of a misdemeanor and shall, upon conviction, be punished in the discretion of the court. (1953, c. 732.)

ARTICLE 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. **Inspection; meat stamped as approved or condemned.**

Local Modification.—Rowan and city of Salisbury: 1953, c. 594, s. 2.

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ 106-181. **Use of deleterious substances prohibited.** — The use of soap bark or any other substance deleterious to health in soft drinks is prohibited. (1935, c. 372, s. 8; 1955, c. 271, s. 1.)

Editor's Note.—The 1955 amendment deleted the former labeling requirement, which as amended is now § 106-181.1.

§ 106-181.1. **Labeling.**—The bottle or container in which a soft drink is sold must bear the name of the product and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8; 1955, c. 271, s. 2.)

Cross Reference.—See note to § 106-181.

ARTICLE 21A.

Enrichment of Flour, Bread, Corn Meal and Grits.§ 106-219.2. **Definitions.**

(5) "Corn meal" means all types of corn meal intended for human consumption.

(6) "Corn grits" means all types of corn grits intended for human consumption.

(7) "Enriched" means restored or brought up to content of vitamins and minerals as described in this article.

(8) "North Carolina Food, Drug and Cosmetic Act" refers to article 12 of this chapter. (1945, c. 641, s. 2; 1955, c. 630, s. 1.)

Editor's Note.—The 1955 amendment, and (7) as (7) and (8). As the rest of the effective January 1, 1956, rewrote subsection (5), inserted present subsection (6) and renumbered former subsections (6) section was not changed only subsections (5) through (8) are set out.

§ 106-219.3. **Required vitamins and minerals.**—On and after the effective date of this article, it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale in this State any products covered herein which do not contain the vitamins and minerals as prescribed in the following formulae:

(a) White flour shall contain in each pound not less than two (2.0) and not more than two and five tenths (2.5) milligrams of vitamin B (thiamin); not less than one and two tenths (1.2) and not more than one and five tenths (1.5) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty (20.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than sixteen and five tenths (16.5) milligrams of iron; except that self-rising flour shall contain, in addition to the above ingredients, not less than five hundred (500) and not more than one thousand five hundred (1500) milligrams of calcium.

(b) White bread shall contain in each pound not less than one and one tenth (1.1) and not more than one and eight tenths (1.8) milligrams of vitamin B (thiamin); not less than seven tenths (0.7) and not more than one and six tenths (1.6) milligrams of riboflavin, not less than ten (10.0) and not more than fifteen (15.0) milligrams of niacin (nicotinic acid); not less than eight (8.0) and not more than twelve and five tenths (12.5) milligrams of iron.

(c) Corn meal and corn (hominy) grits shall contain in each pound not less than two (2.0) and not more than three (3.0) milligrams of vitamin B₁ (thiamine); not less than one and two tenths (1.2) and not more than one and eight tenths (1.8) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty-four (24.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than twenty-six (26.0) milligrams of iron.

(d) Enrichment may be accomplished by the addition of vitamins from a natural or synthetic source, or other harmless and assimilable enriching ingredients which will accomplish the purpose of this article and will be acceptable under the North Carolina Food, Drug and Cosmetic Act.

(e) The enriching ingredients required under subsections (a), (b) and (c) of this section may be added in a harmless carrier which does not impair the enriched products; provided, (1) that such carrier is used only in quantity necessary to effect uniform mixture in the finished products; (2) that the concentration of enriching ingredients does not differ more than fifteen per cent (15%) between top and bottom of containers following subsection to normal handling and transportation; and (3) that enriched grits be so stabilized that loss of vitamins and minerals from customary rinsing before cooking shall not exceed ten per cent (10%). (1945, c. 641, s. 3; 1955, c. 630, s. 2.)

Editor's Note.—The 1955 amendment, effective January 1, 1956, deleted, after "flour" in line one of subsection (a), the words "degerminated corn meal, and degerminated hominy grits." The amend-

ment inserted present subsection (c), re-lettered former subsections (c) and (d) as (d) and (e) and added the reference to subsection (c) in the first line of subsection (e).

§ 106-219.4. Products exempted.—The terms of this article shall not apply:

(a) To white flour, corn meal and corn grits sold to bakers or other commercial secondary processors; provided, the purchaser furnishes to the seller an approved certificate of intent to use said flour, grits or corn meal solely in the production of the products covered in this article; or in the manufacture of legitimate products not covered by the provisions of this article.

(b) To whole wheat flour or bread made from the entire wheat berry; provided, that flour or bread made from the whole wheat berry, or various parts thereof, mixed with white flour shall contain vitamins and minerals equal to that required for the respective enriched products as defined in § 106-219.3 (a) and (b).

(c) To the further enrichment of the products covered in this article when done so as to comply with standards and labeling requirements under the North Carolina Food, Drug and Cosmetic Act.

(d) To products ground for the producer's use from the producer's grain; provided, that such products shall become subject to this article when offered for sale. (1945, c. 641, s. 4; 1955, c. 630, s. 3.)

Editor's Note.—The 1955 amendment, effective January 1, 1956, substituted, in line one of subsection (a), the words "corn meal and corn grits" for the words

"degerminated grits and degerminated corn meal," rewrote subsection (b), inserted present subsection (c) and designated former subsection (c) as (d).

§ 106-219.6. Board authorized to make regulations; hearings. — The authority for promulgating regulations for the efficient enforcement of this article, and for bringing into force the provisions under § 106-219.3 (d) is hereby vested in the Board of Agriculture, and the Board is hereby authorized to make standards hereunder conform insofar as practicable, with interstate standards. Actions under this section shall follow proper public notice and hearing. (1945, c. 641, s. 6; 1955, c. 630, s. 4.)

Editor's Note.—The 1955 amendment, effective January 1, 1956, substituted "(d)" for "(c)" in line three.

§ 106-219.9. Exemptions from article.—This article shall not apply to the delivery by a miller to a producer or owner of corn meal or corn grits, ground by the miller from the producer's or owner's corn for use in the producer's or owner's own home when the miller is paid in corn for such milling service; however, if said producer or owner desires the health benefit for his family and re-

quests enrichment the miller is required by this article to enrich according to the hereinbefore mentioned standards.

Nothing in this article shall prevent the manufacture and sale of plain or enriched corn meal or grits when labeled as such; nor shall this article apply to corn raised, ground and consumed, within the borders of any county.

The provision of this article shall not apply to grist mills operated by two or less employees. (1945, c. 641, s. 9½; 1955, c. 630, ss. 4½-5½.)

Editor's Note.—The 1955 amendment, effective January 1, 1955, rewrote this section.

ARTICLE 25.

North Carolina Egg Law.

§§ 106-240 to 106-245: Repealed by Session Laws 1955, c. 213, s. 14.

§ 106-245.1. **Short title.** — This article shall be known as the "North Carolina Egg Law." (1955, c. 213, s. 1.)

§ 106-245.2. **Definitions.**—The following words, terms, and phrase shall be construed for the purpose of this article as follows:

(a) "Eggs" mean the eggs of a domesticated chicken hen, which eggs are in the shell.

(b) "Fresh eggs" mean eggs that meet the requirements for consumer Grade A or above as prescribed in the standards and grades for individual shell eggs adopted by the Board of Agriculture of North Carolina.

(c) "North Carolina eggs" mean any eggs which are produced in this State.

(d) "Commissioner" means Commissioner of Agriculture of North Carolina.

(e) "Producer" means a person, firm, or corporation selling no eggs other than eggs produced by his or its own flock.

(f) "Retailer" means any person, firm, or corporation selling or offering for sale eggs to consumers in this State.

(g) "Distributor" means any person, firm, or corporation offering for sale or distributing eggs in this State to a retailer, cafe, restaurant, or any other establishment serving eggs to the public or to an institutional user and shall include any person, firm, or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm, or corporation engaged only to haul or transport eggs, nor shall the term distributor include a producer. (1955, c. 213, s. 2.)

§ 106-245.3. **Certificate required for distributor; issuance and term; renewal.**—Every distributor as defined by this article shall obtain from the Commissioner of Agriculture a certificate authorizing such distributor to engage in the selling or distributing of eggs. This certificate shall be issued free of charge and shall expire the 30th day of June after its issue. Such certificate is renewable free of charge at any time during the 30 days immediately preceding its expiration date. (1955, c. 213, s. 3.)

§ 106-245.4. **Inspection fee imposed; use of proceeds; reduction of fee.**—An inspection fee not to exceed one-fifteenth (1/15) of a cent per dozen is imposed upon all eggs sold or distributed in this State by distributors, the same to be collected by the Department of Agriculture. The proceeds thereof are to be placed in a special fund, and shall be continuously available to the Commissioner to be used for the purpose of defraying the expenses of the administration of this article.

The Board of Agriculture shall have the authority to reduce in a uniform manner the fees or charges herein provided if in its judgment the expenses of the administration of this article justify such reduction. (1955, c. 213, s. 4.)

§ 106-245.5. **Collection of inspection fee.**—The North Carolina Board of Agriculture shall be authorized to prescribe and administer such reasonable rules and regulations as are necessary for the collection of the inspection fee required by this article. (1955, c. 213, s. 5.)

§ 106-245.6. **Sales between distributors.**—In the event a distributor who is a holder of a certificate shall sell or consign eggs to another distributor holding a certificate, the consignor or original seller may deliver to the consignee the eggs so sold or consigned without payment of inspection fee or identifying eggs as to grade or weight class, provided said eggs are accompanied by proper invoice. (1955, c. 213, s. 6.)

§ 106-245.7. **Unlawful acts.**—Except as provided in subsections (b) and (c) of this section, it shall be unlawful:

(a) For any distributor in selling or delivering eggs to a retailer, cafe, or to an institutional user, to fail to furnish to the buyer or consignor an invoice showing the seller's or deliverer's name and address, and the quantity, grade and weight class of eggs involved in each transaction, unless such eggs are designated as ungraded. A copy of such invoices shall be kept on file by the seller for a period of at least 30 days.

(b) For any person, firm, or corporation to offer for sale, expose for sale, or have in possession with intent to sell in this State eggs in any carton or any other type of package without clearly designating thereon in plain and readily legible print the name and address of the packer or distributor of such eggs and the grade and weight class to which the eggs contained therein conform, unless such eggs are designated as ungraded. Such designation shall be of the kind and in the manner required by the rules of the Department of Agriculture. Provided, however, that nothing in this subsection shall apply to the transactions contemplated in § 106-245.6; and provided further, that any retailer who purchases eggs directly from a producer, may sell at retail in cartons such eggs purchased without grade or size being designated thereon.

(c) In offering eggs for sale at retail in open cases, boxes, or other containers from which eggs are sold in bulk to consumers, to fail to display conspicuously on such case, box, or other container a plainly written designation showing the correct grade and weight class to which such eggs conform unless such eggs are designated as ungraded; such designation shall be of the kind and the manner required by the rules of the Department of Agriculture; provided, however, that any retailer may offer eggs for sale at retail in open cases, boxes or baskets, without designating the grade or size thereon, when such eggs are purchased directly from producers.

(d) To sell, offer for sale, expose for sale, or have in possession with intent to sell in this State eggs for human consumption, if the package or container, display, or any advertising pertaining thereto, bears any statement or device which is false or misleading with respect to the freshness, grade, or size of the eggs being sold or advertised.

(e) To advertise the sale of eggs in any newspaper or circular or by radio, or other form of advertisement wherein the price of eggs offered for sale is stated, without also designating in such advertisement the grade and size classification to which the eggs being offered for sale conform, unless such eggs are designated as ungraded.

(f) To use the word "fresh," "nulaid," "country," "hennery," "day-old," "select," "selected," "certified," "best," "nearby," "fresh-laid," or any other similar descriptive terms which the Commissioner, by rule, shall prohibit in connection with advertising or selling eggs unless such eggs conform to the definition of fresh eggs as prescribed in this article.

(g) To use the word "North Carolina" in connection with the advertisement and sale of eggs not produced in this State. (1955, c. 213, s. 7.)

§ 106-245.8. **Rules and regulations; advisory committee.** — The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article.

The Board of Agriculture may at its discretion, and after reasonable notice to interested parties, order and conduct a public hearing prior to the adoption and promulgation of any rule or regulation authorized by this article. The Board may also appoint an advisory committee from the industry, the members of which shall serve without compensation. (1955, c. 213, s. 8.)

§ 106-245.9. **Board to fix standards, grades and weight classes; producers and others may grade.**—The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs to be sold or offered for sale in this State as will promote honest and fair dealings in the interest of the poultry industry and the consumer. Such standards, grades and weight classes may be altered or modified by the Board whenever it deems it necessary.

Nothing in this article shall prevent any person, firm, or corporation, including a producer, from grading eggs according to the grades and weight classes adopted by the Board of Agriculture. (1955, c. 213, s. 9.)

§ 106-245.10. **Powers of the Commissioner in making inspection.**—For the purpose of carrying out the provisions of this article, the Commissioner, individually or through his authorized inspectors or agents, is authorized:

To enter, on any business day, during the usual hours of business, any store, market, or any other building or place where eggs are sold or offered for sale in this State, or to stop and inspect any truck or other vehicle transporting eggs to be held or offered for sale, or possessed for the purpose of sale in this State, and to make such examination or inspection as may be necessary to ascertain whether any provision of this article or any rule or regulation duly promulgated hereunder in relation to the sale or offering for sale in this State of any eggs is being violated. (1955, c. 213, s. 10.)

§ 106-245.11. **Exemptions.**—The provisions of this article shall not apply to:

(a) Producers as defined in this article.

(b) Those who buy or sell eggs to be used exclusively for hatching purposes.

(c) Any shipment of eggs while the same constitutes a bona fide shipment in interstate commerce, but this article shall apply at the very instant when an interstate shipment loses its character as such. (1955, c. 213, s. 11.)

§ 106-245.12. **Penalties for violations; suspension or revocation of certificate.**—Any person violating any provision of this article, or any rule or regulation promulgated by the Board of Agriculture under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days.

In addition, the Commissioner may, after due notice and hearing, suspend or revoke the certificate of any distributor who has been convicted of any violation of this article or any rules or regulations made pursuant thereto. (1955, c. 213, s. 12.)

ARTICLE 26.

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

§ 106-246. **Cleanliness and sanitation required; wash rooms and toilets, living and sleeping rooms; animals.** — For the protection of the health of the people of the State, all places where ice cream, milk shakes, milk sherbet, sherbet, water ices and other similar frozen or semi-frozen food products are made for sale, all creameries, butter and cheese factories, when in operation,

shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows or other openings. (1921, c. 169, s. 1; C. S., s. 7251(a); 1933, c. 431, s. 1; 1959, c. 707, s. 1.)

Editor's Note.—

The 1959 amendment rewrote the first sentence.

§ 106-248. **Purity of products.**—All cream, ice cream, butter, cheese or other product produced in places named herein shall be pure, wholesome and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in § 106-253; and whole milk, sweet cream, ice cream mix, and other mixes shipped into this State from other states and used in the manufacture of frozen or semi-frozen dairy products processed or sold in this State shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing name of product, name and address of processor and date of pasteurization. (1921, c. 169, s. 3; C. S., s. 7251(c); 1933, c. 431, s. 2; 1959, c. 707, s. 2.)

Editor's Note.—

The 1959 amendment rewrote this section.

§ 106-253. **Standards of purity and sanitation; regulating trade or brand names of frozen or semi-frozen desserts.** — The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen or semi-frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C. S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846; 1959, c. 707, s. 3.)

Editor's Note.—

The 1959 amendment inserted "or semi-frozen" in line ten.

§ 106-254. **Inspection fees; wholesalers; retailers and cheese factories.** — For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices and other similar frozen or semi-frozen food products are made or stored, or any cheese factory or butter-processing plant in this State that disposes of its products at wholesale to retail dealers for resale, shall pay to the Commissioner of Agriculture each year an inspection fee of twenty dollars (\$20.00). Each maker of ice cream,

milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semi-frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars (\$5.00) each year. The inspection fee of five dollars (\$5.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4.)

Editor's Note.—

The 1959 amendment rewrote this section.

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106 266.6. **Definitions.**—As used in this article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

“Person” means any person, firm, corporation or association.

“Commission” means the North Carolina Milk Commission created by this article.

“Commissioner” means the North Carolina Commissioner of Agriculture.

“Distributor” means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells twenty-five (25) gallons or less of milk per day which is produced on his own farm:

1. Persons, irrespective of whether any such person is a producer:

(a) Who pasteurize or bottle milk or process milk into fluid milk;

(b) Who sell and/or market fluid milk at wholesale or retail:

(1) To hotels, restaurants, stores or other establishments for consumption on the premises,

(2) To stores or other establishments for resale, or

(3) To consumers;

(c) Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

2. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

“Producer” means any person, irrespective of whether any such person is a distributor, who operates to produce milk for sale as fluid milk in the State.

“Producer-distributor” means a distributor who handles milk produced only by himself, or a cooperative group.

“Consumer” means any person, other than a distributor who purchases milk for human consumption.

“Market” means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

“Licensee” means a licensed milk distributor.

“Milk” means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed, and kept; including milk that is produced under strict sanitary conditions, and cooled, pasteurized, standardized or otherwise processed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several forms) and skimmed milk. Said term excludes the lacteal secretions of one or more dairy cows where the secretion is to be sold for any other purpose.

"Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

"Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

"Board" means the local agency authorized by this article to administer the operation of the article in each marketing area operating under the provisions of this article, to be known as the "milk board" of the particular market area in which it functions.

"Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

"Health authorities" includes the State Board of Health, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.

"Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality. (1953, c. 1338, s. 1.)

Editor's Note.—For comment on this article, see 31 N. C. Law Rev. 384.

Quoted in *State v. Galloway*, 249 N. C. 658, 107 S. E. (2d) 631 (1959).

§ 106-266.7. Milk Commission created; membership; chairman; compensation; quorum; duties of Commissioner of Agriculture and Director of Agricultural Experiment Station. — There is hereby created a Milk Commission to be designated as the North Carolina Milk Commission, consisting of nine members as follows: One of whom shall be a producer, who is not directly or indirectly engaged in the distribution thereof; one of whom shall be a producer-distributor; two of whom shall be distributors; three of whom shall be representatives of the public interest who are not connected in any manner with the production or distribution of milk; one of whom shall be in the business of retailing packaged milk through a retail grocery establishment, or through a restaurant or through a drugstore retail outlet, or otherwise engaged in the business of retailing packaged milk other than in the processing and distribution of same; and the ninth member shall be the Commissioner of Agriculture serving ex officio, without voting privileges except in cases of tie votes, but his presence and attendance at meetings shall be counted in determining a quorum of the Commission. Except for the Commissioner of Agriculture, all members of the Commission shall be appointed by the Governor. Of the members of the Commission first appointed, the Governor shall designate one for a term of one year; one for a term of two years; one for a term of three years; and three for a term of four years. Thereafter, appointments shall be made for terms of four years.

The Commission shall select one of its members who shall act as chairman and shall provide such administrative personnel as may be necessary to carry out the provisions of this article.

(a) The pay of the members of the Commission shall be set by the Governor and the Council of State

(b) Five members of the Commission shall constitute a quorum.

(c) The Commissioner of Agriculture and the Director of the Agricultural Experiment Station of North Carolina State College shall provide as far as practical without additional compensation such technical and other services as may be necessary to carry out the provisions of this article.

(d) The Commission shall, subject to the limitations herein contained and the rules and regulations of the Commission, enforce the provisions of this

article, but no official act shall be taken, rule or regulation be promulgated, or official order be made or enforced, with respect to the provisions of this article, without the approval of the majority of the members of the Commission. (1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1.)

Editor's Note.—The first 1955 amendment increased the membership of the Milk Commission from seven to nine, and a quorum from four to five. The second 1955 amendment substituted "Commission" for "Commissioner" in line one of subsection (d).

§ 106-266.8. Powers of Commission. — The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(a) To confer with the legally constituted authorities of other states of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the State of North Carolina and going out of the said State in interstate commerce, with a view of accomplishing the purpose of this article, and to enter into a compact or compacts for such uniform system of milk control.

(b) To investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk for consumption in the State of North Carolina.

(c) To supervise and regulate the transportation, processing, storage, distribution, delivery and sale of milk for consumption; provided that nothing in this article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers; and provided further that any distributor, having on April 1, 1953 a local health department permit authorizing the selling of dairy products in any county, city and/or town, shall be granted a license by the Commission to continue to operate in said county, city and/or town unless and until the Commission shall suspend or revoke such license upon due notice and after a hearing as authorized by this article.

(d) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors as between themselves, or that may arise between them as groups.

(e) To cause examination into the business, books, and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, association of producers, and milk distributors, and require them to produce their records, books, and accounts; to subpoena any other person from whom information is desired.

(f) To take deposition of witnesses within or without the State. Any member of the Commission or any employee of the Commission, so designated, may administer oaths to witnesses and sign and issue subpoenas.

(g) To hold hearings, make and adopt rules and regulations and/or orders necessary to carry out the purposes of this article. Every rule or order of the Commission shall be filed in the office of the Commissioner and a certified copy sent to the chairman of the board in the marketing area affected by said rule or order. An order applying only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, by registered mail, return receipt requested, with postage prepaid, to each person affected thereby; or in the case of a corporation, to any officer or agent of the corporation upon whom legal processes may be served. The filing in the office of the Commissioner with a certified copy of any rule or order to the chairman of the board in the area affected shall constitute due and sufficient notice to all persons affected by such rule or order.

(h) The operation and effect of any provision of this article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this article of a specific power or powers.

(i) The Commission shall not exercise its power in any market until a pub-

lic hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its power in such market. The Commission may, on its own motion, call such a hearing, and shall call such a hearing upon the written application of a producers' association organized under the laws of the State, supplying, in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' organization exists on said market, the Commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at the time and place and after such notice as the Commission may determine.

The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

The Commission shall withdraw the exercise of its power from any market upon written application of a majority of the producers in said marketing area.

(j) The Commission, after public hearing and investigation, may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk. Whenever the Commission, after a public hearing and investigation, finds as a fact that an impending marketing situation threatens to disrupt or demoralize the milk industry in any milk-marketing area or areas, it may establish such minimum prices at which milk may be sold in the said area or areas, as it may deem to be necessary to prevent the disruption of such market or markets; and when the Commission finds that such threat no longer exists it shall withdraw such order or orders: Provided, that this authority shall not apply to the resale of milk when it is purchased for consumption on the premises. In exercising this authority, the Commission may take into consideration the type of container in which the milk is marketed. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade, quantity, or class of milk the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public.

(k) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing the issuance, refusal to issue, suspension or revocation of any such license shall be based upon the determination by the Commission that the issuance, refusal to issue, suspension or revocation of such license, as the case may be, is in the public interest and is necessary in order to promote and carry out the purposes of this article. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(l) Any member of the Commission, or any person designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is processed, stored, bottled or manufactured into food products. Any member of the Commission or designated employee shall have the power to inspect and copy books and records in any place within the State for the purpose of ascertaining facts to enable the Commission to administer this article. The Com-

mission may combine such information for any market or markets and make it public.

(m) The Commission may define after a public hearing what shall constitute a natural market area and define and fix limits of the milk shed or territorial area within which milk shall be produced to supply any such market area: Provided, that producers, producer-distributors or their successors now shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

(n) The Commission may delegate such of its powers given it by this article as it sees fit to the milk board in any particular market area, for the purpose of carrying out the provisions of this article within said market area.

(o) Each licensee shall from time to time, as required by the Commission, submit verified reports containing such information as the Commission may require. (1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292.)

Editor's Note.—The 1955 amendment substituted "Commission," the second time it appears in line two of subsection (f), for "Commissioner."

The 1959 amendment inserted the second and third sentences of subsection (j).

Section Is Constitutional.—This section, conferring upon the Milk Commission power to fix prices in respect to milk and its products in intrastate business, prescribes standards for the guidance of the Commission and leaves to the Commission only its proper administrative function. It does not violate N. C. Const., art. 1, §§ 37 and 17, nor the Fourteenth Amendment to the federal Constitution. *State v. Galloway*, 249 N. C. 658, 107 S. E. (2d) 631 (1959).

Regulation of Transportation Rates.—In view of the very broad powers conferred upon the Milk Commission by subsection (g) of this section to hold hearings, make and adopt rules and regulations and orders necessary to carry out the purposes of this act regulating the producing, etc., of milk, the Milk Commission, and the superior court on appeal, have the power, fairly implied from the language of the act and essential to putting into effect its

declared purposes and objects, to regulate and to fix transportation rates for distributors in North Carolina hauling milk of their producers in North Carolina to their processing plant in North Carolina—all interstate business—and sufficient standards for their guidance in regulating and fixing such hauling prices is to be fairly implied from subsection (j) of this section. *State v. Galloway*, 249 N. C. 658, 107 S. E. (2d) 631 (1959).

An order of the Milk Commission pursuant to this section prescribing a uniform hauling charge per cwt. upon all producers delivering milk to a certain distributor, regardless of the distance or route, is not arbitrary or discriminatory and is relevant to the legislative purpose of the Milk Commission Act. It does not deny a producer the equal protection of the laws or deprive him of property without due process of law, even though he is subject under the regulation to a higher charge than he was under a former system, and does not violate N. C. Const., art. 1, §§ 37 and 17, nor the Fourteenth Amendment to the federal Constitution. *State v. Galloway*, 249 N. C. 658, 107 S. E. (2d) 631 (1959).

§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated.—No distributor in a market in which the provisions of this article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this article. No distributor shall violate the prices as established by the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the

Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give ten days notice by registered mail to the Commission and every licensed distributor in each marketing area affected prior to the effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4.)

Editor's Note.—The 1955 amendment added the last three sentences.

§ 106-266.10. **Application for distributor's license.** — An application to the Commission for a license to operate as a distributor shall be made by mail or otherwise within thirty days after the provisions of this article become effective in a market, and as to any distributor thereafter beginning business, before such distributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for that purpose. (1953, c. 1338, s. 5.)

§ 106-266.11. **Annual budget of Commission; collection of monthly assessments from local milk boards.** — The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the local milk boards in the form of monthly assessments, and the local milk boards shall pay the assessments so levied. The assessments so levied shall not exceed four cents (4c) per hundred pounds of milk handled in each market in which the provisions of this article are in operation. The assessments herein provided for are the identical (not additional) assessments permitted by § 106-266.14. (1953, c. 1338, s. 6.)

§ 106-266.12. **Milk Commission Account; deductions by distributor from funds owed to producer.**—All receipts from assessments collected under this article shall be paid by the Commission to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of an account to be known as the "Milk Commission Account" and such an amount as may be necessary, and no more, is hereby appropriated out of this Milk Commission Account, for the payment of all expenses incurred by the Commission in administering and enforcing this article. The Commission shall require a distributor to make such deductions from funds owed to a producer as authorized by the producer. (1953, c. 1338, s. 7.)

§ 106-266.13. **Local milk boards.**—(a) **Members.**—For the purpose of securing the benefits of this article, in any market area, the producers and distributors and producer-distributors in that market area shall establish a milk board of five members to carry out the provisions of this article in conjunction with the Commission. Each board shall be composed of two producers supplying milk to the market, one of whom shall be named by the producers operating in the market and one by the Commission. In the markets where the producers' association handles the selling of fifty per cent (50%) or more of the milk, the association shall have the right to name both producer representatives on the milk board; and two representatives of the distributors operating in the market shall be named by the Commission. In markets where producer-distributors handle fifty per cent (50%) or more of the milk used in the market, the Commission shall determine the representation of the producers, the producer-distributors and the distributors on the milk board on a basis fair to all parties.

The Commission shall appoint the fifth member of the milk board to represent

the consumers and the public interest, who shall serve as chairman of the board. The representative of the consumer and the public interest shall have no connection financially or otherwise with the production or distribution of milk or products derived therefrom.

(b) Powers.—The milk board shall perform such functions as the Commission shall delegate to it. (1953, c. 1338, s. 8.)

§ 106-266.14. **Assessments to meet expenses of carrying out article.**—The expenses, including salaries and/or per diem found necessary to properly carry out the provisions of this article shall be met by an assessment or assessments of not over two cents (2c) per hundred pounds of milk and/or cream (converted to terms of milk of four per cent (4%) of butterfat) handled by distributors and not over two cents (2c) per hundred pounds of milk and/or cream (converted to terms of milk of four per cent (4%) of butterfat) sold by producers. All assessments shall be paid in monthly or semimonthly installments, at the time that distributors pay producers for the milk and after the original assessment is so paid, no additional assessment shall be levied for the purposes of this article. Assessments shall be made for such funds as are found necessary to carry out the provisions of this article, but no more. (1953, c. 1338, s. 9.)

§ 106-266.15. **Injunctive relief.**—In the event of violation of any provisions of this article, or order promulgated under the provisions thereof, in addition to any other remedy, the Commission may apply to any court of record in the State of North Carolina for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist. (1953, c. 1338, s. 10.)

§ 106-266.16. **Penalties.**—Any person violating any provisions of this article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11.)

§ 106-266.17. **Appeals.**—(a) Any person or persons aggrieved by an order of the Commission refusing a license, to reissue or revoke or suspend a license, to a distributor or producer-distributor or to transfer a license from one person to another, and any order of the Commission applying only to a person or persons, and not otherwise specifically provided for, may be reviewed upon appeal to the superior court. Any person or persons aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought and sold, or any other order, action, rule or regulation of the Commission, may, within forty (40) days after the effective date of such action, rule, regulation or order, appeal therefrom to the superior court. No such appeal shall, in either case, act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before any such person, or persons, shall be allowed to appeal, he shall file written notice of appeal with the Commission and within ten (10) days after the receipt of said written notice of appeal it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of a county in which the violation occurs. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission against (here insert name of appellant)", and said cause shall

be placed on the civil issue docket of the superior court of such county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the Supreme Court of North Carolina. (1953, c. 1338, s. 12.)

A sedulous protection against abuse of power by the Milk Commission is provided in this section, which requires that when an appeal is taken from an order of

the Milk Commission, the proceeding shall be heard de novo in the superior court. *State v. Galloway*, 249 N. C. 658, 107 S. E. (2d) 631 (1959).

§ 106-266.18. Saving clause.—No provisions of this article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1953, c. 1338, s. 13.)

§ 106 266.19. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.—The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this article are hereby repealed to the extent necessary for the full operation of this article. No provisions of this article shall be deemed in conflict with articles 28 and 28A of chapter 106, Volume 3A of the General Statutes. No provisions of this article shall be deemed in conflict with the authority granted to county, city-county and district boards of health by §§ 130-19, 130-20, 130-66, of chapter 130, Volume 3B of the General Statutes, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the State Board of Health by § 130-3 of Volume 3B of the General Statutes, to make sanitary inquiries and investigations. (1953, c. 1338, s. 14.)

§ 106-266.20. Limitations upon power of Commission.—Nothing in this article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers, nor the power to restrict the marketing area of any producer. (1953, c. 1338, s. 14½.)

§ 106-266.21. Sale below cost to injure or destroy competition prohibited.—The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or sub-distributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, shall be upon the person charged with a violation of this section. As used herein the term "cost" shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. In determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indi-

rectly reducing the price received by the distributor or producer-distributor or retailer involved. (1955, c. 406, s. 1; 1959, c. 1021.)

Editor's Note. — The 1959 amendment rewrote the second sentence. larly as to its constitutionality, see 33 N. C. Law Rev. 524.

For comment on this section, particu-

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ 106-267.1. License required; fees; term of license; examination required.—Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in § 106-267.3. A license fee of two dollars (\$2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5.)

Editor's Note.—

The 1959 amendment inserted the words "or sample milk for" in lines one and two, and deleted from the end of the second sentence the words "for a license to test milk or cream where such milk or cream is bought and paid for on the basis of the

amount of percentage of butterfat or milk fat contained therein." It also substituted in the next to last sentence the words "expire on December 31 of each year" for "run for a period of one year from the date of issue."

ARTICLE 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose.—There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section which formerly related to the Farm Crop Improvement Division.

Session Laws 1955, c. 276, s. 1, changed "Agricultural Experiment Station," as used in § 106-15, to read "Agricultural Research Station."

§ 106-270. Board membership. — The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section.

§ 106-276. **Supervision of certification of crop seeds.**—Certification of crop seeds shall be subject to the supervision of the Board of Crop Seed Improvement. The North Carolina Crop Improvement Association is recognized as the official agency for seed certification. (1929, c. 325, s. 7; 1955, c. 330, s. 3.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section.

ARTICLE 31.

North Carolina Seed Law.

§ 106-280. **Definitions.**

f. The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated in successive generations from other sorts of the same kind; e. g., Jarvis Golden Prolific corn, Atlas 66 wheat, Kobe lespedeza.

s. The term "hybrid seed corn" as applied to field corn, sweet corn, or popcorn means the first generation seed of a cross produced by controlling the pollination, and by combining two, three, or four inbred lines, or by combining one inbred line or a single cross with an open-pollinated variety: Provided the Board of Agriculture may in its discretion and upon recommendation of the Director of the Agricultural Experiment Station redefine hybrid seed corn. Hybrid designations shall be treated for purposes of labeling as variety names.

w: Repealed.

(1953, c. 856, ss. 1-3.)

Editor's Note. — The 1953 amendment rewrote subsections f and s and repealed former subsection w, defining "non-coded."

Only the affected subsections are set out or referred to.

See notes to G. S. 106-280.1, 106-280.2.

§ 106-280.1. **Hybrid Seed Corn Committee.**—The Hybrid Seed Corn Committee shall consist of the Director of Research, North Carolina Agricultural Experiment Station, as chairman, the head of the Department of Agronomy, the head of Plant Pathology, and the person in charge of official variety tests of the North Carolina Agricultural Experiment Station and three persons appointed by the Commissioner of Agriculture, one from the seed trade, one from among seed producers, and one representing the farmers at large. The appointments made by the Commissioner of Agriculture shall be made effective July 1, 1953 and every three years thereafter. (1953, c. 856, s. 3.)

Editor's Note.—The act from which this section was derived directed that it should appear as subsection w of G. S. 106-280.

§ 106-280.2. **Tobacco Seed Committee.**—The Tobacco Seed Committee shall consist of the Director of Research, North Carolina Agricultural Experiment Station, as chairman, the head of the Department of Field Crops, the head of the Department of Plant Pathology, the person in charge of the official tobacco variety tests of the North Carolina Agricultural Experiment Station, and three persons appointed by the Commissioner of Agriculture, one from the seed trade, one from among seed producers, and one representing the farmers at large. The initial appointments made by the Commissioner of Agriculture shall be for periods of one year, two years, and three years, effective July 1, 1957; subsequent appointments shall be for periods of three years. (1957, c. 263, s. 1.)

Editor's Note.—The act from which this section was derived directed that it should appear as subsection x of G. S. 106-280.

§ 106-281. **Tag and label requirements.**

b. For vegetable seeds:

(1) Name of kind and variety of seed.

(2) Origin of snap beans and pepper seed; if unknown, so stated.

(3) Per cent of germination with month and year of test.

(4) For seeds which germinate less than the standards last established by the Commissioner and Board of Agriculture under this article the following information shall be shown on the label:

(a) The words "BELOW STANDARD" in not less than eight-point type.

(b) Percentage of germination exclusive of hard seed.

(c) Percentage of hard seed, if present.

(d) The month and year of test.

(5) The name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(1959, c. 585, s. 1.)

Editor's Note. — The 1959 amendment changed paragraph (2) of subsection b by inserting the words "and pepper seed." As the rest of the section was not changed it is not set out.

§ 106-283. Prohibitions.

(6) To sell, offer or expose for sale any hybrid seed corn that has not been recorded that same year with the Commissioner. The recording must be made using the same designation for each hybrid which was used when a hybrid of this same pedigree was first sold, offered, or exposed for sale or recorded officially with an agency responsible for the enforcement of seed laws. At the time of recording, a two-pound sample of the seed of each hybrid recorded shall be furnished to the Commissioner for use if desired in verification tests. The sponsor shall furnish an affidavit as provided in § 106-284.1 H.

(7) To sell, offer, or expose for sale any flue-cured tobacco variety that has not been recorded with the Commissioner of Agriculture. The recording must be made prior to November 1 preceding each growing season, using the same designation for each variety which was used when the variety was first sold, offered, or exposed for sale or recorded officially with an agency responsible for the enforcement of a State seed law.

(8) To sell, offer, or expose for sale any pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated with a recommended dosage of bichloride of mercury or some other substance approved by the North Carolina Board of Agriculture, and so labeled. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2.)

Editor's Note. — The 1953 amendment rewrote paragraph (6) of subsection b. The 1957 amendment added paragraph (7) of subsection b. The 1959 amendment added paragraph (8) of subsection b. As only these paragraphs were affected by the amendments the rest of the section is not set out.

§ 106-284.1. Administration.

H. To accept for purposes of recording annually only the hybrid seed corn which has been previously tested in the official variety tests of the North Carolina Agricultural Experiment Station and approved by the Hybrid Seed Corn Committee. The Commissioner shall require at the time of recording, an affidavit from the sponsor with respect to each hybrid being offered for recording, affirming that its pedigree is different from that of all other hybrids being offered for recording by the same sponsor and that the designation given to it is the same designation which was used for the hybrid of this same pedigree when it was first sold, offered, or exposed for sale or was first entered into official test or offered for official recording. A two-pound sample of seed of each hybrid shall be furnished the Commissioner for use if needed in verification or other tests. The Commissioner shall refuse to accept for purposes of recording any hybrid seed corn which has been shown to be inferior, or which has been shown in verification or other tests to be the same hybrid as previously recorded by someone else under a different desig-

nation or to have been otherwise mislabeled or inconsistently labeled. Nothing in this section shall be interpreted to prohibit two or more persons recording a hybrid of a given pedigree if the same designation is used for the hybrid by all persons recording.

H.1. To accept for the purpose of recording annually only the flue-cured tobacco varieties which have been declared by the Tobacco Seed Committee to have been correctly identified, based on the evidence presented. The Commissioner shall refuse to accept for recording any flue-cured tobacco variety which has not been declared by the Tobacco Seed Committee to be correctly identified. At the time of recording, a one ounce sample of seed of each variety being offered for recording, shall be furnished the Commissioner for use in verification or other tests. Nothing in this section shall be interpreted to prohibit two or more persons recording a variety if the same designation is used for the variety by all persons recording. Provided, that the grower of seed of a variety that is refused recording may appeal to the Board of Crop Seed Improvement. Notice of such appeal shall be given to the chairman of said Board, including such evidence and pertinent documents bearing on the appeal.

(1953, c. 856, s. 5; 1957, c. 263, s. 3.)

Editor's Note. — The 1953 amendment rewrote subsection H and the 1957 amendment inserted subsection H.1. As only these subsections were affected by the amendments the rest of the section is not set out.

ARTICLE 31A.

Seed Potato Law.

§ 106-284.9. **Inspection; "stop sale" orders; sale for other purposes than seed; use of other than sale certification tags; notice required.**—(a) To effectively enforce the provisions of this article, the Commissioner of Agriculture shall require the inspectors to inspect Irish and sweet potatoes and parts thereof shipped into, possessed, sold or offered for sale within this State for the purpose of propagation, and may enter any place of business, warehouse, common carrier or other place where such potatoes are stored or being held, for the purpose of making such inspection; and it shall be unlawful for any person, firm or corporation in custody of such potatoes or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections.

(b) When the Commissioner or his authorized inspectors find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes any potatoes with respect to which such order has been issued. Such "stop sale" order shall not prevent the sale of any such potatoes for other than propagation purposes.

(c) When a lot of seed potatoes is found to be in violation of the article and the owner or the person or firm in possession of the potatoes elects to remove the certification tags and sell for purposes other than for seed, such person or firm shall be required to furnish the Commissioner of Agriculture copies of sales memoranda or other acceptable evidence as to whom the potatoes were sold and a statement certifying that the potatoes were not sold for propagation purposes.

(d) It shall be unlawful for any person, firm or corporation to use, furnish for use or offer for use any tags, labels or other markings designating that the potatoes are intended for seed purposes except "Official Certification Tags" furnished by or approved by an officially designated certifying agency of the State of North Carolina.

(e) Any person, firm, or corporation receiving seed potatoes from outside of

the State in lots of more than 20-100 pound bags shall notify the Department of Agriculture in Raleigh, or the nearest field office of the Department, not less than three (3) days and not more than ten (10) days prior to the anticipated arrival date, or on the date that the order is placed when said order is placed less than three (3) days prior to the anticipated arrival date, advising of said anticipated arrival date. Such notice shall also include the address at which the shipment is to be received. Such notice may be by letter, postal card, telegram, or telephone. (1947, c. 467, s. 5; 1957, c. 1381.)

Editor's Note.—The 1957 amendment added subsections (c), (d) and (e).

ARTICLE 31B.

Vegetable Plant Law.

§ 106-284.14. **Title.**—This article shall be known as the “Vegetable Plant Law.” (1959, c. 91, s. 1.)

§ 106-284.15. **Purpose of article.**—The purpose of this article is to improve vegetable practices in North Carolina and to enable vegetable producers to secure vegetable plants for transplanting that are free from diseases and insects, and in order to prevent the spread of diseases and insects affecting the future stability of the vegetable industry and the general welfare of the public. (1959, c. 91, s. 2.)

§ 106-284.16. **Definitions.**—As used in this article, the word “standards”, as applied to vegetable plants, includes the qualities of color, freshness, firmness, strength, straightness, and unbroken conditions and freedom from injurious insects, diseases and nematodes and means the standards with respect thereto as established and fixed either by the International Crop Improvement Association or an officially recognized certifying or inspecting agency of a state.

As used in this article, the words “certified vegetable plants for transplanting”, shall mean plants which have been tagged or labelled so as to indicate that such plants have been inspected by an authorized agent of an officially recognized state inspecting or certifying agency of some state, and found to conform to the appropriate standards, however, in the discretion of the Commissioner of Agriculture this does not necessarily imply certification for variety purity.

As used in this article, the words “plants” or “vegetable plants” shall mean pepper, eggplant, sweet potato, onion, cabbage and tomato plants intended for transplanting purposes and such other vegetable plants intended for transplanting purposes as the State Board of Agriculture may designate by regulation in order to protect the vegetable industry. (1959, c. 91, s. 3.)

§ 106-284.17. **Unlawful to sell plants not up to standard and not appropriately tagged or labelled.**—It shall be unlawful for any person, firm, or corporation to pack for sale, offer or expose for sale, or ship into this State any vegetable plants which do not meet the appropriate standards and which have not been appropriately tagged or labelled as certified vegetable plants for transplanting. (1959, c. 91, s. 4.)

§ 106-284.18. **Rules and regulations.**—The State Board of Agriculture is hereby authorized to adopt reasonable rules and regulations to carry out the provisions of this article. (1959, c. 91, s. 5.)

§ 106-284.19. **Inspection; interference with inspectors; “stop sale” orders.**—To enforce the provisions of this article effectively, the Commissioner of Agriculture and his duly authorized agents are authorized to inspect vegetable plants, and may enter any place of business, warehouse, common carrier or other places where such vegetable plants are stored or being held, for the purpose of making such an inspection; and it shall be unlawful for any person, firm or

corporation in custody of such vegetable plants or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find vegetable plants being held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such vegetable plants and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for transplanting purposes any plants in respect to which such order has been issued unless and until so authorized by the Commissioner or his agent or a court of competent jurisdiction. (1959, c. 91, s. 6.)

§ 106-284.20. Violation a misdemeanor; notice to violators; opportunity for hearing; facts and results of inspection furnished to solicitor.

—Any person, firm or corporation violating any of the provisions of this article or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. Whenever the Commissioner of Agriculture becomes cognizant of any violations of the provisions of this article, or regulations pursuant thereto, he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the inspection was made and furnish that officer with a copy of the results of the inspection of such vegetable plants thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. Nothing in this section shall operate to prevent the Commissioner from issuing a "stop sale" order pursuant to the provisions of this article. (1959, c. 91, s. 7.)

§ 106-284.21. Authority to permit sale of substandard plants.—Notwithstanding any other provision of this article, the Commissioner of Agriculture is authorized when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in his discretion may seem necessary, the sale of vegetable plants for transplanting purposes which do not meet the standards referred to in § 106-284.16. (1959, c. 91, s. 8.)

§ 106-284.22. When article not applicable.—This article shall not apply to the sale by a grower or a retail merchant of vegetable plants grown within this State when such sale is made for home or garden or any other non-commercial use. The provisions of this article shall not apply to the sale of vegetable plants for transplanting purposes in this State when grown within this State and sold by a plant producer to a planter having personal knowledge of the conditions under which such vegetable plants were grown or produced. (1959, c. 91, s. 9.)

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-305. Proclamation of infected feedstuff quarantine.—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock as a carrier of infectious or contagious disease from any area outside of the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any State or federal agency competent to

make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man or livestock. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328.)

Editor's Note. — The 1953 amendment rewrote the latter part of the first sentence and added the second sentence.

Part 3. Hog Cholera.

§ 106-314. **Manufacture and use of serum and virus restricted.**—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be canceled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S., s. 4879; 1959, c. 576, s. 1.)

Editor's Note. — The 1959 amendment inserted "Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of

Agriculture" in lieu of "United States Department of Agriculture, Bureau of Animal Industry" in the first and second paragraphs.

§ 106-315. **Written permit from State Veterinarian for sale, use or distribution of hog cholera virus, etc.**—No hog cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be canceled by the State Veterinarian when he deems same necessary. (1939, c. 360, s. 5; 1959, c. 576, s. 2.)

Editor's Note. — The 1959 amendment deleted a former proviso excepting coun-

ties having local law providing for vaccination of hogs.

§ 106-316.1. **Purpose of sections 106-316.1 to 106-316.5.**—It is the purpose and intent of §§ 106-316.1 to 106-316.5 to safeguard the swine industry in North Carolina through a program designed to prevent the spread of hog cholera by prohibiting and restricting the use of virulent hog cholera virus; to provide for the use of modified live virus hog cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture; to empower the State Board of Agriculture to establish rules and regulations and the Commissioner of Agriculture to establish emergency rules and regulations governing the movement of hogs into

the State from other states and within the State; to establish rules and regulations designating the minimum dosage of anti-hog-cholera serum or antibody concentrate that shall be used in combination with modified live virus hog cholera vaccines on swine vaccinated at public livestock markets and other places; and to establish such other rules and regulations and emergency rules and regulations as may be necessary for carrying out the purposes of §§ 106-316.1 to 106-316.5. (1955, c. 824, s. 1; 1959, c. 576, s. 3.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 106-316.2. Use of virulent hog cholera virus prohibited without permit; virulent hog cholera virus defined; use of modified live virus vaccines.—Notwithstanding any other provision of the law, either general, public-local, special or private, and except as herein provided, the possession, sale and use of virulent hog cholera virus in North Carolina is hereby prohibited. Virulent hog cholera virus referred to in this section means any unattended hog cholera virus collected directly or indirectly from blood or other tissues of swine infected with hog cholera which has not been licensed as a modified live virus hog cholera vaccine. The State Veterinarian may issue a permit authorizing the sale, possession and use of virulent hog cholera virus only for the purpose of laboratory diagnosis; official research programs; production of anti-hog-cholera serum, antibody concentrate, modified live virus, killed virus vaccine, and similar biological products; and following a declaration that a state of emergency exists in a designated quarantined hog cholera area or areas within the State by the Commissioner of Agriculture of North Carolina. The use of virulent hog cholera virus during a declared state of emergency shall be under the direct supervision of the State Veterinarian or his authorized representative. Modified live virus hog cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture may be sold and used in compliance with the General Statutes of North Carolina and the rules, regulations, definitions and standards adopted by the North Carolina Board of Agriculture and the emergency rules and regulations established by the Commissioner of Agriculture. (1955, c. 824, s. 2; 1959, c. 576, s. 4.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required.—It shall be unlawful to bring hogs into North Carolina that have been inoculated with virulent hog cholera virus less than thirty days prior to the date of entry, except for immediate slaughter, and in addition thereto the transportation or importation of such hogs that have been inoculated with virulent hog cholera virus must be accompanied by a health certificate and permit as required by the rules and regulations of the North Carolina Board of Agriculture or emergency rules and regulations of the North Carolina Commissioner of Agriculture. The provisions of this section shall not be construed to be in conflict with or to repeal any provisions of G. S. 106-317 through G. S. 106-322 or any other statute or rule or regulation prohibiting, restricting or controlling the interstate movement of hogs for other reasons. (1955, c. 824, s. 3; 1959, c. 576, s. 5.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 106-316.4. Penalties for violation of sections 106-316.1 to 106-316.5.—Any person, firm or corporation violating the provisions of §§ 106-316.1 to 106-316.5 shall be guilty of a misdemeanor, and upon the first conviction shall be fined not less than fifty dollars (\$50.00) or imprisoned in the discretion

of the court. For a second offense, any such violator shall be fined not less than two hundred dollars (\$200.00) or imprisoned in the discretion of the court, or both. (1955, c. 824, s. 4.)

§ 106-316.5. **Application of sections 106-316.1 to 106-316.5; laws repealed.**—Except as provided in §§ 106-316.1 to 106-316.5, all general, public-local, special or private laws and clauses of laws in conflict with such sections are hereby repealed; provided nothing in such sections shall apply to the counties of Anson, Bertie, Duplin, Martin, New Hanover, Northampton, Pender, Union, Vance and Warren. (1955, c. 824, ss. 3½, 5.)

§ 106-317. **Regulation of the transportation or importation of hogs and other livestock into the State.**—To prevent the spread of hog cholera, vesicular exanthema, vesicular stomatitis, foot and mouth disease, or any other contagious, infectious and communicable swine disease in North Carolina, the North Carolina Board of Agriculture is authorized and empowered to promulgate rules and regulations governing the transportation and importation of swine into North Carolina from any other state or territory: Provided, that following a proclamation by the Secretary of Agriculture of the United States and the Commissioner of Agriculture of North Carolina that a state of emergency exists, arising from the existence of a dangerous contagious and infectious disease of livestock which threatens the livestock industry of the country, the North Carolina Commissioner of Agriculture is empowered and authorized to immediately promulgate emergency rules and regulations governing the movement of swine and other livestock within the State and prohibiting, restricting and/or controlling the transportation and importation of swine and other livestock into North Carolina for the duration of the emergency. The emergency rules and regulations promulgated by the North Carolina Commissioner of Agriculture shall be subject to approval, disapproval or change at the next regular or special meeting of the North Carolina Board of Agriculture. The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State. (1941, c. 373, s. 1; 1955, c. 424, s. 1.)

Editor's Note.—The 1955 amendment rewrote this section which formerly related only to hogs and hog diseases.

§ 106-318. **Issuance of health certificates for swine and livestock; inspection.**—Such health certificates that may be required under the rules and regulations by the Board of Agriculture or the emergency rules and regulations of the Commissioner of Agriculture shall be issued by a State, federal or duly licensed veterinarian in the state of origin certifying that the swine or other livestock transported and imported are healthy and not infected with or exposed to a contagious, infectious or communicable swine or other livestock disease, and all permits required under such rules and regulations shall be in possession of the owner or agent in charge, at all times until delivery of such swine or other livestock, and upon request, the owner or agent in charge shall produce said required certificate and permit for inspection by any police or peace officer or inspection agent of this State or any county thereof. The burden shall be on the person transporting said swine or other livestock to prove the origin, identity and destination of such swine and other livestock. (1941, c. 373, s. 2; 1955, c. 424, s. 2.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 106-319. **Burial of hogs and other livestock dying in transit.**—It shall be the duty of any owner or agent having in charge any swine or other livestock imported or transported into this State who shall, before delivery lose a hog or other livestock from natural or unnatural death to have the same delivered

to a rendering plant or buried in the area to a depth of at least two feet within twelve hours after death of said swine or other livestock. (1941, c. 373, s. 3; 1955, c. 424, s. 3.)

Editor's Note.—The 1955 amendment rewrote this section so as to apply to other livestock as well as hogs. It also inserted the provision as to delivery to a rendering plant.

§ 106-321. Penalties for violation.—Any person, firm or corporation who shall violate any provision set forth in this article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1941, c. 373, s. 5; 1955, c. 424, s. 4.)

Editor's Note.—The 1955 amendment rewrote this section and made it applicable to violation of rules and regulations.

Part 7. Rabies.

§ 106-364. Definitions.—The following definitions shall apply to §§ 106-364 to 106-387:

(a) The term "dog" shall mean a dog of either sex.

(b) The term "vaccination" shall be understood to mean the administration of antirabic vaccine approved by the United States Bureau of Animal Industry, the North Carolina State Department of Agriculture, and the North Carolina State Board of Health.

(c) The term "local health director" shall be understood to include district health officer, county health officer, city health officer, and city-county health officer, county superintendent of health, or any other administrative head of a local health department. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3.)

Local Modification.—Session Laws 1953, cc. 120, 252, made all of the provisions of this Part, §§ 106-364 through 106-387, applicable to Person and Union counties, respectively.

Session Laws 1957, c. 277, made all the provisions of this Part applicable to Edgecombe County.

Editor's Note.—The 1953 amendment

rewrote subsection (b) and added subsection (c).

The 1957 amendment, effective January 1, 1958, rewrote subsection (c), which formerly read: The term "county health officer" shall be understood to mean "district health officer" in counties that are served by district health officers.

§ 106-365. Vaccination of all dogs.—In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of each and every dog over four months of age to have same vaccinated against rabies annually, or at a time or times determined by the State Board of Health, but no more often than once in each calendar year in accordance with the provisions of §§ 106-364 to 106-387. All antirabic vaccine shall be administered by licensed veterinarians or by properly qualified laymen in accordance with the provisions of § 106-366. (1935, c. 122, s. 2; 1941, c. 259, s. 2; 1953, c. 876, s. 2.)

Local Modification.—By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled

volume should be deleted.

Editor's Note.—The 1953 amendment rewrote this section.

§ 106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians.—It shall be the duty of the local health director with the approval of the board of county commissioners of each county, and in those counties where a local health director is not employed it shall be the duty of the county board of commissioners to appoint a sufficient number of rabies inspectors to carry out the provisions of §§ 106-364 to 106-387. In the appointment of

rabies inspectors, preference shall be given to licensed veterinarians. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience is qualified in the opinion of the local health director and the board of county commissioners to perform the duties required under §§ 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4.)

Local Modification.—By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendment

rewrote this section.

The 1957 amendment, effective January 1, 1958, substituted "local health director" for "county health officer."

§ 106-367. **Time of vaccination.**—The vaccination of all dogs shall begin on February 1 and shall be completed within ninety (90) days of that date. Provided, however, that the local health director, in those counties having a local health director and the county board of commissioners in those counties which do not have a local health director, may require the vaccination of all dogs within any area of said counties when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, s. 4; 1949, c. 645, s. 2; 1953, c. 876, s. 4; 1957, c. 1357, s. 5.)

Editor's Note. — The 1953 amendment rewrote this section.

The 1957 amendment, effective January

1, 1958, substituted "local health director" for "county health officer" and "a local health director" for "health officers."

§ 106-369. **Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.** — The State Department of Agriculture may purchase proper rabies vaccine and a uniform metal tag serially numbered, suitably lettered and showing the year issued, provided for in §§ 106-364 to 106-387, for resale to the rabies inspectors. The resale price shall include State cost of the vaccine, metal tags, handling and postage. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352.)

Local Modification. — Orange: 1953, c. 267, s. 5.

Editor's Note.—

The 1959 amendment rewrote the first sentence and inserted the second sentence.

§ 106-371. **Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.**

Local Modification.—Mecklenburg: 1957, c. 904.

§ 106-372. **Fee for vaccination; penalty for late vaccination.**—The rabies inspector shall collect from the owner of each dog vaccinated a vaccination fee in an amount if any to be fixed by the county board of commissioners. Any owner who fails to have his dog vaccinated at the time provided in § 106-368 shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector an additional sum of one dollar (\$1.00) to be retained by him for each dog treated. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5; 1953, c. 876, s. 5; 1959, c. 139.)

Local Modification. — Washington: 1955, c. 353.

By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendment rewrote this section.

The 1959 amendment deleted the words "at a sum not more than one dollar (\$1.00) for each dog vaccinated" formerly appearing at the end of the first sentence.

§ 106-372.1: Repealed by Session Laws 1953, c. 876, s. 6.

§ 106-373. Vaccination of dogs after vaccination period.—It shall be the duty of the owner of any dog born after February 1 in any year or any dog which shall not be four months old on February 1 in any year to take the dog, when four months of age, or within 30 days thereafter to a licensed veterinarian or to a rabies inspector and have it vaccinated against rabies. (1935, c. 122, s. 10, c. 344; 1941, c. 259, s. 8; 1949, c. 645, s. 6; 1953, c. 876, s. 7.)

Local Modification.—By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-375. Quarantine of districts infected with rabies.—The local health director and, in those counties where local health directors are not employed, the county board of commissioners may declare quarantine against rabies in any district when in his or its judgment this disease exists to the extent that the lives of persons are endangered, and in that event each and every dog in such district shall be confined on the premises of the owner or in a veterinary hospital; provided, that a dog may be permitted to leave the premises of the owner if on leash or under the control and in the sight of its owner or other responsible person at all times. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8.)

Local Modification.—Cleveland: 1955, c. 306.

By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendment rewrote this section.

The 1957 amendment, effective January 1, 1958, substituted "local health director" for "county health officer" and the plural of the former for "health officers."

§ 106-376. Killing stray dogs in quarantine districts.—When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any peace officer shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9.)

Editor's Note. — The 1953 amendment substituted "peace officer" for "police officer or deputy sheriff" in the third line of this section.

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated.—Every dog known to have been bitten by another animal which is known or proved to be rabid shall be killed immediately by its owner or by a peace officer; provided, that any dog which has been vaccinated in accordance with §§ 106-364 to 106-387 at least three weeks before being bitten but not more than one year before, shall be closely confined for ninety (90) days. At the end of the period of confinement, such dog shall be released if declared free of rabies by a rabies inspector or a licensed graduate veterinarian. If during the period of confinement such dog develops rabies, as determined by a licensed graduate veterinarian, it shall be the duty of the owner to have such animal killed, and properly disposed of, subject to the provisions of § 106-379. (1935, c. 122, s. 14; 1953, c. 876, s. 10.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-378. Confinement of suspected animals.—Every person who owns or has possession of an animal which is suspected of having rabies shall confine such animal at once in some secure place for at least ten (10) days, before such animal shall be released. (1935, c. 122, s. 15; 1935, c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11.)

Local Modification.—By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-379. Animals having rabies to be killed; heads ordered to a laboratory.—Every rabid animal, after rabies has been diagnosed by a licensed graduate veterinarian, shall be killed at once by its owner or by a peace officer; except, that if the animal has bitten a human being, such animal shall be confined under the supervision of a licensed graduate veterinarian until the death of the animal. All heads of animals suspected of dying of rabies shall be sent immediately to a laboratory approved by the State Board of Health. Care shall be taken not to damage the brain and to submit such specimens in a manner approved by the State Laboratory of Hygiene. (1935, c. 122, s. 16; 1953, c. 876, s. 12.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-380. Notice to local health director when person bitten; confinement of dog; reports by physicians.—When a person has been bitten by an animal having rabies or suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to notify the local health director immediately and give their names and addresses; and the owner or person having such animal in his possession or under his control shall immediately securely confine it for 10 days at the expense of the owner in such place as may be designated by the local health director. It shall be the duty of every physician, after his first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the local health director the name, age and sex of the person so bitten, and precise location of the bite wound, within 24 hours after first having knowledge that the person was bitten. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9.)

Local Modification.—By virtue of Session Laws 1953, cc. 120, 252, the references to Person and Union in the recompiled volume should be deleted.

rewrote this section.

The 1957 amendment, effective January 1, 1958, substituted "local health director" for "county health officer."

Editor's Note.—The 1953 amendment

§ 106-381. Confinement or leashing of vicious animals.—When an animal becomes vicious or a menace to the public health, the owner of such animal or person harboring such animal shall not permit such animal to leave the premises on which kept unless on leash in the care of a responsible person. (1935, c. 122, s. 18; 1953, c. 876, s. 14.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-383. Regulation of content of vaccine; doses.—Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold, or offered for sale unless said rabies vaccine shall be approved by the U. S. Bureau of Animal Industry, North Carolina State Department of Agriculture and North Carolina State Board of Health. Rabies vaccine shall be given in doses recommended by the manufacturer of the vaccine. (1935, c. 122, s. 20; 1953, c. 876, s. 15.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 106-385. Violation made misdemeanor.

Local Modification. — Orange: 1953, c. 367, s. 5.

Part 8. Bang's Disease.

§ 106-389. "Bang's disease" defined; co-operation with the federal Department of Agriculture.—Bang's disease shall mean the disease

wherein an animal is infected with the Bang's bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a seriological test, or if the Bang's bacillus has been found in the body or its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves between the ages of four and eight months, and older cattle with Brucella vaccine in accordance with the recommendations of the United States Bureau of Animal Industry. Such vaccination shall be done under rules and regulations promulgated by the Board of Agriculture. The Commissioner of Agriculture may permit the sale of valuable animals that have reacted to an official Bang's test or are suspicious to same, provided such animals go direct to infected herds that have been vaccinated with approved Brucella vaccine, as provided for in this section, and are under quarantine in accordance with the law and regulations covering. Such approved vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture and no indemnity shall be paid on any such vaccinated animal. It shall be the duty of the State Veterinarian to test all animals vaccinated with approved Brucella vaccine twelve months after the date of vaccination and regularly thereafter. All such vaccinated animals that show a positive reaction to an official Bang's test eighteen months or more after vaccination shall be considered as affected with Bang's disease and shall be branded with the letter "B" in accordance with the law covering. It shall be unlawful to sell, offer for sale, distribute or use Brucella vaccine or any other product containing living Bang's organisms, except as provided for in this section.

The control and eradication of Bang's disease in the herds of the State shall be conducted as far as funds of the Board of Agriculture will permit, and in accordance with the rules and regulations made by the said board. The Board of Agriculture is hereby authorized to co-operate with the United States Department of Agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119.)

Editor's Note.—

The 1953 amendment rewrote this section.

§ 106-390. Blood samples; diseased animals to be branded and quarantined; sale, etc.—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the State Veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the State Veterinarian. All dairy and breeding cattle over six months of age offered or sold at public sale, except for immediate slaughter, shall be negative to a Bang's test made within thirty days prior to sale and approved by the State Veterinarian: Provided, however, the State Veterinarian is authorized to issue a written permit for public show or sale to the owners of un-bred officially calftlood-vaccinated heifers eighteen months of age or under that originate directly from either a Brucellosis certified herd or from a herd that has been officially blood tested and negative to Brucellosis within twelve months, with or without a blood test. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171.)

Editor's Note.—

The 1959 amendment added the proviso at the end of the section.

Part 10. Feeding Garbage to Swine.

§ 106-405.1. **Definitions.**—For the purposes of this Part, the following words shall have the meanings ascribed to them in this section:

(a) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods including animal carcasses, parts of animal carcasses, offal or contents of offal.

(b) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or any other entity. (1953, c. 720, s. 1.)

§ 106-405.2. **Permit for feeding garbage to swine.**—(a) No person shall feed garbage to swine without first securing a permit therefor from the North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be secured within 90 days after June 9, 1953, and shall be renewed on or before the first day of July of each year.

(b) No permit shall be issued or renewed for garbage feeding under this Part in any county or other subdivision in which local regulations to prohibit garbage feeding are in effect.

(c) This Part shall not apply to any individual who feeds only his own household garbage to swine: Provided, that any such swine sold or disposed of shall be sold or disposed of in accordance with rules and regulations promulgated by the State Board of Agriculture. (1953, c. 720, s. 2.)

§ 106-405.3. **Application for permit.**—(a) Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Carolina Commissioner of Agriculture in accordance with requirements of this Part.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of \$1.00 for each permit issued to a garbage feeder under the provisions of this Part. The fees provided for in this Part shall be used exclusively for the enforcement of this Part.

(c) No permit fee shall be collected from any federal, State, county, or municipal institution. (1953, c. 720, s. 3.)

§ 106-405.4. **Revocation of permits.**—Upon determination that any person, having a permit issued under this Part or one who has applied for a permit hereunder, has violated or failed to comply with any provisions of this Part, the North Carolina Commissioner of Agriculture may revoke such permit or refuse to issue a permit to an applicant therefor. (1953, c. 720, s. 4.)

§ 106-405.5. **Sanitation.**—Premises on which garbage feeding is permitted under this Part must be equipped with feeding platforms constructed of concrete, wood or other impervious material, or troughs of such material of sufficient size to accommodate the swine herd. Premises must be kept free of collections of unused garbage and waste materials. Sanitation, rat and fly control measures must be practiced as a further means of the prevention of the spread of diseases. (1953, c. 720, s. 5.)

§ 106-405.6. **Cooking or other treatment.**—All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212 degrees F. for at least thirty minutes unless treated in some other manner which shall be approved in writing by the North Carolina Commissioner of Agriculture as being equally effective for the protection of animal and human health. (1953, c. 720, s. 6.)

§ 106-405.7. **Inspection and investigation; maintenance of records.**—(a) Any authorized representative of the North Carolina Commissioner of Agriculture shall have the power to enter at reasonable times upon any private

or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative. (1953, c. 720, s. 7.)

§ 106-405.8. Enforcement of Part; rules and regulations.—The North Carolina Commissioner of Agriculture is hereby charged with the administration and enforcement of the provisions of this Part. The North Carolina Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to cooperate with the United States Bureau of Animal Industry in the control and eradication of vesicular exanthema.

The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this Part. (1953, c. 720, s. 8.)

§ 106-405.9. Penalties.—Any person, firm or corporation who shall knowingly violate any provisions set forth in this Part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this Part shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9.)

ARTICLE 35.

Public Livestock Markets.

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales.

Local Modification.—Harnett: 1955, c. 753; Lee: 1957, c. 772.

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale.

Applied in *Draughon v. Maddox*, 237 N. C. 742, 75 S. E. (2d) 917 (1953).

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The Commissioner of Agriculture is hereby authorized to collect a fee of one hundred dollars (\$100.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless canceled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals; provided that the Commissioner of Agriculture by and with the consent of the State Board of Agriculture is hereby authorized to determine reasonable charges and costs for such tests, serum, vaccines, and other medical supplies. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269.)

Editor's Note.—

The 1957 amendment added the proviso at the end of the section.

ARTICLE 36.

Plant Pests.

§ 106-419. **Plant pest defined.**—A plant pest is hereby defined to mean any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. (1957, c. 985.)

Editor's Note.—The former article entitled "Crop Pests", consisting of §§ 106-419 to 106-423, derived from Consolidated Statutes §§ 4896 to 4900, was changed by Session Laws 1955, c. 189, which deleted

references to the former Crop Pest Commission. The 1957 amendment rewrote the article which now consists of §§ 106-419 to 106-423.1.

§ 106-420. **Authority of Board of Agriculture to adopt regulations.**—The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this article as to eradicate, repress and prevent the spread of plant pests

- (1) Within the State,
- (2) From within the State to points outside the State, and
- (3) From outside the State to points within the State.

The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock,

- (1) Into the State from outside the State,
- (2) Within the State, and
- (3) From within the State to points outside the State.

The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, and narcissus bulb inspection activities. (1957, c. 985.)

§ 106-421. **Permitting uncontrolled existence of plant pests; nuisance; method of abatement.**—No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

§ 106-422. **Agents of the Board; inspection.**—The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and

shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. (1957, c. 985.)

§ 106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection.—The Board of Agriculture shall have the authority to define nursery stock. The Commissioner of Agriculture shall have the right to cause all plant nurseries, and narcissus bulb fields where narcissus bulbs are commercially raised, within the State to be inspected at least once each year for serious plant pests. Every person, firm or corporation buying and reselling nursery stock shall register and secure a dealer's certificate for each location from which plants are sold. (1957, c. 985.)

§ 106-423.1. Criminal penalties; violation of laws or regulations.—If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties under this article, or shall violate any provisions of this article or any regulations of the Board of Agriculture adopted pursuant to this article, he shall be guilty of a misdemeanor and shall be fined not less than five nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days, for each offense. Each day's violation shall constitute a separate offense. (1957, c. 985.)

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-430. Purpose of law.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-432. Board of Agriculture administers law, makes rules, appoints superintendent.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-433. Employment of officers and assistants.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-434. Bonds of superintendent and employees.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-435. Fund for support of system; collection and investment.—In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June thirty, one thousand nine hundred and twenty-two, twenty-five (25) cents shall be collected through the ginner of the bale and paid into the State treasury,

to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than ten years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of §§ 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S., s. 4925(e); 1957, c. 1091.)

Editor's Note.—The 1957 amendment substituted "mortgage notes or bonds" for "mortgages" in line seventeen and inserted in the same sentence the provision as to farm markets.

Recovery on Bond.—

In accord with original. See *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-439. Duties of superintendent; manner of operating warehouse system.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-440. Power of superintendent to sue or to be sued; liability for tort.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts.

Stated in *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

§ 106-442. Transfer of receipt; issuance and effect of receipt. —

The official negotiable receipt issued under § 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, and it is the duty of the local manager accepting same for storage to satisfy himself that the depositor has good title to the same. (1921, c. 137, s. 12; C. S., s. 4925(1); 1941, c. 337, s. 5; 1955, c. 523.)

Editor's Note.—The 1955 amendment rewrote the last sentence.

Sale by Wrongdoer to Innocent Purchaser—Compensation of True Owner.—

Where wrongdoer obtained cotton by false pretense, stored it and obtained negotiable warehouse receipts without signing the certificates of ownership, and negotiated the receipts to an innocent purchaser for value without notice, by virtue of this section the purchaser obtained absolute title to the cotton. But the true owner is entitled to recover its value against the bond of the warehouse manager and the warehouse if the loss was occasioned by

any default in the faithful performance of their obligations under this article, or the bond of the State Warehouse Superintendent if the loss was occasioned by his default in the faithful performance of his duties, or, if the loss is not covered by such bonds, then under the indemnifying or guarantee fund created by G. S. 106-435. *Ellison v. Hunsinger*, 237 N. C. 619, 75 S. E. (2d) 884 (1953).

ARTICLE 39.

Leaf Tobacco Warehouses.

§ 106-452. **Maximum warehouse charges.**—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum: Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one-half per centum (3½%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291; 1955, c. 1029.)

Editor's Note.—The 1955 amendment changed the maximum commissions on the sale of burley tobacco from 4% to 3½%, and added the provision as to basket fee.

ARTICLE 40.

Leaf Tobacco Sales.

§ 106-465. **Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.**

Jurisdiction of Federal Trade Commission.—There is a substantial public interest in maintaining free and open competition among warehousemen on tobacco auction markets. The public interest often is specific and substantial, because the unfair method employed threatens the existence of present or potential competition. That is the basis for the jurisdiction of the Federal Trade Commission in a case involving regulations adopted pursuant to this section governing the allocation of selling time to tobacco warehouses. *Asheville Tobacco Board of Trade, Inc. v. Federal Trade Comm.*, 263 F. (2d) 502 (1959).

The decisions of the North Carolina courts since the enactment of this section make it clear that the sale of tobacco at auction is of great public importance to the State of North Carolina, but they also show that the operation of the business is in the hands of private parties. A tobacco

board of trade is organized primarily for the benefit of those engaged in the business; its articles of association and bylaws constitute a contract amongst the members by which each member consents to reasonable regulations pertaining to the conduct of the business. Such a board is not an instrumentality of the State, and its activities are subject to the jurisdiction of the Federal Trade Commission. *Asheville Tobacco Board of Trade, Inc. v. Federal Trade Comm.*, 263 F. (2d) 502 (1959).

Rules and Regulations of Board.—The authority granted to a tobacco board of trade, under and by virtue of the provisions of this section, to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on warehouse floors where an auction market is situated, is sufficiently broad to include the authority to make reasonable rules and regulations in

respect to allotment of sales time. *Cooperative Warehouse v. Lumberton Tobacco Board of Trade*, 242 N. C. 123, 87 S. E. (2d) 25 (1955); *Day v. Asheville Tobacco Board of Trade*, 242 N. C. 136, 87 S. E. (2d) 18 (1955).

The articles of association for the purposes expressed in the charter and bylaws of a tobacco board of trade, organized and existing under and by virtue of this section constitute a contract between it and its members, and as a consequence of membership in the corporation for mutual membership, each member is deemed to have consented to all reasonable rules and regulations pertaining to the business. *Cooperative Warehouse v. Lumberton Tobacco Board of Trade*, 242 N. C. 123, 87 S. E. (2d) 25 (1955); *Day v. Asheville Tobacco Board of Trade*, 242 N. C. 136, 87 S. E. (2d) 18 (1955).

Regulations adopted by a local tobacco board of trade involving allocation of selling time to warehouses were held in the instant case to unreasonably and unduly restrain trade in the purchase and sale of tobacco and to constitute unfair methods of competition and unfair acts or practices in commerce with the meaning of the Federal Trade Commission Act. *Asheville*

Tobacco Board of Trade, Inc. v. Federal Trade Comm., 263 F. (2d) 502 (1959).

A tobacco board of trade has no authority to legislate. It cannot create a duty where the law creates none. The legislature has the authority to regulate, within constitutional limits, the sale of leaf tobacco upon the auction markets of this State, and in doing so may prescribe standards of conduct to be observed by those who conduct auction warehouses as well as others participating in the sales. But this is a nondelegable power. *Kinston Tobacco Board of Trade v. Liggett & Myers Tobacco Co.*, 235 N. C. 737, 71 S. E. (2d) 21 (1952).

Board Has No Right to Establish Sales and Require Buyers to Purchase Therein.

--This section is silent upon the question of the number of sales and prescribes no standard by which the number of sales may be determined. Therefore, in the absence of an agreement, either expressed or implied, a board organized under this section has no right to establish sales and require buyers to purchase therein. *Kinston Tobacco Board of Trade v. Liggett & Myers Tobacco Co.*, 235 N. C. 737, 71 S. E. (2d) 21 (1952), cert. den. 344 U. S. 866, 73 S. Ct. 108 (1952).

ARTICLE 42.

Production, Sale, Marketing and Distribution of Tobacco.

§§ 106-471 to 106-489: Repealed by Session Laws 1955, c. 188, s. 1.

Editor's Note.—The repealing act became effective July 1, 1955.

ARTICLE 43.

Combines and Power Threshers.

§§ 106-490 to 106-495: Repealed by Session Laws 1955, c. 268, s. 2.

§ 106-495.1. **Reports of crops harvested by means of combines or power threshers.**—It shall be the duty of the Commissioner of Agriculture to collect reports from every person, firm, or corporation who shall engage in the harvesting of crops by means of combines or power threshers; and it shall be the duty of every person, firm, or corporation engaging in the harvesting of crops by means of combines or power threshers to keep an accurate and complete record of the acreages harvested, and amounts threshed or combined for each farm, and to make reports on forms to be provided by the Commissioner of Agriculture showing acreages and amounts for the preceding season. For crops combined or threshed between January 1 and July 31 of each year the report shall be made not later than the first day of September of such year. For crops combined or threshed between August 1 and December 31 of each year the report shall be made not later than the first day of February of the next succeeding year. (1955, c. 268, s. 1.)

§ 106-495.2. **Reports of sales of combines or power threshers.**—It shall be the duty of every person, firm, or corporation who shall sell any combine

or power thresher in this State to report to the Commissioner of Agriculture the name and address of the purchaser thereof. Every sale completed on or after the first day of September and prior to the first day of May of the following year shall be reported on or before the first day of June of that year, and every sale completed on or after the first day of May and prior to the first day of September of each year shall be reported on or before the first day of October of said year. (1955, c. 268, s. 1.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. **Land set apart.**—For the purpose of the operating of a State Fair, expositions and other projects which properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart two hundred acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1; 1959, c. 1186, s. 1.)

Editor's Note. — The 1959 amendment substituted, in the first and second lines, the words "operating of a State Fair, ex- positions and other projects which" for the words "holding annually of a State Fair and exposition which will."

§ 106-503. **Board of Agriculture to operate fair.** — The State Fair and other projects provided for in G. S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G. S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State Fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State Fair and shall operate said State Fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State Fair. (1931, c. 360, s. 3; 1959, c. 1186, s. 2.)

Editor's Note.—

The 1959 amendment inserted the words "and other projects" at three places in the section. It also substituted "G. S. 106-502" for "§ 106-2" in the first sentence, and "operate" for "hold and conduct" in the second sentence.

Section 4 of the amendatory act, effective

June 19, 1959, provides: "All actions heretofore taken by the manager of the North Carolina State Fair in the operation of projects on the fair grounds at times other than the annual dates of the State Fair are confirmed, ratified and validated."

§ 106-503.1. **Board authorized to construct and finance facilities and improvements for fair.**

2. **Contracts and Leases; Pledge of Gate Receipts, etc.**—For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State Fair grounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State Fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

(1959, c. 1186, s. 3.)

Editor's Note. — The 1959 amendment substituted, in line three of subsection 2, the words "on the North Carolina State Fair grounds" for the words "for the

North Carolina State Fair". As only this subsection is changed the rest of the section is not set out.

Part 3. Protection and Regulation of Fairs.

§ 106-516.1. **Carnivals and similar amusements not to operate without permit.**—Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, ferris wheels, riding devices and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than thirty days prior to a regularly advertised agricultural fair and so in conflict with G. S. 105-39. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a misdemeanor and be punished by a fine or imprisonment, or both, in the discretion of the court: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a State-wide or Nation-wide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854.)

Local Modification. — Greene: 1957, c. 738. section provided that it shall not apply to Franklin County.

Editor's Note.—The act inserting this

§ 106-520. **Local aid to agricultural, animal, and poultry exhibits.**

Local Modification.—Craven: 1955, c. 607, amended by 1957, c. 886; Edgecombe and Nash: 1953, c. 273; city of Rocky Mount: 1953, c. 273; city of New Bern:

ARTICLE 46.

Erosion Equipment.

§ 106-521. **Counties authorized to provide farmers with erosion equipment.**

Local Modification.—Granville: 1953, c. 1240.

ARTICLE 49A.

Voluntary Inspection of Poultry.

§ 106-549.1. **Short title.** — This article shall be known as the "North Carolina Voluntary Inspection of Poultry Law." (1955, c. 1233, s. 1.)

§ 106-549.2. **Definitions.** — The following words, terms, and phrases shall be construed for the purpose of this article as follows:

A. "Commissioner" means Commissioner of Agriculture of North Carolina.

B. "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.

C. "Poultry" means any kind of domesticated bird, including, but not being limited to chickens, turkeys, ducks, pigeons, geese, and guineas.

D. "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry.

E. "Poultry products" means any giblets or any edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of dressed poultry or from any product derived wholly from such edible portion.

F. "Inspector" means any person who is licensed or designated by the State Supervisor of Poultry Inspection to inspect and certify the condition and wholesomeness of poultry products in accordance with the provisions of this article or the rules and regulations made pursuant thereto.

G. "Identify" means to apply official identification to products or the container thereof.

H. "Official identification" means the symbol represented by a stamp, label, seal, or other device approved by the Commissioner and affixed to any product, or to any container thereto, stating that the product was inspected or graded or both.

I. "Official plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.

J. "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not. (1955, c. 1233, s. 2.)

§ 106-549.3. Authority to enter into voluntary agreements providing for inspection.—The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with individuals, firms, or corporations operating poultry processing plants in this State in which dressed poultry is processed, cut up, or otherwise handled, for the purpose of establishing official inspection for ready-to-cook poultry and poultry products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the requirements of the North Carolina poultry industry. (1955, c. 1233, s. 3.)

§ 106-549.4. Rules and regulations.—The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this article. These rules and regulations shall include minimum requirements for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of poultry, poultry products, or any edible parts thereof; and other administrative factors that may arise in administering this article. (1955, c. 1233, s. 4.)

§ 106-549.5. Who shall be eligible for this service.—Any person operating a processing plant in North Carolina in accordance with the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1955, c. 1233, s. 5.)

§ 106-549.6. Cost of inspection. — The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting poultry and poultry products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1955, c. 1233, s. 6.)

§ 106-549.7. Payment of inspection costs. — The payment of inspection costs and other costs as provided in this article shall be paid to the North Carolina Department of Agriculture. (1955, c. 1233, s. 7.)

§ 106-549.8. Plant number. — Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant in which inspection service is requested meet the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant

number for the particular plant or facility in which the service is requested. (1955, c. 1233, s. 8.)

§ 106-549.9. **Identifying officially inspected poultry, poultry products, and edible parts thereof.**—The Commissioner is hereby granted authority to issue, approve, or otherwise give permission for poultry, poultry products, and other edible parts to be officially identified with a stamp, label, or other device for all or part of any poultry processed in official plants. This identification shall include, but not be limited to, the official plant number. (1955, c. 1233, s. 9.)

§ 106-549.10. **Inspection in official plants.**—All dressed poultry that is eviscerated in an official plant where inspection service is maintained shall be processed in a sanitary manner. Dressed poultry may be eviscerated in such plants without inspections for condition and wholesomeness but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means effective segregation of inspection and uninspected product is maintained. (1955, c. 1233, s. 10.)

§ 106-549.11. **Supervision of inspection program.**—The supervision of this inspection program shall be under the State Veterinarian or person designated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department of Agriculture and the United States Department of Agriculture. (1955, c. 1233, s. 11.)

§ 106-549.12. **Who shall inspect poultry.**—The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect poultry as provided in this article. These inspectors so designated shall have supervision over plant sanitation, inspection of poultry, and carrying out the rules and regulations adopted by the Board of Agriculture. (1955, c. 1233, s. 12.)

§ 106-549.13. **Withdrawal of service.**—In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliance with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a thirty-day notice. (1955, c. 1233, s. 13.)

§ 106-549.14. **Exemptions.**—The provisions of this article shall not apply to any individual raising and processing poultry, ready-to-cook poultry or poultry products without the consent of such individual. (1955, c. 1233, s. 13½.)

ARTICLE 49B.

Voluntary Inspection of Meat, Meat Products and Meat By-Products.

§ 106-549.15. **Short title.**—This article shall be known as the North Carolina Voluntary Inspection of Meat, Meat Products and Meat By-Products Law. (1957, c. 1379, s. 1.)

§ 106-549.16. **Definitions.**—The following words, terms, and phrases shall be construed for the purpose of this article as follows:

- (1) "Commissioner" means Commissioner of Agriculture of North Carolina.
- (2) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.
- (3) "Producer" means a person, firm or corporation growing livestock for human consumption, on his own farm or farms controlled by him.
- (4) "Commercial processor" means any person, firm or corporation slaughtering livestock or processing meat, meat products, and meat by-products for sale for human consumption, or any person, firm or corporation operating a slaughterhouse or any meat packer, or any nonexempt producer, or any two or more such persons, firms or corporations acting in combination.
- (5) "Retailer" means any person, firm or corporation selling or offering for sale meat, meat products, or meat by-products to the consumer.
- (6) "Meat" means the edible part of the muscle of cattle, sheep, swine, rabbits or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears.
- (7) "Meat by-product" is any edible part other than meat which has been derived from one or more cattle, sheep, swine, rabbits or goats.
- (8) "Meat food product" means any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, rabbits or goats, except such articles as organotherapeutic substance, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession; provided that the Board of Agriculture shall have the authority to prescribe a definition and identity for any food or class of food in which optional ingredients are permitted.
- (9) "Inspector" means any person who is licensed or designated by the Commissioner to inspect and approve plants, plant facilities, processing methods, and all products processed in such plants in accordance with the provisions of this article and the rules and regulations made pursuant thereto.
- (10) "Identify" means to apply official identification to products or the container thereof.
- (11) "Official identification" means a symbol such as a stamp, label, seal, or other device approved by the Commissioner to be affixed to any inspected and approved products or to the container thereof.
- (12) "Approved plant" means a single plant comprised of one or more buildings or parts thereof including facilities and methods of operation which have been inspected and approved as suitable and adequate for processing meat, meat products, and meat by-products in accordance with this article and the rules and regulations promulgated thereunder.
- (13) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not. (1957, c. 1379, s. 2.)

§ 106-549.17. Authority to enter into voluntary agreements providing for inspection.—The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with producers, commercial processors, or retailers in this State for the purpose of establishing official inspection

for meat, meat by-products, and meat food products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the needs of the North Carolina meat industry. (1957, c. 1379, s. 3.)

§ 106-549.18. **Rules and regulations.**—The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this article. These rules and regulations shall include minimum requirement for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of meat, meat by-products, meat food products, or any edible parts thereof; and other administrative factors that may arise in administering this article. (1957, c. 1379, s. 4.)

§ 106-549.19. **Who shall be eligible for this service.**—Any person, firm, or corporation operating an approved plant in North Carolina in accordance with the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1957, c. 1379, s. 5.)

§ 106-549.20. **Cost of inspection.**—The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting meat, meat by-products, and meat food products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1957, c. 1379, s. 6.)

§ 106-549.21. **Payment of inspection costs.**—The payment of inspection costs and other costs as provided in this article shall be paid to the North Carolina Department of Agriculture. (1957, c. 1379, s. 7.)

§ 106-549.22. **Plant number.**—Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant which inspection service is requested meets the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant number for the particular plant or facility in which the service is requested. (1957, c. 1379, s. 8.)

§ 106-549.23. **Identifying officially inspected meat, meat by-products, meat food products, and edible parts thereof.**—The Commissioner is hereby authorized to issue, approve, or otherwise give permission for meat, meat by-products, meat food products, and other edible parts to be officially identified with a stamp, label, or other device for all or part of any meat and meat products processed in approved plants. This identification shall include, but not be limited to, the official plant number. (1957, c. 1379, s. 9.)

§ 106-549.24. **Inspection of approved plants.**—All dressed meat that is eviscerated in an approved plant where inspection service is maintained shall be processed in a sanitary manner. Dressed cattle, sheep, swine, rabbits and goats may be eviscerated in such plants without inspection for condition and wholesomeness, but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means, effective segregation of inspection and uninspected product is maintained. (1957, c. 1379, s. 10.)

§ 106-549.25. **Supervision of inspection program.**—The supervision of this inspection program shall be under the State Veterinarian or person des-

ignated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department of Agriculture and the United States Department of Agriculture. (1957, c. 1379, s. 11.)

§ 106-549.26. **Who shall inspect meat and meat products.**—The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect meat and meat products as provided in this article. The inspectors so designated shall have supervision over plant sanitation, inspection of meat and meat products, and carrying out the rules and regulations adopted by the Board of Agriculture. (1957, c. 1379, s. 12.)

§ 106-549.27. **Withdrawal of service.**—In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliances with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a thirty-day notice. (1957, c. 1379, s. 13.)

§ 106-549.28. **Exemptions.**—The provisions of this article shall not apply to any individual raising or processing meat, meat by-products, or meat food products without the consent of such individual. (1957, c. 1379, s. 13½.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. **Policy as to promotion of use of, and markets for, farm products; tobacco excluded.**—It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, swine, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this article, however, shall not include the agricultural product of tobacco, with respect to which a separate provision and enactment has heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352.)

Editor's Note.—

The first 1957 amendment inserted "cotton" in the list of products in the first sentence, and deleted the words "or cotton" formerly appearing after "tobacco" in

the second sentence. The second 1957 amendment carried forward this change and also inserted in the first sentence "livestock, poultry," and "cattle, swine, sheep, broilers, turkeys, commercial eggs."

§ 106-564.1. **Alternate method for collection of assessments.**—As an alternate method for the collection of assessments provided for in G. S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G. S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State,

that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the 1st day of June of each year following such deduction, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. (1953, c. 917.)

§ 106-564.2. Further alternative method for collection of assessments.—As an alternate method for the collection of assessments provided for in G. S. 106-564, the duly certified agency representing the producers of peaches, apples or other tree fruits, is hereby authorized to establish the names, addresses and number of trees or acres of trees and certify same to the Commissioner of Agriculture. The Commissioner of Agriculture shall then notify by registered letter such certified producers that on or before the date specified by the duly certified agency, the assessments shall be paid to the Commissioner of Agriculture by the producers. The date of collections of such assessments may be established by the duly certified agency representing the producers of any agricultural product referred to in G. S. 106-550. (1955, c. 374.)

§ 106-564.3. Alternative method for collection of assessments relating to cattle sold for slaughter.—As an alternative method for the collection of assessments provided for in article 50, of chapter 106 of the General Statutes, as amended, and as the same relates to cattle sold for slaughter, upon the request of the duly certified agency of the producers of cattle which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packing houses, and any and all persons, firms and corporations engaged in the buying, selling or handling of cattle for slaughter in this State, and on and after the date specified in the letter the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such cattle bought, acquired or sold for slaughter. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packing house or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell cattle for slaughter without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the 20th day of the following month, be remitted by such purchaser as above described, to the Commissioner of Agriculture of North Carolina, who shall thereupon pay the amount of the assessments to the duly certified agency of the producers of such cattle sold for slaughter entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packing houses, or persons, firms or corporations engaged in buying, acquiring or selling cattle for slaughter shall at all times during regular business hours be open for the inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packing house, or any person, firm or corporation engaged in buying, selling or handling cattle for slaughter in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176.)

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the

regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer. Provided, however, that as to growers or producers of potatoes or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within thirty days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. (1947, c. 1018, s. 18; 1959, c. 311.)

Editor's Note. — The 1959 amendment added the part of the section beginning with the first proviso.

ARTICLE 50B.

North Carolina Agricultural Hall of Fame.

§ 106-568.13. North Carolina Agricultural Hall of Fame created.— There is hereby created and established as an agency of the State of North Carolina the North Carolina Agricultural Hall of Fame. (1953, c. 1129, s. 1.)

§ 106-568.14. Board of directors; membership; compensation.— The North Carolina Agricultural Hall of Fame shall be under the general supervision and control of a board of directors consisting of the following: The Commissioner of Agriculture of the State of North Carolina, who shall act as chairman; the Director of the North Carolina Agricultural Extension Service; the State Supervisor of Vocational Agriculture; the President of the North Carolina Farm Bureau Federation; the Master of the State Grange, the foregoing being ex officio members; and three members who shall be appointed by the Governor of North Carolina. All of said members shall serve without compensation. (1953, c. 1129, s. 2.)

§ 106-568.15. Terms of directors.—One of the appointive members shall be appointed for a term of two years, one for a term of four years and one for a term of six years. The successor to each of the appointive members shall be appointed for a term of six years, and in case of a vacancy, the Governor is authorized to appoint a successor for the remainder of the unexpired term. The ex officio members shall serve so long as they hold their respective offices or positions which entitle them to ex officio membership on said board of directors. (1953, c. 1129, s. 3.)

§ 106-568.16. Admission of candidates to Hall of Fame.—The said board is hereby empowered to formulate rules and regulations governing acceptance and admission of candidates to said North Carolina Agricultural Hall of Fame, provided that no name shall be accepted until an authentic and written record of achievements of said person in agricultural activities shall have been presented to and accepted by a majority vote of said board created by this article.

and provided that both men and women are eligible for recognition. (1953, c. 1129, s. 4.)

§ 106-568.17. **Acceptance of gifts, bequests and awards; display thereof.**—The said board is hereby empowered to accept and receive gifts, bequests, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some State owned building in Raleigh, provided that duplicates of such gifts, bequests, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina. (1953, c. 1129, s. 5.)

ARTICLE 52.

Agricultural Development.

§ 106-580. **Short title.**—This article may be cited as the “Agricultural Development Act.” (1959, c. 1177, s. 1.)

§ 106-581. **Intent and purpose.**—It is hereby declared to be the intent and purpose of this article to provide for a plan of assistance to the farmers and other citizens of this State in increasing agricultural income by making available to the various counties of the State the full resources of the Agricultural Extension Service, and other facilities, within the said counties, by means of the Farm and Home Development Program and the Rural Development Program as authorized by Title 7, United States Code, and other existing agricultural agencies. (1959, c. 1177, s. 2.)

§ 106-582. **Counties authorized to utilize facilities to promote programs.**—The several counties of this State are hereby authorized to utilize the facilities of existing extension and other agricultural advisory committees for the purpose of installing and promoting the Farm and Home Development Program and/or the Rural Development Program, or other program within the purview of this article, in the said counties; or, the several counties may, within their discretion, with the cooperation of the Agricultural Extension Service, create such new additional committees as may be needed for this purpose. (1959, c. 1177, s. 3.)

§ 106-583. **Policy of State; cooperation of departments and agencies with Agricultural Extension Service.**—It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture, the School of Agriculture of North Carolina State College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conser-

vation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4.)

§ 106-584. **Maximum use of existing research facilities.**—In effectuating the purposes of this article, maximum use may be made of existing research facilities owned or controlled by the State of North Carolina or by the federal government and of the facilities of the State and federal extension services. (1959, c. 1177, s. 5.)

§ 106-585. **Appropriations by counties; funds made available by Congress.**—The several counties of this State are hereby authorized to make such appropriations and expend such funds as shall be necessary to defray any part of the expenses of the programs authorized by this article, including the salaries of the extension agents, special agents and other necessary personnel, and any funds made available by the Congress of the United States for this purpose may be accepted and used therefor. (1959, c. 1177, s. 6.)

§ 106-586. **Authority granted by article supplementary.** — The authority granted by this article is in addition to that granted to the Extension Service by the Congress of the United States and in no way infringes upon the administrative authority of the director of the Extension Service or the existing policies of the Extension Service. (1959, c. 1177, s. 7.)

§ 106-587. **County and municipal expenditures for purposes of article.**—Any county or municipality in this State may appropriate and contribute funds for the purposes of this article and county and municipal expenditures for the aforesaid purposes are declared to be necessary expenses; and county expenditures therefor are declared to be for special purposes, for which special approval of the General Assembly is hereby given. (1959, c. 1177, s. 8.)

Chapter 108.

Boards of Public Welfare.

Article 1.

State Board of Public Welfare.

Sec. 108-9. Relatives ineligible to appointment in State institutions; payments to nursing, etc., homes owned, etc., by welfare or other officials, or their relatives, prohibited.

Article 2.

County Boards of Public Welfare.

108-14.01. Special county attorneys for welfare matters; appointment or designation of another to perform duties; compensation and expenses.

Sec.

108-14.02. Duties of special county attorneys.

108-14.03. Boards of welfare to assist and furnish information to special attorneys.

Article 2A.

Records of Persons Receiving Public Assistance.

108-14.1. County board to file list of persons receiving assistance.

108-14.2. Lists open to public; records as to adoption; names of children, etc., not disclosed; data as to employees of board to be on file.

- Sec.
 108-14.3. List filed only in county where board functions.
 108-14.4. Unlawful uses of information disclosed; unlawful to fail to file list.
 108-14.5. Only names, addresses and amounts to be disclosed; authority of State Board not limited.

Article 3.

Division of Public Assistance.

Part 1. Old Age Assistance.

- 108-27. Department of Public Welfare.
 108-28. Certain powers and duties of State Board of Public Welfare.
 108-30.2. Action to be taken upon termination of assistance.
 108-32. Assistance not assignable; checks payable to decedents.

Part 2. Aid to Dependent Children.

- 108-56. General powers and duties of Department of Public Welfare.
 108-57. Certain powers and duties of State Board of Public Welfare.
 108-63.1. Supervision of assistance in certain cases.

Part 3. General Assistance.

- 108-73.11. County fund for aid to the permanently and totally disabled.
 108-73.12. Appropriation not to lapse.

Part 4. Hospitalization of Assistance Recipients.

- Sec.
 108-73.13. Establishment of fund.
 108-73.14. Determination of rate per recipient; payments into fund.
 108-73.15. Extent of payment for hospitalization.
 108-73.16. Custody and receipt of funds.
 108-73.17. Disbursement.
 108-73.18. Acceptance of federal grants.

General Provisions.

- 108-74.1. Rules and regulations of Board subject to approval of Director of Budget and Advisory Budget Commission.
 108-76.1. Diversion of aid or violation of article a misdemeanor.
 108-76.2. Further action prohibited upon termination of federal aid.
 108-76.3. Personal representatives for recipients of assistance; appointment authorized; procedure; removal; costs; appeals.
 108-76.4. Courts for purposes of §§ 108-76.3 to 108-76.5; records.
 108-76.5. Findings under § 108-76.3 not competent as evidence in other proceedings.

Article 4.

Home Boarding Fund.

- 108-79. Administration of Fund by State Board of Public Welfare.

ARTICLE 1.

State Board of Public Welfare.

§ 108-3. Powers and duties of Board.

8. To employ with the approval of the Governor, a trained investigator of social service problems who shall be known as the Commissioner of Public Welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties. The salary of the Commissioner shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

14. To furnish to the federal government, or any of its agencies, such services as may be required in selecting, certifying, or referring persons who may be eligible for Civilian Conservation Corps, or persons who may be eligible for employment by the Works Projects Administration, the Resettlement Administration, the Surplus Commodities Corporation, or any other agency of the federal government engaged in relief or allied activities. The State Board of Public Welfare is also authorized to certify to the Surplus Commodities Corporation the persons eligible to receive such commodities as may be distributed for relief purposes. The State Board is further authorized to furnish to the federal government or any of its agencies any certification services that may be required or authorized under the Social Security Act, and to accept reimbursement from the federal government for such services.

15. To establish standards, provide rules and regulations for the operation of, and to inspect and license boarding homes, rest homes, or convalescent homes for persons who are aged or mentally or physically infirm and who are not related

or connected by blood or marriage to the applicant for license when a charge is made for such care: Provided said homes care for two or more persons. Such license shall be valid for one year from the date of issuance unless revoked earlier by the Board for cause. Such homes shall be under the supervision of the Board, and its agents may at any time visit and inspect the homes. Any individual or corporation who shall operate any such home without having first received such license from the Board shall be guilty of a misdemeanor. Licensing authority shall not apply to any institution established, maintained or operated by any unit of government nor to commercial inns or hotels nor to any facility licensed by the Medical Care Commission under the provisions of G. S. 131-126.1 (3) unless the facility receives public welfare funds.

17. To cooperate with the federal Department of Health, Education and Welfare in the administration of acts of Congress relating to child welfare and services related and pursuant thereto and to administer the funds provided by the federal government either as direct grants or as matching funds for child welfare purposes. The provision of federal acts relating to grants-in-aid to the State for child welfare purposes, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this section shall be liberally construed in relation to such federal acts, so that the intent to comply therewith shall be made effectual. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; 1951, c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684.)

Editor's Note.—

The 1953 amendment added the third sentence of subsection 14 and the 1955 amendment added subsection 17. The first 1957 amendment changed subsection 14 by substituting "State Board of Public Welfare" for "State Board of Charities and Public Welfare." The second 1957 amendment added the second sentence of subsection 8, and made a conforming change in the first sentence. The 1959 amendment,

effective Jan. 1, 1960, deleted from subsection 15 part of the proviso beginning in line five, inserted the next to last sentence, and added to the last sentence the part relating to facility licensed by the Medical Care Commission. As only these subsections were affected by the amendments the rest of the section is not set out.

Cited as to subsection 15, in *In re O'Neal*, 243 N. C. 714, 92 S. E. (2d) 189 (1956).

§ 108-5. **Inspection of county prisons; reports required.**—The State Board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties, chiefs of police of cities and towns, and superintendents of public welfare and other county and municipal officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the State Board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the State Board. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86.)

Editor's Note.—The 1957 amendment inserted after the word "counties" in line four a comma followed by the words and punctuation "chiefs of police of cities and

towns." It also inserted after the word "county" in line five the words "and municipal."

§ 108-6. **Biennial reports to General Assembly.**—The State Board shall biennially prepare and submit to the General Assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the State institutions under its supervision, with such suggestions as it may deem necessary and pertinent, and shall report such other matters as it may

think for the benefit of the people of the State. (1868-9, c. 170, s. 8; 1870-1, c. 106; Code, c. 2338; Rev., s. 3918; 1917, c. 170, s. 1; C. S., s. 5009; 1955, c. 982.)

Editor's Note.—The 1955 amendment struck out the former provision for printing.

§ 108-9. Relatives ineligible to appointment in State institutions; payments to nursing, etc., homes owned, etc., by welfare or other officials, or their relatives, prohibited.—(a) No person shall be appointed to any place or position in any of the State institutions under the supervision of the State Board who is related by blood or marriage to any member of the State Board or to any of the principal officers, superintendents, or wardens of State institutions.

(b) In all cases where nursing homes or homes for the aged or infirm may be owned or operated in whole or in part by members of the State Board of Public Welfare, of any county board of public welfare, or of any county board of commissioners, or by an official of the State Department of Public Welfare or any county department of public welfare, or by any person related by blood (closer than the third degree of kinship as determined by chapter 104A of the General Statutes of North Carolina) to any such board member or official, or the spouse of such board member or official or relative, the payment of any public welfare or public assistance funds derived from any source, federal, State, or local, for the care of any person in such facility, shall be prohibited. (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715.)

Editor's Note. — The 1959 amendment, former section as subsection “(a)” and effective as of Jan. 1, 1960, designated the added subsection “(b).”

§ 108-10. Failure of officers to furnish information.—If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the State shall fail, refuse, or neglect to furnish any information required by law to be furnished to the State Board of Public Welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the State, they shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted “State Board of Public Welfare” for “State Board of Charities and Public Welfare.”

ARTICLE 2.

County Boards of Public Welfare.

§ 108-11. County welfare boards; appointment; duties.—Each of the several counties of the State shall have a county welfare board composed of three members who shall be appointed as follows: The board of county commissioners shall appoint one member who may be one of their own number to serve as ex officio member of the county welfare board with the same powers and duties as the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the State Board of Public Welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

Appointments of county welfare board members shall be made on or before the first day of July of the year in which the term of appointment expires, and shall be effective as of that date, and the terms of office shall be three years each.

Appointments to fill vacancies shall be for the remainder of the term of office. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible to serve more than two successive terms.

The term of the third member of the county board of public welfare due to expire on the first day of April, one thousand nine hundred and fifty-five, is hereby extended through the thirtieth day of June of that year; the term of the member appointed by the county commissioners due to expire on the first day of April, one thousand nine hundred and fifty-six, is hereby extended through the thirtieth day of June of that year; and the term of the member appointed by the State Board of Public Welfare due to expire on the first day of April, one thousand nine hundred and fifty-seven, is hereby extended through the thirtieth day of June of that year.

The county welfare boards of the several counties shall have the duty of selecting the county superintendent of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including co-operation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children: Provided, that as to cases requiring immediate action to prevent undue hardship the county welfare board may at its discretion delegate to the superintendent of public welfare authority to consider and process applications under these laws, and to determine eligibility for assistance, amount of such assistance, and date on which it shall begin. The board shall require that any action taken by the superintendent pursuant to such delegated authority be fully reported to the board at its next meeting. The board of public welfare of each county shall at its next monthly meeting accept or reject or modify the action of the county superintendent of public welfare made under the preceding proviso since the last monthly meeting of the county board of public welfare. The county welfare board shall meet with the superintendent of public welfare and advise with him in regard to problems pertaining to his office, and the superintendent of public welfare shall be the executive officer of the board and shall act as its secretary.

Any member of a county board of public welfare is authorized to inspect and examine any papers, documents, data, case histories, clinical data, medical reports, or any records whatsoever on file in the office of the county superintendent of public welfare, or in the custody of any case worker or agent or employee engaged in any service under any said county superintendent of public welfare, which pertain in any manner to any applicant or applications for public assistance of any type or nature, as authorized by chapter 108 of the General Statutes, as amended. No member of a county board of public welfare shall disclose to anyone or make public any information acquired by him by virtue of such inspection of said records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1.)

Local Modification.— Gaston: 1957, c. 1157; Guilford: 1955, c. 312.

Editor's Note.—

The 1953 amendment added the proviso at the end of the first sentence of the last paragraph and the two sentences following.

The 1955 amendment rewrote the for-

mer second paragraph to appear as the present second and third paragraphs.

The 1957 amendment substituted in the first paragraph "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

The 1959 amendment added the last paragraph. Section 1½ of the amendatory

act provides: "If the provisions of this act are held by the Attorney General of the State of North Carolina to be in conflict with the federal statutes relating to

disclosure of information (42 USCA 302; 42 USCA 602; 42 USCA 1352;) this act shall be null and void."

§ 108-12. Meetings of the board; compensation and expenses.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the State Board, and shall meet at least once a month with the superintendent of welfare and advise with him in regard to problems pertaining to his office. Members of county boards of public welfare may at the discretion of the board of county commissioners receive a per diem not to exceed ten dollars (\$10.00) a day and actual expenses when attending official meetings; any such payments heretofore made are hereby validated. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320.)

Local Modification. — Jackson: 1959, c. 142.

The 1959 amendment increased the per diem from five to ten dollars.

Editor's Note.—

§ 108-12.1. Change of name in statutes and regulations relating to board.—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the General Assembly, or in any rule or regulation, a duty or obligation is imposed upon a county welfare board or upon a county board of public welfare, or any authority, privilege or power is granted thereto, the same shall be construed as referring to the county board of public welfare which shall henceforth be the designation of any of said county welfare boards or county boards of public welfare. (1945, c. 43, s. 3; 1957, c. 100, s. 2.)

Editor's Note.—The 1957 amendment substituted "board of public welfare" for "board of charities and public welfare."

It would seem that this amendment was made through inadvertence.

§ 108-13. County superintendent of welfare; appointment; salary.—On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a superintendent of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the State Board of Public Welfare. In making such appointment the county board may reappoint the superintendent of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as superintendent of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a qualifying basis; or the county board may appoint as superintendent of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of superintendent if such person meets the minimum requirements of the position of superintendent of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as superintendent of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The superintendent so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of superintendent of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a superintendent of public welfare in accordance with the merit system rules of the State Board of Public Welfare and any superintendent so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

(1957, c. 100, s. 1.)

Editor's Note.—

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in

the first and second paragraphs. As only these paragraphs were changed, the third paragraph is not set out.

§ 108-14. Powers and duties of county welfare superintendent.

1. To act as executive officer of county welfare board and to appoint office personnel in accordance with merit system regulations of the State Board of Public Welfare, whose salaries shall be paid by the county from federal, State and county funds: Provided, that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State and federal funds available for the purpose such portion of the salaries as, in the discretion of the State Board may be necessary.

2. To administer old age assistance and aid to dependent children under the supervision of the State Board of Public Welfare and in accordance with the provisions of the Old Age Assistance and Aid to Dependent Children Acts.

4. To act as agent for the State Board of Public Welfare in relation to any work to be done by the State Board in the county; and to make, under the direction of the State Board, such investigations in the county in the interest of social welfare as the State Board may desire or direct.

(1957, c. 100, s. 1.)

Cross Reference.—As to delegated authority of county welfare superintendent in emergency cases, see § 108-11.

Editor's Note.—

The 1957 amendment substituted "State

Board of Public Welfare" for "State Board of Charities and Public Welfare" in paragraphs 1, 2 and 4. As the rest of the section was not affected by the amendment it is not set out.

§ 108-14.01. Special county attorneys for welfare matters; appointment or designation of another to perform duties; compensation and expenses.—The board of county commissioners of any county, with the approval of the county board of public welfare, may appoint a duly qualified and licensed attorney who shall serve as a special county attorney for the purposes of §§ 108-14.01 to 108-14.03. In lieu of appointing a special county attorney the board of county commissioners may designate the county attorney, the assistant district solicitor or the solicitor of any court in the county inferior to the superior court as special county attorney and provide for him additional compensation for the performance of the duties imposed upon him as special county attorney. Such special county attorney shall serve as legal advisor to the county superintendent of public welfare, the county board of public welfare and the board of county commissioners in public welfare matters, and provision for his compensation and other expenses may be made in the special tax levy for county welfare administration. Nothing in §§ 108-14.01 to 108-14.03 shall be construed as prohibiting any system or plan by which any county in the State may already have made specific arrangements for specialized legal services of the nature herein prescribed, or the authority of any county government to retain and compensate special legal counsel for the purposes of discharging all or some of the duties and responsibilities herein set forth, or to impair the validity of the expenditure of public funds for specialized legal services. (1959, c. 1124, s. 1.)

§ 108-14.02. Duties of special county attorneys.—The special county attorney shall have the following duties:

- (1) He may represent the county, the plaintiff or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support

Act and as a part of such representation shall exercise continuous supervision of compliance with any order entered in any proceeding under said Act.

- (2) By direction of the board of county commissioners and by and with the consent and approval of the county attorney, the special county attorney may be assigned and may discharge all of the duties of the county attorney in respect to the old age assistance lien.
- (3) He shall be authorized to appear as special prosecution on behalf of the State and to make all necessary investigation preliminary thereto in connection with the preparation and prosecution of criminal cases under article 40 of chapter 14 of the General Statutes, entitled "Protection of the Family".
- (4) He shall be authorized to investigate, institute, prepare and prosecute as special prosecution, in cooperation with the solicitor of any court of record, all proceedings authorized under chapter 49 of the General Statutes, entitled "Bastardy".
- (5) He shall perform such other duties as may be assigned him by the board of county commissioners. (1959, c. 1124, s. 2.)

§ 108-14.03. Boards of welfare to assist and furnish information to special attorneys.—In performing any of the duties set forth in § 108-14.02, the special county attorney is authorized to call upon any county board of public welfare or the State Board of Public Welfare for such information as is necessary for the performance of such duties; and such boards are hereby directed to assist special county attorneys in the performance of their duties and to furnish necessary information. (1959, c. 1124, s. 3.)

ARTICLE 2A.

Records of Persons Receiving Public Assistance.

§ 108-14.1. County board to file list of persons receiving assistance.—It shall be the duty of each county board of public welfare to file in the office of the auditor of its county, the same being the county in which said board performs its duties and functions, on or before the 30th day of January and July of each year a complete list showing the names, addresses, and amounts of monthly grants of all persons receiving through such county any payments for old age assistance, aid to dependent children, or aid to the permanently and totally disabled, or persons receiving public assistance of any nature under any welfare or public assistance program administered by the welfare department. Provided that the term auditor as used in this article shall be construed to mean any officer charged with the keeping of the fiscal records of said county. (1953, c. 882, s. 1.)

§ 108-14.2. Lists open to public; records as to adoption; names of children, etc., not disclosed; data as to employees of board to be on file.—The said lists showing the names, addresses and amounts of public assistance paid to each individual, as required by § 108-14.1, shall be filed with the county auditor and shall be preserved by said auditor, and such report or reports, when so filed, are hereby declared to be public records and shall be open to public inspection at all times during the regular office hours of said auditor; provided, however, that nothing herein contained shall be construed to authorize or require the disclosure of any records of the public welfare department, either State or county, pertaining to adoptions or pertaining to children heretofore or hereafter placed in foster homes for adoption or other purposes. Nothing contained in this article shall be construed to authorize or require the disclosure of the names of individual children receiving aid to dependent children or any other financial services. Information with respect to any such services shall be made available in the name of a parent or the responsible adult and not in the name of the individual

child. The names of and the salaries paid to all employees of the county board of public welfare, whether such salaries are paid by county funds, State funds, or both such funds, shall be on file in the office of the county auditor and are hereby declared to be public records in the same manner and to the same extent as in the case of all other employees of the county. (1953, c. 882, s. 2.)

§ 108-14.3. **List filed only in county where board functions.**—Nothing contained in this article shall be construed to require any county board of public welfare to file any list required by this article with any county auditor, other than in the county where such county board of public welfare performs its duties and functions. (1953, c. 882, s. 3.)

§ 108-14.4. **Unlawful uses of information disclosed; unlawful to fail to file list.**—Except as provided in this article, it shall be unlawful for any person, firm or corporation, board, body, association or other agency of any kind whatsoever to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list or lists of names or any list of names derived from the reports provided for by this article for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance, and any person, firm, corporation, board, body or association violating any provision of this article prohibiting the use of the information appearing in the reports required by this article for commercial or political purpose, even though such information was at first legally obtained or disclosed under this article, shall be guilty of a misdemeanor. It shall be unlawful for any superintendent of any county board of public welfare or any officer or agent of same to fail or refuse to file the lists required by this article. (1953, c. 882, s. 4.)

§ 108-14.5. **Only names, addresses and amounts to be disclosed; authority of State Board not limited.**—Nothing contained in this article shall require data on liens or property reserves to be filed in said reports, nor shall any case record, papers, documents or data be disclosed except so much as may be necessary to show the names, addresses and amounts paid to recipients or beneficiaries as required by § 108-14.1. No provision of this article shall be construed as repealing or limiting the authority of the State Board of Public Welfare to establish and enforce rules and regulations to protect case records other than the reports required under this article and as permitted by § 618 of the Revenue Act of 1951 as enacted by the Congress of the United States. (1953, c. 882, s. 4½.)

ARTICLE 3.

Division of Public Assistance.

§ 108-15. **Division of Public Assistance created.**—There is hereby created in the State Board of Public Welfare a Division of Public Assistance, including

- (1) Assistance to aged needy persons,
- (2) Aid to dependent children, and
- (3) General assistance to other needy persons, as administered under authority of this article. (1937, c. 288, s. 1; 1949, c. 1038, s. 1; 1957, c. 100, s. 1.)

Editor's Note.—

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 108-16. **Director of Public Assistance.**—The Commissioner of Welfare, with the advice and approval of the Governor, shall employ a whole-time executive to be known as "Director of Public Assistance." Such Director, under the authority and supervision of the Commissioner of Welfare, shall have charge of the administration of the Division herein created, and shall actively direct its

affairs; and shall perform such other duties as may be required of him by the rules and regulations adopted by the State Board. He shall see that this article is properly administered, that the requirements thereof are carried out in a timely and orderly manner, that administration of this Division shall be kept at all times properly co-ordinated and efficiently maintained in agreement with other agencies of the State and with the federal government; and shall perform such other duties as are customary in his position.

The Director of Public Assistance shall receive such salary and compensation as may be fixed by the Governor subject to the approval of the Advisory Budget Commission; and his tenure of office shall be such as may be fixed by rules and regulations of the Department relative thereto and approved by the Governor, subject to termination when, in the opinion of the Governor and the Commissioner of Welfare, the public interest may demand it. (1937, c. 288, s. 2; 1957, c. 541, s. 8.)

Editor's Note.—Prior to the 1957 amendment the Director of the Budget fixed the salary and compensation.

Part 1. Old Age Assistance.

§ 108-17. Short title.

Cross Reference.—As to special county old age assistance, see §§ 108-14.01 to attorneys and their duties with respect to 108-14.03.

§ 108-19. **Definitions.**—As used in this article, "State Board" shall mean the State Board of Public Welfare, established by this chapter.

"The county board of welfare" shall mean the county board of public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

(1957, c. 100, ss. 1, 2.)

Editor's Note.—

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the first paragraph. It also substituted in the

second paragraph "board of public welfare" for "board of charities and public welfare." As the rest of the section was not affected by the amendment it is not set out.

§ 108-27. **Department of Public Welfare.**—The powers and duties of the State Board of Public Welfare, established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the State Board of Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in lines two and six. It

also substituted "Public Welfare" for "Charities and Public Welfare" in the catchline.

§ 108-28. **Certain powers and duties of State Board of Public Welfare.**

(h) The State Board is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina

State Board of Public Welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 13; 1939, c. 395, s. 1; 1943, c. 505, s. 2; 1957, c. 100, s. 1.)

Editor's Note.—

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the

catchline and in paragraph (h). As the rest of the section was not affected by the amendment it is not set out.

§ 108-30. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the State Board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the State Board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the State Board. One copy of the application shall be forwarded to the State Board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the State Board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed forty dollars (\$40.00) per month or four hundred eighty dollars (\$480.00) in one year, and there shall not be paid thereupon out of State and county funds more than twenty dollars (\$20.00) per month or more than two hundred forty dollars (\$240.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds: Provided, that, when it appears to the county board of public welfare that the interest of the recipient of such award will be better served by smaller payments at more frequent intervals, such award shall be paid in two or more equal installments in each month. Within the limitations of the State appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the State Board of Allotments and Appeal. The State Board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It

shall be unlawful, except for purposes directly connected with the administration of old age assistance and in accordance with the rules and regulations of the State Board for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving old age assistance, directly or indirectly derived from the records, papers, files, or communications of the State Board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 15; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, s. 1.)

Editor's Note.—

The 1953 amendment inserted "for" in lieu of "or" in line two of the last para-

graph.

The 1959 amendment inserted the proviso in the third paragraph.

§ 108-30.1. Lien on real property.—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received old age assistance, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1951. Before any application for old age assistance is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Immediately after the approval of an old age assistance grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in the county of residence of the recipient and in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket, showing the name of the county filing said statement as claimant, or lienor, and the name of the recipient as owner, or lienee, and same shall be indexed in the name of the lienee in the defendants', or reverse alphabetical, side of the cross-index to civil judgments; in said index the county shall appear as plaintiff, or lienor; no cross-index in the name of the county, or lienor, shall be required. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of old age assistance paid to such recipient from and after October 1, 1951. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten years from the last day for which assistance is paid nor more than three years after the death of any recipient: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient, or as a homesite by the recipient, or a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability: Provided, further, that the board of county commissioners and the county board of public welfare of the county in which the recipient resides, acting jointly and after investigation, shall have the authority to subordinate any lien created by this section to a mortgage or lien created against the property of such recipient for the necessary repairs or improvements on said property, whether title to said property is held by the recipient alone or by the entirety with his or her spouse.

The State Board of Public Welfare shall furnish to the county superintendent of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of rec-

ord to be recipients of old age assistance as of the date of notice that all old age assistance grants paid from and after October 1, 1951, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but the failure to give such notice shall not affect the validity of the lien.

Upon receipt of a statement signed by the Superintendent of Public Welfare, setting forth the total amount of old age assistance paid to a recipient from and after October 1, 1951, the clerk of the superior court may, after reasonable notice to the county attorney within the same calendar month in which said statement was executed, accept payment of the total sum set forth in said statement, tendered by said recipient or in his behalf, and cancel the lien of record. The clerk of the superior court shall, within the same calendar month, give the Superintendent of Public Welfare notice of the receipt of such payment and of the cancellation of the lien, and shall hold or disburse the funds so received as provided by law. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107.)

Editor's Note. — The 1953 amendment rewrote the fifth sentence of the first paragraph.

The 1955 amendment substituted the word "Immediately" for the words "Any time" at the beginning of the fourth sentence, inserted the words "in the county of residence of the recipient and" in the fourth sentence, and substituted "three years" for "one year" in the first of the three provisos at the end of the first paragraph. The amendment also made changes in the second proviso and added the third proviso.

The 1957 amendment added the last paragraph.

Section 4 of the 1955 amendatory act made it effective March 16, 1955, and applicable "to all liens heretofore established under the provisions of G. S. 108-30.1 including those on which no action has heretofore been instituted to enforce the same; provided, however, that no action may be instituted to foreclose such liens on property which has come into the hands of innocent purchasers or encumbrancers for value prior to the effective date."

Duration of Lien.—The lien against the estate of a deceased recipient of old age benefits under the provisions of this section may not be enforced by action in any event after the expiration of 10 years from the last day from which assistance

was paid, and, even if it be conceded that no action to enforce such lien may be maintained after one year from the death of the recipient, such lien, properly filed, remains in force until satisfied, and attaches to the surplus realized upon foreclosure of a mortgage on the realty of the deceased recipient notwithstanding that foreclosure was had more than one year after his death. *Lenoir County v. Outlaw*, 241 N. C. 97, 84 S. E. (2d) 330 (1954).

This article provides two separate and distinct methods by which a county may recover the aggregate amount paid as old age assistance to a recipient: One, a claim against the personality of the estate, which must be filed within one year after the death of the recipient, and the other a general lien upon the recipient's real estate, attaching upon the filing of the statement therefor in the lien docket and its proper indexing. *Lenoir County v. Outlaw*, 241 N. C. 97, 84 S. E. (2d) 330 (1954).

No old age assistance lien docket is contemplated or provided for. Not only is there no provision for an old age assistance docket, but this section positively requires that such claims be filed in the regular lien docket. It is patent, therefore, that liens for old age assistance and for building materials and labor must be filed in the same book—the lien docket. *Saunders v. Woodhouse*, 243 N. C. 608, 91 S. E. (2d) 701 (1956).

§ 108-30.2. Action to be taken upon termination of assistance.—The county department of public welfare shall, within six months after the termination of an old age assistance grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination or from any other information which has come to the attention of the department, (a) that such recipient does not own, or has not owned since the date of the filing of the old age assistance lien against such recipient's realty, any real property,

and (b) that such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars (\$100.00), and (c) in the case of termination because of death, that no executor, administrator, collector or other personal representative has been appointed, an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department, (a) that such recipient does own, or has owned since the date of the filing of the old age assistance lien against such recipient's realty, any real property, or (b) that such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars (\$100.00), or (c) in case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed, then the department shall furnish to the county attorney all available information concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the race of the recipient, the total amount of old age assistance received by the recipient from and after October 1, 1951, by or through the State and the several counties thereof, and the reason for termination of the old age assistance grant. Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of old age assistance does not exceed one hundred dollars (\$100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the old age assistance lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court.

The claim against the estate of a recipient herein provided for shall have equal priority in order of payment with the sixth class under § 28-105 of the General Statutes: Provided, that no such claims shall be satisfied out of any real property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the recipient, the surviving spouse, any minor dependent child of such recipient, or by a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability. (1951, c. 1019, s. 1; 1955, c. 237, s. 2; 1957, c. 1273.)

Cross Reference.—See note to § 108-30.1. rewrote this section.

The 1957 amendment added the last two sentences of the first paragraph.

Editor's Note. — The 1955 amendment

§ 108-30.3. Funds recovered.—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid old age assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county old age assistance fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Old Age Assistance Fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim. Necessary costs of collection of

any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1951, c. 1019, s. 1; 1955, c. 237, s. 3.)

Cross Reference.—See note to § 108-30.1. paragraph and struck out the former third paragraph.
Editor's Note.—The 1955 amendment added the second sentence of the second

§ 108-32. Assistance not assignable; checks payable to decedents.
 —The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an old age assistance recipient during or after the first day of the month for which a grant was previously authorized by the county welfare board, any old age assistance check or checks payable to such recipient not endorsed prior to such recipient's death, shall be delivered to the clerk of the superior court of the county on which the check was drawn and by him administered under the provisions of §§ 28-68 and 28-68.2 of the General Statutes. (1937, c. 288, s. 17; 1945, c. 615, s. 1; 1953, c. 213.)

Editor's Note.—
 The 1953 amendment, effective June 30, 1953, rewrote the second paragraph.

§ 108-33. State Board of Allotments and Appeal.—For the purpose of making allotment of State and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the State Board of Public Welfare and as an agency of said Board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

The chairman of the State Board of Public Welfare;
 The Commissioner of Welfare;
 The Director of Public Assistance, established by this article; all of whom shall be ex officio members of the State Board of Allotments and Appeal. The chairman of the State Board of Public Welfare shall be the chairman of the Board of Allotments and Appeal.
 (1957, c. 100, s. 1.)

Editor's Note.—
 The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the first, second and fourth paragraphs. Only the first four paragraphs are set out.

§ 108-37. Allocation of funds.
 The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in ac-

cordance with the County Fiscal Control Act. (1937, c. 288, s. 22; 1939, c. 395, s. 1; 1943, c. 505, s. 4; 1955, c. 310, s. 1.)

Local Modification.—Rowan: 1955, c. 420. tive purposes” formerly appearing before “Provided” in line eleven of the paragraph, and added the last sentence thereto. As the first and second paragraphs were not changed by the amendment they are not set out.

Editor’s Note.—The 1955 amendment struck out the word “both” formerly appearing before the word “payments” in line ten of the third paragraph. It also struck out the words “and for administra-

§ 108-38. Administration expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county superintendent of welfare and the State Board of Public Welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1957, c. 100, s. 1.)

Editor’s Note.—The 1957 amendment substituted “State Board of Public Welfare” for “State Board of Charities and Public Welfare” in the last paragraph. As the rest of the section was not affected by the amendment it is not set out.

Part 2. Aid to Dependent Children.

§ 108-46. Definitions.—As used in this article, “State Board” shall mean the State Board of Public Welfare, established by this chapter.

“The county board of welfare” shall mean the county board of public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

(1957, c. 100, ss. 1, 2.)

Editor’s Note.—The 1957 amendment substituted “State Board of Public Welfare” for “State Board of Charities and Public Welfare” in the first paragraph. It also substituted in the second paragraph “board of public welfare” for “board of charities and public welfare.” As the rest of the section was not affected by the amendment it is not set out.

§ 108-56. General powers and duties of Department of Public Welfare.—The powers and duties of the State Board of Public Welfare established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the State Board of Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42; 1957, c. 100, s. 1.)

Editor’s Note.—The 1957 amendment substituted “State Board of Public Welfare” for “State Board of Charities and Public Welfare”.

§ 108-57. Certain powers and duties of State Board of Public Welfare.

(h) The North Carolina State Board of Public Welfare is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina State Board of Public Welfare, to be used in carrying out the provisions of this article.

(i) Make to the solicitor of superior court those reports relating to recipients

of assistance under the provisions of this act as required by G. S. 15-155.1 and shall assist the solicitor in making any investigation relative thereto both actively and by furnishing to him all information available to it or any local board relative to such assistance. (1937, c. 288, s. 43; 1939, c. 395, s. 1; 1943, c. 505, s. 6; 1957, c. 100, s. 1; 1959, c. 1210, s. 3.)

Cross Reference. — For provision prohibiting action under Session Laws 1959, c. 1210, if such action will result in termination of payments of federal funds to North Carolina for public assistance, see § 108-76.2.

Editor's Note.—

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the caption and paragraph (h). The 1959 amendment added paragraph (i). Section 5

of the amendatory act provides that the act shall not apply to the counties of Gaston and Mecklenburg.

As only paragraphs (h) and (i) were affected by the amendments the rest of the section is not set out.

The words "this act" as used in subsection (i) of this section refer to Session Laws 1959, c. 1210. For other sections of that act, see §§ 15-155.1 to 15-155.3, 108-76.1, 108-76.2.

§ 108-59. Application for assistance; determination thereon.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00) except in extraordinary circumstances in which it appears to the satisfaction of the State Board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purposes above set forth: Provided further, that within the limitations of the State appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. Such award so made, when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds: Provided, that, when it appears to the county board of public welfare that the interest of the beneficiary or beneficiaries of such award will be better served by smaller payments at more frequent intervals, such award shall be paid in two or more equal installments in each month.

(1959, c. 179, s. 2.)

Editor's Note.—

The 1959 amendment added the proviso at the end of the third paragraph. As only

this paragraph was changed by the amendment the rest of the section is not set out.

§ 108-63.1. Supervision of assistance in certain cases.—Whenever a county board of welfare determines that the recipient of assistance payments granted under the provisions of part 2 of this article, entitled the Aid to Dependent Children Act, has not used said assistance to provide food, shelter, clothing, household and medical supplies, and other necessities, which are required for the care and support of the dependent child or children who are the intended beneficiaries of the assistance, or of the needy relative with whom such child or children live, then the county welfare board shall enter an order requiring the county superintendent of public welfare to supervise the expenditure of such assistance payments by the recipient, to cause such assistance to be used for the aforementioned necessities, and the superintendent shall comply with said order. Said supervision may include conferences with the recipient, preparation of monthly budgets for the recipient, requiring reporting on such expenditures by the recipient, and otherwise directing the expenditure of the assistance in accordance with such budgets.

Following the entry of the order requiring the superintendent to supervise the expenditure of the assistance, the county board of welfare shall cause notice thereof to be served on the recipient. If the recipient objects to the order, he may appear at the next meeting of the board held not less than five days after service of notice of the order upon the recipient, and, in such event, the superintendent shall not begin the supervision of the expenditures of the assistance until further order by the board. If, after hearing the recipient, the board reaffirms the order directing the superintendent to supervise the expenditures of assistance, the recipient may appeal therefrom to the State Board of Allotments and Appeal, in the manner and form prescribed by the Board of Allotments and Appeal.

The Board of Allotments and Appeal shall, upon receipt of such appeal, give the recipient and the county board of welfare reasonable notice and opportunity for a fair hearing. The decision of the State Board of Allotments and Appeal shall be final. In the event of such appeal, the order directing the superintendent to supervise the expenditures of assistance shall not be operative unless and until the State Board of Allotments and Appeal determines that the county board of welfare properly entered such order in accordance with the provisions of the section.

The county board of welfare may, at any time, rescind or terminate the order requiring the county welfare superintendent to supervise the expenditure of assistance. The supervision of expenditures provided in this section shall continue until the order is terminated by the county welfare board. (1959, c. 668, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides: "In the event that the Secretary of Health, Education, and Welfare notifies the State Board of Public Welfare that further payments of federal funds to the State of North Carolina for aid to dependent children will not be made because the procedures provided by this act are prohibited by the

Social Security Act, as amended, or by other applicable federal statutes, or by proper and authorized regulations having the force and effect of law, then and in that event no county board of welfare or county superintendent of public welfare shall take any further action pursuant to the provisions of this act."

§ 108-66. Allocation of funds.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for payments of grants to recipients:

Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1955, c. 310, s. 2.)

Editor's Note.—The 1955 amendment struck out "both" formerly appearing before the word "payments" in line ten of the third paragraph, and struck out the words "and for administrative purposes"

formerly appearing at the end of said paragraph. It also added the last sentence of the fourth paragraph. As the first and second paragraphs were not affected by the amendment they are not set out.

Part 3. General Assistance.

§ 108-73.5. State General Assistance Fund.

The Treasurer of the State of North Carolina is hereby made ex officio Treasurer of the State General Assistance Fund herein established, including therein such grants in aid for general assistance as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State General Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the superintendent of public welfare, countersigned by the county auditor, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, the signature of the chairman of the county welfare board together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1949, c. 1038, s. 2; 1955, c. 310, s. 3.)

Editor's Note. — The 1955 amendment struck out the word "both" formerly appearing before the word "payments" in the third sentence of the second paragraph. It also struck out the words "and for administrative purposes" formerly appearing

immediately before the proviso to the third sentence and added the last sentence of the section. As the first paragraph was not changed by the amendment it is not set out.

§ 108-73.11. County fund for aid to the permanently and totally disabled. — Annually, at the time other taxes are levied in each of the several counties of the State, there may be levied and imposed a special tax not to exceed five cents (5c) per one hundred dollars (\$100.00) assessed valuation for the purpose of raising such an amount as shall be determined necessary by the respective boards of county commissioners of the State for the program of aid to the permanently and totally disabled to supplement the State and federal funds available for expenditure in said county for aid to the permanently and totally disabled. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as are other taxes, and it shall be understood that the said tax is levied for a special purpose. The taxes collected from such levy shall be deposited to the credit of the county aid to the permanently and totally disabled fund. The levy of the special tax herein provided for shall be permissive and the requirement under this article that the several counties annually levy and impose taxes to provide for such amounts as such counties are required to pay for aid to the permanently and totally disabled shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1953, c. 891.)

§ 108-73.12. Appropriation not to lapse.—No appropriation for aid to the permanently and totally disabled shall lapse or revert, but the unexpended balance may be considered in making further appropriations. Any proceeds of county taxation for aid to the permanently and totally disabled remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing fiscal year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer a portion of the amount raised by the county for any one of the three assistance pro-

grams (old age assistance, aid to dependent children, and aid to the permanently and totally disabled) to the county fund maintained for any one of the other two assistance programs named herein. (1953, c. 891.)

Part 4. Hospitalization of Assistance Recipients.

§ 108-73.13. **Establishment of fund.**—In order to achieve economy and efficiency in the hospitalization of assistance recipients the State Board of Public Welfare is authorized and empowered to establish a special fund for the hospitalization of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, and to establish reasonable rules and regulations necessary to carry out the provisions of Part 4 of this article. The fund shall be known as "The State Fund for the Hospitalization of Assistance Recipients," hereinafter referred to as the fund. Disbursement from the fund shall be made only for the purpose of providing necessary hospital care for recipients, and their spouses when such spouses are included in the assistance budget group, of old age assistance, aid to dependent children, and aid to the permanently and totally disabled. Any balance in the fund at the end of any fiscal year and at the end of any biennium shall remain in the fund and shall not expire or revert. (1955, c. 969.)

Editor's Note.—The act inserting this Part became effective July 1, 1955.

§ 108-73.14. **Determination of rate per recipient; payments into fund.**—The fund shall consist of amounts paid monthly into the fund on behalf of each recipient of old age assistance, aid to dependent children, and aid to the permanently and totally disabled out of monies appropriated to the State Board of Public Welfare for this purpose; monthly payments for each county for such recipients through deductions made by the State Board of Public Welfare from State funds due the county for assistance purposes; and federal matching funds paid to the State for each assistance category. The rate per recipient of monthly payments into the fund shall be fixed from time to time by the State Board taking into consideration costs of hospitalization, the number of persons covered, the extent of hospitalization of such persons, and the availability of State funds. After the recipient rates have been determined, the portion of such rates to be paid from federal matching funds shall be computed. Payment of the balance of such rates shall be borne equally by the State and the several counties. (1955, c. 969.)

§ 108-73.15. **Extent of payment for hospitalization.**—Persons eligible as hereinabove provided shall be entitled to have the costs of necessary hospitalization paid out of the fund, in such amounts, and to the extent and in the manner determined from time to time to be feasible pursuant to the rules and regulations established by the State Board. Such rules and regulations shall be established on the basis of money available for the purpose, the number of assistance recipients, the experience with respect to the incidence of illness, disease, accidents, and other reasons among such recipients, causing them to require hospitalization and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other similar factors considered relevant by the State Board. (1955, c. 969.)

§ 108-73.16. **Custody and receipt of funds.**—The Treasurer of the State of North Carolina is hereby made ex officio treasurer of "The State Fund for the Hospitalization of Assistance Recipients" herein established. The fund thus established is hereby made an irrevocable trust and all payments into the fund are irrevocable except upon repeal of this article as provided in G. S. 108-76. The Treasurer shall keep the fund in a separate account and shall be responsible

therefor on his official bond; and the said fund shall be protected by proper depository security as are other State funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1955, c. 969.)

§ 108-73.17. Disbursement.—Claims for the cost of hospitalization shall be submitted by the county superintendent of public welfare to the State Board of Public Welfare, in accordance with the rules and regulations of the State Board. Payments from the fund shall be made only to hospitals licensed by the North Carolina Medical Care Commission, or licensed or approved according to the laws of another state, on warrants drawn on "The State Fund for the Hospitalization of Assistance Recipients" upon order of the State Board of Public Welfare evidenced by the signature of the Commissioner of Public Welfare. (1955, c. 969; 1959, c. 180.)

Editor's Note. — The 1959 amendment proved according to the laws of another inserted the words "or licensed or approved according to the laws of another state."

§ 108-73.18. Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants-in-aid to the State for the hospitalization of public assistance recipients, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Social Security Act, so that the intent to comply therewith shall be made effectual. (1955, c. 969.)

General Provisions.

§ 108-74.1. Rules and regulations of Board subject to approval of Director of Budget and Advisory Budget Commission. — All rules and regulations made by the State Board of Public Welfare to determine eligibility for grants from appropriations made in the Biennial Appropriations Act for Old Age Assistance, Aid to Dependent Children, and Aid to the Permanently and Totally Disabled, or to determine the amount of any such grant, shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1959, c. 1254.)

§ 108-76.1. Diversion of aid or violation of article a misdemeanor. — If any person wilfully violates any provision of this article or diverts any assistance granted under the provisions of this article to any use other than that for which the assistance was granted, such person shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned or both in the discretion of the court. (1959, c. 1210, s. 2.)

Cross Reference. — See § 108-76.2 and note thereto. inserting this section provides that it shall not apply to the counties of Gaston and Mecklenburg.

Editor's Note.—Section 5 of the act in-

§ 108-76.2. Further action prohibited upon termination of federal aid.—In the event that the Secretary of Health, Education, and Welfare notifies the State Board of Public Welfare that further payments of federal funds to the State of North Carolina for aid to dependent children, or for any other public assistance program, will not be made because any procedure provided by this act is prohibited by the Social Security Act, as amended, or by other applicable federal statutes, or by proper and authorized regulations having the force and effect of law, then and in that event no person or agency shall take any further action pursuant to such procedure. (1959, c. 1210, s. 4½.)

Editor's Note.—Section 5 of the act inserting this section provides that it shall not apply to the counties of Gaston and Mecklenburg. The words "this act" as used in this section refer to Session Laws 1959, c. 1210. For other sections of that act, see §§ 15-155.1 to 15-155.3, 108-57, 108-76.1.

§ 108-76.3. Personal representatives for recipients of assistance; appointment authorized; procedure; removal; costs; appeals.—If any otherwise qualified applicant for or recipient of old age assistance, aid to the permanently and totally disabled, or general assistance, or payee in the case of aid to dependent children, is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, a petition may be filed by the superintendent of public welfare before the appropriate court under § 108-76.4, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient or payee, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of old age or general assistance or aid to the permanently and totally disabled or the payee, in the case of aid to dependent children, is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient, or of the payee in the case of aid to dependent children, for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of old age or general assistance or aid to the permanently and totally disabled, or in the case of aid to dependent children, for the application of the payment to the best interest of the children. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the superintendent of public welfare in the selection of a suitable person for appointment as personal representative for the limited purposes of §§ 108-76.3 to 108-76.5. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1959, c. 1239, s. 1.)

§ 108-76.4. Courts for purposes of §§ 108-76.3 to 108-76.5; records.—For the purposes of §§ 108-76.3 to 108-76.5 the court may be either a domestic relations court established pursuant to article 13, chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular public assistance payments. The court may, for the purposes of §§ 108-76.3 to 108-76.5, direct the superintendent of public welfare to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1959, c. 1239, s. 2.)

§ 108-76.5. Findings under § 108-76.3 not competent as evidence in other proceedings.—The findings of fact under the provisions of § 108-76.3 herein shall not be competent as evidence in any case or proceeding deal-

ing with any subject matter other than provided in §§ 108-76.3 to 108-76.5. (1959, c. 1239, s. 3.)

ARTICLE 4.

Home Boarding Fund.

§ 108-77. **State Boarding Home Fund created.**—The General Assembly of North Carolina shall make appropriations to the State Board of Public Welfare for the purpose of providing aid for needy, dependent, and delinquent children and paying their necessary subsistence in boarding homes. The State Board of Public Welfare, from said appropriations, shall maintain a fund to be known and designated as the State Boarding Home Fund, from which said Fund there shall be paid, in accordance with the rules and regulations adopted by the State Board of Public Welfare, the amount necessary to provide homes for the needy, dependent, and delinquent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1; 1955, c. 1044, s. 1; 1957, c. 100, s. 1.)

Editor's Note.—The 1955 amendment substituted the words "needy, dependent, and delinquent" for "needy and dependent." The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 108-79. **Administration of Fund by State Board of Public Welfare.**—From the Fund so provided, the State Board of Public Welfare may provide for payment of the necessary costs of keeping in suitable boarding homes, needy, dependent, and delinquent children, including the children committed to the State Board of Public Welfare under the provisions of § 110-29, provided such children so committed to such State Board of Public Welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said Fund shall be expended under the rules and regulations adopted by the State Board of Public Welfare. (1937, c. 135, s. 3; 1955, c. 1044, s. 2; 1957, c. 100, s. 1.)

Editor's Note. — The 1955 amendment substituted the words "in suitable boarding homes, needy, dependent, and delinquent children" for the words "needy and dependent children in suitable boarding homes."

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

Chapter 109.

Bonds.

ARTICLE 1.

Official Bonds.

§ 109-2. **Penalty for officer acting without bond.**

Quoted in *Langley v. Taylor*, 245 N. C. 59, 95 S. E. (2d) 115 (1956).

§ 109-3. **Condition and terms of official bonds.**

Quoted in part in *State v. Corbett*, 235 N. C. 33, 69 S. E. (2d) 20 (1952).

§ 109-4. **When county may pay premiums on bonds.** — In all cases where the officers or any of them named in § 109-3 are required to give a bond, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. The board of commissioners of any county are further

authorized and empowered to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed in the offices of any such county officer or officers, such bond or bonds to be conditioned upon faithful performance of duty, and, in the event of such requirement, to pay the premiums on such individual or blanket bonds. (1937, c. 440; 1953, c. 799.)

Editor's Note. — The 1953 amendment a set or fixed salary”, and added the second sentence.
deleted from the first sentence the words
“and the said officer or officers are paid by

§ 109-11. Approval, acknowledgment and custody of bonds.—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney in fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C. S., s. 333; 1957, c. 1011.)

Editor's Note. — The 1957 amendment added the proviso.

ARTICLE 5.

Actions on Bonds.

§ 109-34. Liability and right of action on official bonds.

Necessary Parties in Action against Deputy Sheriff.—If the defendant were acting in the capacity of deputy sheriff at the time of the alleged assault and false arrest, he and the surety on his bond, and the sheriff and the surety on his bond, would be proper and necessary parties to the action based on the cause of action for the

alleged assault and false arrest. *State v. Corbett*, 235 N. C. 33, 69 S. E. (2d) 20 (1952).

Leave of Court Unnecessary.—

In accord with original. See *Reid v. Holden*, 242 N. C. 408, 88 S. E. (2d) 125 (1955).

§ 109-35. Complaint must show party in interest; election to sue officer individually.

The relator is the real party in interest in an action brought in the name of the State on an official bond, and he will be so considered in determining the identity

of the parties under a plea of *res judicata* in a subsequent action. *Reid v. Holden*, 242 N. C. 408, 88 S. E. (2d) 125 (1955).

**Chapter 110.
Child Welfare.**

**Article 2.
Juvenile Courts.**

Sec. 110-22.1. Validation of acts of superior court clerk serving as judge of

Sec. 110-36. Modification of judgment; determination whether child abandoned; return of child to parents.
county juvenile court.

ARTICLE 2.

Juvenile Courts.

§ 110-21. Exclusive original jurisdiction over children.

Purpose.—

In accord with 3rd paragraph in original. See in re Blalock, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 181 (1951).

This article primarily conferred upon juvenile courts the power to initiate and examine and pass upon cases coming under its provisions. These powers are both judicial and administrative, and when, having acquired jurisdiction, a juvenile court has investigated the case and determined and adjudged that the child comes within the provisions of the law and shall be controlled and dealt with as a ward of the State, this being in the exercise of the judicial powers in the premises, fixes the status of the child, and the condition continues until the child is of age, unless and until such adjudication is modified or reversed by a further judgment of the court itself or by the superior court judge hearing the

cause on appeal as the article provides. In re Blalock, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

Exceptions to Jurisdiction in Cases Involving Custody of Child.—

In accord with 1st paragraph in original. See In re Melton, 237 N. C. 386, 74 S. E. (2d) 926 (1953).

Modification of Foreign Divorce Decree Awarding Custody of Children.—Where a Virginia divorce decree awarding custody of children was subject to modification when changing conditions so required, the superior court of the county where the children resided had authority to examine the conditions then existing and, with the welfare of the children as its guide, determine the present right to custody. Cleeland v. Cleeland, 249 N. C. 16, 105 S. E. (2d) 114 (1958).

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts.—There shall be established in each county of the State a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of county.

The clerk of the superior court of each county in the State shall serve ex officio as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county: Provided, that with the consent in writing or upon the request in writing of the clerk of the superior court of any county in the State, the board of county commissioners of such county shall have the right in its discretion at any time to appoint some other competent and qualified individual to serve as judge of the juvenile court in lieu of the clerk of the superior court. The judge so appointed shall serve for a term to run concurrent with the term of the clerk of the superior court, or the remainder of such term, and the county shall pay said judge such sum as the county commissioners of said county shall deem just and proper. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, the board of commissioners of any county shall have the right in their discretion to co-operate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97,

s. 2; C. S., s. 5040; Ex. Sess. 1920, c. 85; 1945, c. 186, s. 2; 1955, c. 1043, s. 1; 1957, c. 359.)

Editor's Note.—

The 1955 amendment rewrote the first sentence of the second paragraph and added the second sentence. Section 3½ of the 1955 act, which also amended § 110-23, provides that the act shall not apply to the following counties: Brunswick, Buncombe, Burke, Caswell, Catawba, Davie, Forsyth, Franklin, Graham, Guilford, Halifax, Haywood, Jones, Lenoir, Macon,

Madison, McDowell, Nash, Onslow, Person, Pitt, Randolph, Transylvania, Vance, Warren and Watauga.

The 1957 amendment rewrote the first two sentences of the second paragraph of this section. And Session Laws 1957, cc. 363 and 454 provided that Henderson and Robeson, respectively, be inserted in the list of counties set out in the preceding paragraph of this note.

§ 110-22.1. Validation of acts of superior court clerk serving as judge of county juvenile court.—All of the acts and judgments of the several clerks of the superior court of the State while serving as judge of the juvenile court of their counties since the 18th day of May, 1955, are hereby in all respects ratified, confirmed and validated. (1957, c. 1042.)

§ 110-23. Definitions of terms.—The term “court” when used in this article without modification shall refer to the juvenile courts to be established as herein provided. The term “judge” when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the other appointed judge, or to the judge of the joint city and county juvenile court elected as provided in § 110-22. The term “child” shall mean any minor less than sixteen years of age. The term “adult” shall mean any person sixteen years of age or over. (1919, c. 97, s. 3; C. S., s. 5041; 1955, c. 1043, s. 2.)

Editor's Note.—The 1955 amendment inserted in the second sentence the words “or to the other appointed judge.” As to counties to which the amendatory act does

not apply, see note to § 110-22.

Cited in *In re Blalock*, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

§ 110-24. Sessions of court; records; general provisions.

Quoted in part in *In re Blalock*, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

§ 110-29. Hearing; disposition of child.

3. Commit the child to the custody of the State Board of Public Welfare, to be placed by such Board in a suitable institution, society or association as described in subsection 4 of this section, or in a suitable family home and supervised therein; or

4. Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Public Welfare authorized to care for children, or to place them in suitable family homes; or

(1957, c. 100, s. 1.)

Editor's Note.—

The 1957 amendment substituted “State Board of Public Welfare” for “State Board of Charities and Public Welfare” in sub-

sections 3 and 4. As the rest of the section was not affected by the amendment it is not set out.

§ 110-30. Child to be kept apart from adult criminals; detention homes.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the State Board of Public Welfare, appoint a matron

or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

(1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the second paragraph. As the rest of the section was not affected by the amendment it is not set out.

§ 110-31. Probation officers; appointment and discharge; compensation.—The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the State Board of Public Welfare.

The county superintendent of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the State Board of Public Welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the State Board of Public Welfare.

The State Board of Public Welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the State Board of Public Welfare. (1919, c. 97, s. 11; C. S., s. 5049; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 110-33. Duties and powers of probation officers.—It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and to report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed record of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his supervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the State Board of Public Welfare as it may from time to time require, and shall perform such other duties as the court under

whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1.)

Editor's Note. — The 1957 amendment fare" for "State Board of Charities and substituted "State Board of Public Wel- Public Welfare" in line nineteen.

§ 110-36. Modification of judgment; determination whether child abandoned; return of child to parents.—Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the State may be released or discharged only by the governing board or officer of such institution.

Upon petition by any interested person, the court shall have power to determine whether any such child is an abandoned child, within the meaning and under the provisions of chapter 48 of the General Statutes.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the State, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person, or that the said institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child. (1919, c. 97, s. 16; C. S., s. 5054; 1957, c. 778, s. 9.)

Editor's Note. — The 1957 amendment inserted the second paragraph.

Court May Modify Decree in Absence of Parent or Child. — Under this section the court may alter or modify its decree as to the custody of the children even in the absence of the parent or the child from its territorial jurisdiction. In re Blalock, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

Rights of Parents—Child in State In-

stitution.—

Dismissal of appeal from denial of motion by respondent parents for modification of an order committing the custody of their minor children to the State Board of Public Welfare does not preclude the parents from later moving for modification of the judgment on the ground of changed conditions. In re De Febio, 237 N. C. 269, 74 S. E. (2d) 531 (1953).

§ 110-39. Neglect by parents; encouraging delinquency by others; penalty.—(a) A parent, guardian, or other person having custody of a child, who omits to exercise reasonable diligence in the care, protection, or control of such child or who knowingly or wilfully permits such child to associate with

vicious, immoral, or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation, or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or wilfully is responsible for, or who encourages, aids, causes, or connives at, or who knowingly or wilfully does any act to produce, promote, or contribute to, any condition of delinquency or neglect of such child shall be guilty of a misdemeanor.

(b) It shall not be necessary that there shall have been a prior adjudication of delinquency or neglect of the child in order to proceed under this statute.

(c) A prior adjudication of delinquency or neglect shall not preclude a subsequent proceeding against any parent, guardian or other person who thereafter contributes to any condition of delinquency or neglect. (1919, c. 97, s. 19; C. S., s. 5057; 1959, c. 1284.)

Editor's Note. — The 1959 amendment rewrote this section.

ARTICLE 3.

Control over Indigent Children.

§ 110-49. Permits and licenses must be had by institutions caring for children.—No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of caring for and placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Public Welfare. The said Board shall issue such permit recommending such business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in § 108-3, subsection 5, shall annually procure a license from the State Board of Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1.)

Editor's Note. — The 1957 amendment "Public Welfare" in the first and second substituted "State Board of Public Welfare" paragraphs. "fare" for "State Board of Charities and

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-52. Consent required for removing child from State.

Applied in *In re Blalock*, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

§ 110-55. Violation of article a misdemeanor.—Every person acting for himself or for an agency who violates any of the provisions of this article or who shall intentionally make any false statements to the State Board of Public Welfare shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment for not more

than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

Quoted in part in *In re Blalock*, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

§ 110-56. **Definitions.**—The term "Board" wherever used in this article shall be construed to mean the State Board of Public Welfare. The terms "he" and "his" and "him" wherever used in this article shall apply to a female as well as a male child. (1931, c. 226, s. 8; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and

Public Welfare."
Stated in *In re Blalock*, 233 N. C. 493, 64 S. E. (2d) 848, 25 A. L. R. (2d) 818 (1951).

Chapter 111.

Commission for the Blind.

ARTICLE 1.

Organization and General Duties of Commission.

§ 111-3. **Additional members of Commission for Blind; meeting place.**—In addition to the members of the North Carolina State Commission for the Blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the Governor within thirty days after March 20, 1937. The State Health Director, the Director of the North Carolina Employment Service, and the Commissioner of Public Welfare of North Carolina shall also be ex officio members of this Commission, and their term of office shall be contemporaneous with their tenure of office as State Health Director, Director of the North Carolina Employment Service, and Commissioner of Public Welfare. Of the three additional members, to be appointed by the Governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina State Commission for the Blind shall be held in the city of Raleigh. (1937, c. 285; 1957, c. 1357, s. 20.)

Editor's Note.—The 1957 amendment, tor" for "secretary of the State Board of effective January 1, 1958, substituted in Health."
the second sentence "State Health Direc-

ARTICLE 2.

Aid to the Needy Blind.

§ 111-14. **Application for benefits under article; investigation and award by county commissioners.**—Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the North Carolina State Commission for the Blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of

any such blind person by the North Carolina State Commission for the Blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina State Commission for the Blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina State Commission for the Blind, not inconsistent with this article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674.)

Editor's Note.—

The 1957 amendment substituted the words "is residing" for "has a legal settlement" near the beginning of the section.

§ 111-30. Appointment of guardians for certain blind persons.—If any indigent blind person, who is receiving any moneys available to the needy blind, is unable to manage his own affairs, and this fact is brought to the attention of the clerk of the superior court of the county where said indigent blind person resides by petition of a relative of said blind person, or other interested person, or by the chairman of the county commissioners or by the State Commission for the Blind, it shall be the duty of the clerk to set a day for hearing the facts in the matter and to notify all interested persons. The indigent blind person shall be present at the hearing in person, or by representation, and the clerk of the superior court shall inquire into his condition. The hearing and inquiry shall be conducted in the manner provided by the general guardianship laws of North Carolina. If, after the hearing, the clerk finds that such indigent blind person is unable to manage his own affairs, it shall be the duty of the clerk to appoint some discreet and solvent person to act as guardian for said indigent blind person to whom said moneys may be paid. No bond shall be required of, or fee paid to, the guardian where the amount of money received does not exceed the State maximum grant for aid to the blind. Such person so designated shall use and faithfully apply said moneys for the sole benefit and maintenance of such indigent blind person. The person so designated shall give a receipt to the officer disbursing said moneys and the clerk, in his discretion, may require such person to render a periodic account of the expenditure of such moneys. (1945, c. 72, s. 4; 1953, c. 1000.)

Editor's Note.—The 1953 amendment substituted in line seventeen the words "the State maximum grant for aid to the blind" for "fifty dollars (\$50.00) per month."

Chapter 112.

Confederate Homes and Pensions.

ARTICLE 1.

Confederate Woman's Home.

§ 112-1. Incorporation and powers of Association.— Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic

and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate Soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1970. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222.)

Editor's Note.—

The 1953 amendment deleted the proviso formerly appearing at the end of the first paragraph. The 1959 amendment substituted "1970" for "1960" in line five of the second paragraph.

ARTICLE 2.

Pensions.

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-18. Classification of pensions for soldiers and widows.

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, nine hundred dollars (\$900.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, four hundred ninety-two dollars (\$492.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C. S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; 1945, c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; 1953, c. 1225; 1957, c. 1395, s. 1.)

Editor's Note.—

The 1953 amendment increased the pensions for "Class A" widows from \$600.00 to \$720.00 and for "Class B" widows from \$312.00 to \$372.00. The 1957 amendment increased the pensions for "Class A" widows to \$900.00 and for "Class B" widows to \$492.00. As the rest of the section was not affected by the amendments, only the paragraphs relating to widows are set out.

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll.—All widows of Confederate soldiers who have lived with such soldiers for a period of five years prior to the death of such soldier, or for any period of time if a child was born of said marriage, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and

paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general State pension laws as modified hereby. (1937, cc. 181, 454; 1953, c. 1169; 1959, c. 1004.)

Editor's Note. — The 1953 amendment substituted "five years" for "ten years" in line two, it being the stated purpose of the amendment "to reduce from ten years to five years the period for which widows of certain Confederate soldiers must have

lived with such soldiers in order to be placed upon the Class B pension roll."

The 1959 amendment inserted the words "or for any period of time if a child was born of said marriage" in lines two and three.

§ 112-20. Persons not entitled to pensions.

3: Repealed by Session Laws 1959, c. 181, s. 1.

Editor's Note.—Section 2 of the act repealing subdivision 3 provides: "It is the intent of this act that any widow of a Confederate soldier, who is qualified to receive a pension from this State under article 2

of chapter 112 of the General Statutes, may continue to receive such a pension, even though she is eligible for and receives a pension from any other state or from the United States."

Part 6. Miscellaneous Provisions.

§ 112-34. State payment of burial expenses.—Whenever in any county of this State a Confederate pensioner on the pension roll shall die, and such fact has been determined by the State Auditor, the State Auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a State warrant in the amount of one hundred fifty dollars (\$150.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to old age assistance under the provisions of § 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are not on pension roll at time of death because of being admitted to county home, county institution or State institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018; 1957, c. 1395, s. 2.)

Editor's Note.— amount for funeral expenses from \$100.00
The 1957 amendment increased the to \$150.00.

Chapter 113.

Conservation and Development.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Article 1.

Organization and Powers.

- Sec.
- 113-6. Meetings of the Board and commercial fisheries committee.
- 113-8.1. [Repealed.]
- 113-12. Heads of divisions, experts and assistants.
- 113-15.1. Director authorized to create Division of Community Plan-

- Sec.
- ning; powers and duties.
- 113-26. [Repealed.]
- 113-26.1. Bureau of Mines; mineral museum.
- 113-27. [Repealed.]

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

- Acquisition and Control of State Forests and Parks.**
- 113-29.1. Growing of timber on unused State lands authorized.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.

Article 3.

Private Lands Designated as State Forests.

113-48. Forest rangers appointed.

Article 4.

Protection against Forest Fires; Fire Control.

113-60.1. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.

113-60.2. Publication of proclamation; annulment thereof.

113-60.3. Violation of proclamation a misdemeanor.

Article 4A.

Protection of Forest against Insect Infec-tion and Disease.

113-60.4. Purpose and intent.

113-60.5. Authority of the Department of Conservation and Development.

113-60.6. Definitions.

113-60.7. Action against insects and dis-eases.

113-60.8. Authority of State Forester and his agents to go upon private land within control zone.

113-60.9. Co-operative agreements.

113-60.10. Annulment of control zone.

Article 4B.

Southeastern Interstate Forest Fire Protection Compact.

113-60.11. Execution of Compact author-ized; terms of Compact.

113-60.12. When Compact to become ef-fective; authority of Governor.

113-60.13. Assent of legislature to mutual aid provisions of other com-pacts.

113-60.14. Compact Administrator; North Carolina members of advisory committee.

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

113-105.1. Possession, sale and transporta-tion of certain ring-necked pheasants and chukar par-tridges legalized.

Article 8.

Fox Hunting Regulations.

Sec.

113-110.1. Persons required to have fox hunting licenses.

Article 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

113-120.4. Entrance on navigable waters, etc., for purpose of fishing, hunting or trapping not pro-hibited.

SUBCHAPTER IV. FISH AND FISHERIES.

Article 13A.

Commercial Fisheries Advisory Board.

113-142.2. Creation; function, purpose and duty.

113-142.3. Appointment of members; areas represented.

113-142.4. Qualifications of members; all phases of commercial fishing represented.

113-142.5. Terms of members; vacancies.

113-142.6. Organization and meetings.

113-142.7. Compensation and expenses.

Article 14.

Licenses for Fishing in Inland Waters.

113-143.1. Special trout fishing license.

113-154.1. Fishing from bridges.

113-155. [Repealed.]

Article 15.

Commercial Licenses and Regulations.

113-158, 113-159. [Repealed.]

113-161 to 113-163. [Repealed.]

113-165 to 113-168. [Repealed.]

113-170 to 113-174. [Repealed.]

Article 15A.

Licenses and Taxes on Commercial Fisheries.

113-174.1. Definitions.

113-174.2. Licenses to fish; issuance, terms and enforcement.

113-174.3. License fees and tax on non-food fish boats, nets, and proc-essing plants.

113-174.4. [Repealed.]

113-174.5. License tax on dealers and packers.

113-174.6. Purchase tax on dealers; sched-ule; collection.

113-174.7. License tax on trawl boats, dredge boats, motor boats, and haul boats.

113-174.8. Residents may catch shellfish for own use.

Article 15B.

Commercial License Regulations.

- Sec.
 113-174.9. Printed regulations furnished dealers.
 113-174.10. Dealers to keep and furnish statistics.
 113-174.11. Disturbing marks or property of Board prohibited.
 113-174.12. Explosives, drugs, and poisons prohibited; use of electrical device to take catfish in Cape Fear River.
 113-174.13. Possession of fish killed by explosives as evidence.
 113-174.14. Discharge of deleterious matter into waters prohibited.
 113-174.15. Operation of boats in violation of rules and laws forfeits boats and apparatus
 113-174.16. Violations of fisheries law misdemeanor; license forfeited.

Article 16.

Shellfish; General Laws.

- 113-200. [Repealed.]

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

ARTICLE 1.

Organization and Powers.

§ 113-2. Department created.

Stated in *State v. Story*, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ 113-3. Duties of the Department.—(a) It shall be the duty of the Department, by investigation, recommendation and publication, to aid:

- (1) In the promotion of the conservation and development of the natural resources of the State;
- (2) In promoting a more profitable use of lands and forests;
- (3) In promoting the development of commerce and industry;
- (4) In co-ordinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and
- (5) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State.

(b): Repealed.

(1925, c. 122, s. 4; 1957, c. 753, s. 3; c. 1424, s. 1; 1959, c. 779, s. 3.)

Editor's Note.—The first 1957 amendment rewrote paragraph (2) of subsection (a) by omitting the reference to "waters," and the second 1957 amendment added subsection (b). The 1959 amendment re-

Sec.

- 113-210.1. Weight limit for oyster dredges.

Article 18.

Propagation of Oysters.

- 113-222. Purchase of material; pay for work; contracts.

Article 26.

Marine Fisheries Compact and Commission.

- 113-377.6. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor.
 113-377.7. Commission subject to provisions of Executive Budget Act.

SUBCHAPTER VI. WELL DRILLING.

Article 28.

Drillers Using Power Machinery.

- 113-415 to 113-419. [Repealed.]

ARTICLE 1.

Organization and Powers.

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- (5) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State.

(b): Repealed.

(1925, c. 122, s. 4; 1957, c. 753, s. 3; c. 1424, s. 1; 1959, c. 779, s. 3.)

Editor's Note.—The first 1957 amendment rewrote paragraph (2) of subsection (a) by omitting the reference to "waters," and the second 1957 amendment added subsection (b). The 1959 amendment re-

pealed subsection (b).

Cited in *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 113-5. Appointment and terms of office of Board.—The terms of office of the members of the Board of Conservation and Development now serving in such capacity shall expire at midnight on the thirtieth day of June, 1953. On the first day of July, 1953, the Governor shall appoint fifteen persons to be members of the Board of Conservation and Development. Five members shall be appointed to serve for terms of two years each. Five members shall be appointed for terms of four years each. Five members shall be appointed for terms of six years each. Upon the expiration of their respective terms, the successors of said members shall be appointed for a term of six years each thereafter. In addition to the members appointed to the Board, as above prescribed, the Governor shall, on or as of July 1, 1957, appoint three additional members to said Board, two of whom shall represent the development, processing and packaging of agricultural and seafood products; one member shall represent the development and promotion of the tourist industry. Of the three additional members to be appointed, one shall serve for a term of two (2) years, one shall serve for a period of four (4) years, and one shall serve for a period of six (6) years. Thereafter, as their terms of office expire, members shall be appointed to serve for terms of six (6) years. All members appointed to the Board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said Board because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member. In making the appointments, the Governor shall take into consideration the functions and activities of the Board and in selecting the members shall give, as nearly as possible, proportionate representation to each and all of such functions and activities of the Department. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1; 1953, c. 81; 1957, c. 1428.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, rewrote the provisions of this section with regard to appointment and terms

of members.

The 1957 amendment inserted the seventh, eighth and ninth sentences.

§ 113-6. Meetings of the Board and commercial fisheries committee.—The said Board shall meet at least four times each year; one meeting to be held at some coastal area in the State, and the other three meetings to be held at a date and place to be fixed by the Board, and it may hold such other meetings as may be deemed necessary by the Board for the proper conduct of the business of the Department. The commercial fisheries committee of the Board of Conservation and Development shall meet in Morehead City once each year prior to the meeting held in the coastal area. It will at that time hear recommendations of the Commercial Fisheries Advisory Board and others interested in commercial fishing. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 2; 1947, c. 699; 1957, c. 248.)

Editor's Note.—

The 1957 amendment rewrote the

former section and added the last two sentences.

§ 113-8. Powers and duties of the Board.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall also be the duty of the Board of Conservation and Development to supervise, guide, and control the performance by the Department of its additional duties as set forth in G. S. 113-3 (b) and to hold public hearings with regard

thereto. (1925, c. 122, s. 9; 1927, c. 57; 1947, c. 118; 1957, c. 753, s. 4; c. 1424, s. 2.)

Editor's Note.—

The first 1957 amendment deleted from the fourth paragraph the words "with recommendations and plans for promoting their more profitable use" and inserted in lieu thereof "prepare and maintain a general inventory of the water resources of the State." The second 1957 amendment

added the second paragraph above to appear at the end of the section. As the rest of the section was not affected by the amendments, only the fourth and last paragraphs are set out.

Cited in *Williams v. McSwain*, 248 N. C. 13, 102 S. E. (2d) 464 (1958).

§ 113-8.1: Repealed by Session Laws 1959, c. 779, s. 3.

§ 113-9. **Director of Conservation and Development.**—The Governor shall appoint a suitable person as Director of Conservation and Development who shall serve under the direction and supervision of the Board and who shall have charge of the work of the Department. The Director shall serve at the pleasure of the Governor. (1925, c. 122, s. 12; 1953, c. 808, s. 1.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 113-10. **Duties of the Director.**—It shall be the duty of the Director, under the direction and supervision of the Board and under such rules and regulations as the Board may adopt, to make, or cause to be made, examinations and surveys of the economic and natural resources of the State and investigations of its industrial and commercial enterprises and advantages, and to perform such other duties as the Board may prescribe in carrying out the objects of the Department. (1925, c. 122, s. 13; 1953, c. 808, s. 2.)

Editor's Note. — The 1953 amendment inserted "direction and" in the second line.

§ 113-11. **Compensation of the Director.** — The Director shall receive an annual salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1905, c. 542, ss. 2, 3; Rev., s. 2757; C. S., s. 6122(r); 1925, c. 122, s. 14; 1957, c. 541, s. 9.)

Editor's Note.—The 1957 amendment struck out the words "not to exceed the sum of six thousand dollars" and substituted in lieu thereof the words "subject to the approval of the Advisory Budget Commission."

§ 113-12. **Heads of divisions, experts and assistants.**—The Director shall appoint, subject to the approval of the Board, the heads of the divisions and such experts and assistants as may be necessary to enable him to carry on successfully the work of the Department, and may, with the approval of the Board, assign to the heads of the divisions and other appointees such duties as may be deemed appropriate. (1925, c. 122, s. 15; 1953, c. 808, s. 3.)

Editor's Note.—

The 1953 amendment rewrote this section.

§ 113-15. **Advertising of State resources and advantages.**—It is hereby declared to be the duty of the Department of Conservation and Development to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4.)

Editor's Note. — The 1953 amendment deleted "under the direction and with the approval of the Director of the Budget" formerly appearing after the word "effect" in line three.

§ 113-15.1. **Director authorized to create Division of Community Planning; powers and duties.**—(a) The Director of the Department of Conservation and Development, with the approval of the Board of Conservation and Development, is authorized to create within the Department of Conservation and Development a Division of Community Planning and to provide the necessary personnel and equipment for such division subject to the provisions of articles 1 and 2 of chapter 113 of the General Statutes.

(b) The following powers are hereby granted to the Director of the Department of Conservation and Development and may be delegated and assigned to the Director of Hurricane Rehabilitation who shall serve as ex officio, a Commissioner of Planning:

- (1) To provide planning assistance to cities and other municipalities in the solution of their local planning programs. Planning assistance as used in this section shall consist of making population, land use, traffic, parking and economic base studies of the community, developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, and similar measures which may be recommended for the implementation of such plans. Provided, that the term planning assistance shall not be construed as including the providing of plans for specific public works.
- (2) To receive and expend federal and other funds for planning assistance to cities and other municipalities and to contract with the United States with respect thereto.
- (3) To provide appropriated State or other nonfederal funds, which together will constitute an amount at least equal to one-half the estimated cost of the planning work for which a federal grant is requested.
- (4) To perform planning assistance, either through the staff of the Division of Community Planning, or through acceptable contractual arrangements with other qualified State agencies or institutions, or with private professional organizations or individuals.
- (5) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
- (6) To co-operate with county, city, town and regional planning boards, federal planning agencies, and planning agencies of other states for the purpose of aiding and encouraging an orderly co-ordinated development of the State.
- (7) To accept any funds which may be given or granted to the Department for planning assistance and to expend such funds in a manner and for such purposes as may be specified in the terms of the gift or grant. (1957, c. 996.)

§ 113-26: Repealed by Session Laws 1959, c. 683, s. 6.

§ 113-26.1. **Bureau of Mines; mineral museum.**—The Governor and the Council of State are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the State justify and make reasonably necessary, to create and establish as a part of the Department of Conservation and Development a Bureau of Mines, or a mineral museum in cooperation with the National Park Service, to be located in the western part of the State, with a view to rendering such aid and assistance to mining developments in this State as may be helpful in this expanding industry, and to allocate from the contingency and emergency fund

such funds as may reasonably be necessary for the establishment and operation of such Bureau of Mines or mineral museum.

Upon the creation and establishment of such Bureau of Mines or mineral museum as herein authorized, the same shall be operated under such rules and regulations as may be adopted by the Board of Conservation and Development. (1943, c. 612; 1953, c. 1104, ss. 1-3.)

Editor's Note. — The 1953 amendment inserted the provisions relating to a mineral museum.

§ 113-27: Repealed by Session Laws 1959, c. 779, s. 3.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29.1. **Growing of timber on unused State lands authorized.**—The Department of Administration may allocate to the Department of Conservation and Development, for management as a State forest, any vacant and unappropriated lands, any marsh lands or swamp lands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildfire Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as Research Stations shall not be subject to the provisions of this section. The Department of Conservation and Development, through the Division of Forestry, shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Director of Conservation and Development may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Director of Conservation and Development, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Forestry Division. (1957, c. 584, s. 1.)

Editor's Note.—Section 9 of the act inserting this section provides that “nothing in this act shall be construed as repealing in any manner G. S. 146-1.”

§ 113-34. **Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.**—The Governor of the State is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the State, the same to be held, protected, and administered by said Board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department of Conservation

and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made.

The Board of Conservation and Development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining State-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department of Conservation and Development is further empowered to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

The Department of Conservation and Development, with the approval of the Governor and Council of State, is further authorized and empowered to enter into leases of lands and waters for State parks, State lakes and recreational purposes; and the State Department of Conservation and Development may construct, operate and maintain on said lands and waters suitable public service facilities and conveniences and may charge and collect reasonable fees for (a) the operation and use of such boats or other craft on the surface of said waters as may be permitted under its own regulations; (b) the erection, maintenance and use of docks, piers and such other structures as may be permitted in or on said waters under its own regulations; (c) fishing privileges in said waters, provided that such privileges shall be extended only to holders of bona fide North Carolina fishing licenses, and provided further that all State fishing laws and regulations are complied with.

The Department may make reasonable rules for the regulation of the use by the public of said lands and waters and of public service facilities and conveniences constructed thereon, and said regulations shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment of not more than thirty (30) days.

The authority herein granted is in addition to other authority now held and exercised by the Department of Conservation and Development. (1915, c. 253, s. 1; C. S., s. 6124; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; 1951, c. 443; 1953, c. 1109; 1957, c. 988, s. 2.)

Editor's Note.—

The 1953 amendment added the third, fourth and fifth paragraphs.

The 1957 amendment, effective January 1, 1958, struck out that part of the first

paragraph beginning with the words "Such State forests" in line thirty of the recompiled volume. Though not set out here the deleted portion is in effect through December 31, 1957.

§ 113-38. **Distribution of funds from sale of forest lands.**—All funds paid by the National Forest Commission, by authority of Act of Congress, approved May 23, 1908 (Thirty-five Stat., two hundred sixty), for the counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forest lands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; C. S., s. 6126(a); 1933, c. 537, s. 1; 1939, c. 152; 1943, c. 527; 1957, c. 694; 1959, c. 245.)

Editor's Note.—

The 1959 amendment inserted "Mont-

The 1957 amendment inserted Hyde in gomery" in the list of counties. the list of counties.

ARTICLE 3.

Private Lands Designated as State Forests.

§ 113-48. **Forest rangers appointed.**—The forester of the Department of Conservation and Development may appoint, with the approval of the Board of Conservation and Development, as forest rangers such a man or men over twenty-one years of age as may be recommended for appointment by the owner or owners of such State forest. Such forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; C. S., s. 6130; 1951, c. 575; 1955, c. 910, s. 1.)

Editor's Note.—The 1955 amendment, to appoint State forest rangers, with the effective July 1, 1955, rewrote this section approval of the commissioner of the which formerly authorized the Governor county wherein a State forest is situated.

ARTICLE 4.

Protection against Forest Fires; Fire Control.

§ 113-60.1. **Authority of Governor to close forests and woodlands to hunting, fishing and trapping.**—During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Director of the Department of Conservation and Development and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(a) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(b) Forbid for the period of the emergency the building of camp fires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(c) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping. (1953, c. 305.)

§ 113-60.2. **Publication of proclamation; annulment thereof.**—Such proclamation shall become effective twenty-four (24) hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same

manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Director of the Department of Conservation and Development and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed. (1953, c. 305.)

§ 113-60.3. **Violation of proclamation a misdemeanor.**—Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1953, c. 305.)

ARTICLE 4A.

Protection of Forest against Insect Infestation and Disease.

§ 113-60.4. **Purpose and intent.**—The purpose of this article is to place within the Department of Conservation and Development, Division of Forestry, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases. (1953, c. 910.)

§ 113-60.5. **Authority of the Department of Conservation and Development.**—The authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the Department of Conservation and Development, Division of Forestry. The administration of the provisions of this article, shall be by the State Forester, under the general supervision of the Director of the Department of Conservation and Development. The provisions of this article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture under existing statutes. (1953, c. 910.)

§ 113-60.6. **Definitions.** — As used in this article, unless the context clearly requires otherwise:

(a) "Forest trees" mean only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(b) "Forest land" means land on which forest trees occur.

(c) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(d) "Infestation" means attack by means of any insect, which is by the State Forester declared to be dangerously injurious to forest trees.

(e) "Infection" means attack by any disease affecting forest trees which is declared by the State Forester to be dangerously injurious thereto. (1953, c. 910.)

§ 113-60.7. **Action against insects and diseases.** — Whenever the State Forester, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the State Forester shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to

definitely describe and identify said zone of infestation or infection, and the State Forester, or his agent, shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls. (1953, c. 910.)

§ 113-60.8. **Authority of State Forester and his agents to go upon private land within control zone.**—The State Forester or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the State Forester or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the State Forester may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the State Forester or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area. (1953, c. 910.)

§ 113-60.9. **Cooperative agreements.** — In order to more effectively carry out the purposes of this article, the Department of Conservation and Development is hereby authorized to enter into cooperative agreements with the federal government and other public and private agencies, and with the owners of forest land. (1953, c. 910.)

§ 113-60.10. **Annulment of control zone.**—Whenever the State Forester determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the State Forester shall declare the zone of infestation or infection no longer pertinent to the purposes of this article and such zone will then no longer be recognized. (1953, c. 910.)

ARTICLE 4B.

Southeastern Interstate Forest Fire Protection Compact.

§ 113-60.11. **Execution of Compact authorized; terms of Compact.**—The legislature on behalf of this State is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such compact:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I.

The purpose of this Compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II.

This Compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Ken-

tucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this Compact, subject to approval by the legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this Compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this Compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this Compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or

under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this Compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this Compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this Compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI.

Ratification of this Compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this Compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this Compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

Article VIII.

The provisions of Articles IV and V of this Compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this Compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this Compact.

Article IX.

This Compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not

be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the Compact. (1955, c. 803, s. 1.)

§ 113-60.12. When Compact to become effective; authority of Governor.—When the legislature shall have executed said Compact on behalf of this State and shall have caused a verified copy thereof to be filed with the State Secretary, and when said Compact shall have been ratified by one or more of the states named in § 113-60.11, then said Compact shall become operative and effective as between this State and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this State and any other state ratifying said Compact. (1955, c. 803, s. 2.)

§ 113-60.13. Assent of legislature to mutual aid provisions of other compacts.—The legislature of this State hereby gives its assent to the mutual aid provisions of Articles IV and V of the South Central Interstate Forest Fire Protection Compact in accordance with Article VIII of that Compact relating to inter-regional mutual aid; and the legislature of this State also hereby gives its assent to the mutual aid provisions of Articles IV and V of the Middle Atlantic Interstate Forest Fire Protection Compact in accordance with Article VIII of that Compact relating to inter-regional mutual aid. (1955, c. 803, s. 3.)

§ 113-60.14. Compact Administrator; North Carolina members of advisory committee.—The State Forester is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen. (1955, c. 803, s. 4.)

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-83. Definitions.

Game animals—Deer, bear, fox, squirrels, rabbits, and wild boar.

(1953, c. 304.)

Editor's Note. — The 1953 amendment made the definition of "game animals" apply to "wild boar." As only this definition was affected by the amendment the rest of the section is not set out.

§ 113-84. Powers and duties of the Board of Conservation and Development.—It shall be unlawful to take or pursue any of the wild life of the State at any time or in any manner, except at such times and in such manner as the supply of said wild life may justify, and the said Board is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

- (1) Fix seasons and bag limits or close seasons on any species of game, bird,

or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the Board.

- (1½) Fix seasons and bag limits or close season on any species, age, size or sex of deer in any specified locality or localities, or the entire State, when it shall find, after said investigation and after a public hearing held by the Commission in the area to be affected when determining the advisability of an open season on doe deer, that such action is necessary to assure the maintenance of an adequate and balanced supply thereof. Provided, however, that in any locality where the use of rifles is permitted for the taking of deer, the Wildlife Resources Commission shall not be authorized to fix an open season on doe deer on any day or at any time concurrent with the open season on male deer. This provision shall apply only to the counties of Burke, Caldwell, Rutherford, Surry, Wilkes and counties lying west of the same. Where the number of eligible hunters exceeds the number of doe deer to be harvested as determined by the Wildlife Resources Commission, the Commission shall establish some system of issuing permits in order to regulate the harvest of doe deer.
- (2) Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.
- (3) Acquire by purchase, grant, condemnation, lease, agreement, gift, or devise lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:
- a. Game farms or game refuges.
 - b. Lands or waters suitable for game, bird or fur-bearing animal restoration, propagation or protection.
 - c. For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the Board.
 - d. To extend and consolidate by exchange lands or waters suitable for the above purposes.
 - e. To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.
- (4) Enter into co-operative agreements with educational institutions and State, federal or other agencies, to promote wild life research and to train men for wild life management.
- (5) Enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects.
- (6) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to license the operation of controlled shooting preserves and revoke such licenses for cause. "Controlled shooting preserve" means an area on which only domestically raised game birds are taken. For each calendar year or part thereof during which any licensee operates, said licensee shall pay to the Wildlife Resources Commission an annual license fee of fifty dollars (\$50.00), and such annual license shall be issued only upon the payment of said fifty dollars (\$50.00).

- (7) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to fix seasons and bag limits for domestically raised native, nonnative and hybrid species of game birds taken on licensed controlled shooting preserves, which seasons and bag limits are not required to be the same as for game birds which are not domestically raised. (1935, c. 486, s. 4; 1957, cc. 386, 841.)

Local Modification.—Pender, as to subdivision (1½): 1957, c. 386, s. 2½.

Editor's Note.—The first 1957 amendment inserted subdivision (1½). Section 2 of the amendatory act provides that the act shall not be construed to modify, repeal or abrogate any of the provisions of article 24 of chapter 143 of the General Statutes known as the "North Carolina Wildlife Resources Law."

The second 1957 amendment added subdivisions (6) and (7).

Power to Acquire Land for Game Farms or Game Refuges.—The Wildlife Resources

Commission has been delegated the power to acquire land for game farms or game refuges in the public interest under this section and § 143-237, et seq., but the public need for such project in a particular locality must first be established by a certificate of public convenience and necessity from the North Carolina Utilities Commission under § 40-53. *State v. Story*, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ 113-91. Powers of Commissioner.

(d) To Execute Warrants.—The Commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to arrest without warrant any persons committing a violation of this article in his presence, or upon reasonable grounds to believe that such person is committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(1957, c. 1423, s. 1.)

Local Modification. — Currituck, Gates, Pasquotank and Perquimans: 1953, c. 680.

Editor's Note.—

The 1957 amendment inserted, beginning in line ten, the words "or upon reasonable grounds to believe that such person is committing a violation of this article in his presence." As the rest of the section was not affected by the amendment, only subsection (d) is set out.

Section 3 of the 1957 amendatory act provides that it shall not be construed to repeal any of the provisions of article 24 of chapter 143 as they modify §§ 113-91 and 113-141.

Homicide Committed by Wildlife Protector Engaged in Performance of His Official Duties.—See *State v. Ellis*, 241 N. C. 702, 86 S. E. (2d) 272 (1955).

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	\$ 15.75
State resident hunting license	4.10
Combination hunting and fishing license	5.25
County hunting license	1.10

Said applicant, if a resident of this State, shall pay to the officer or person issuing the license the sum of one dollar (\$1.00) as a license fee, and the sum of ten cents (10c) as a fee to the officer or person, other than the commissioner, for issuing the same, and shall obtain a county resident hunting license, which shall entitle him to take game birds and animals in the county of his residence, or shall pay to the officer or person issuing the license the sum of four dollars (\$4.00) as a license fee and the sum of ten cents (10c) as a fee to the officer or person other than the Commissioner for issuing the same and shall obtain a resident State hunting license, which shall entitle him to take game birds and animals in any county of the State at large, as authorized by this article. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a nonresident of this State, or a resident for less than six months, or an alien, shall pay to the officer or person issuing the license fifteen dollars and fifty cents (\$15.50) as a license fee and the sum of twenty-five cents (25c) as a fee to the officer or person other than the Commissioner for issuing the same and shall obtain a nonresident hunting license, which shall entitle him to take game birds and game animals as authorized by this article. The Commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a State resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of five dollars (\$5.00) as a license fee and twenty-five cents (25c) as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25c) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25c) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars (\$10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fees, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business:

Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five dollars (\$5.00) plus twenty-five cents (25c) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commissioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident land-owner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve", as defined in subdivision (6) of G. S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of five dollars (\$5.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person, other than the Commissioner, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304.)

Editor's Note.—

The 1957 amendment, effective August 1, 1957, increased the fee for State resident hunting license from \$3.10 to \$4.10 and the fee for combination hunting and fishing license from \$4.10 to \$5.25. It also increased the fee in lines six and seven of the second paragraph from three to four dollars and the fee in line twenty-

four from four to five dollars. Section 3 of the amendatory act provided that the act shall not be construed to modify or repeal any of the provisions of article 24 of chapter 143 as the same affects this section.

The 1959 amendment added the last paragraph.

§ 113-100. Open season.

Local Modification. — Hertford, as to certain areas: 1953, c. 963.

§ 113-102. Protected and unprotected game.

Local Modification.—Lee: 1953, c. 688, cited in the recompiled volume, so as to

Editor's Note.—Session Laws 1957, c. 34, amended Session Laws 1951, c. 450, apply only to county of Duplin.

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, café, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime,

between sunrise and sunset, with a shotgun not larger than number ten (10) gauge, a rifle, or with bow having minimum pull of forty-five (45) pounds and non-poisonous, non-barbed, non-explosive arrow with minimum broadhead width of seven-eighths of an inch, unless otherwise specifically permitted by this article. No person shall take any game animals or game birds or migratory game birds from any automobile, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt-lick or poison; nor shall any such jacklight, net, trap, snare, fire, saltlick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sail boat, or any boat under sail, or any floating device towed by a power boat or sail boat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light when hunting raccoons or opossum with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500.)

Editor's Note.—The 1955 amendment authorizes the use of bow and arrow in taking game birds and game animals.

The first 1959 amendment inserted the second sentence of the third paragraph.

The second 1959 amendment added the last paragraph.

Cited in Pegg v. Gray, 240 N. C. 548, 82 S. E. (2d) 757 (1954).

§ 113-105.1. Possession, sale and transportation of certain ring-necked pheasants and chukar partridges legalized.—Nothing herein contained shall be deemed or held to prohibit or to render unlawful any market, store or any produce dealer in this State from possession, buying, selling, offering or exposing for sale or transporting, at any time or in any manner, any ring-necked pheasants or chukar partridges, or carcasses thereof, propagated in cap-

trivty and tagged with an indestructible metal tag as provided for by G. S. 113-105. (1957, c. 1007.)

§ 113-109. **Punishment for violation of article.**—1. Any person, or group of persons, who takes, possesses, transports, buys, sells, offers for sale, or has in possession for sale or transportation, any wild bird, or wild animal, or any part thereof, or the nest or egg of any wild bird, in violation of any of the provisions of this article, or who violates any other of the provisions of this article, or who fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation relating to game birds and animals and game fish promulgated by the Wildlife Resources Commission shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisoned for not more than thirty days, unless a greater penalty be prescribed for the specific act or acts. Upon the second offense, a person convicted thereof shall be fined not less than thirty-five dollars (\$35.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not more than six months, or both in the discretion of the court. Any person, firm, or corporation who buys or sells, or offers to buy or sell, game birds or game animals in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00) or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. In all cases of conviction under this article, the court in which such conviction is had shall revoke and require the surrender of any hunting license then held by the person so convicted, which license shall be forwarded together with the record of such conviction to the Wildlife Resources Commission. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued, and any person whose license has been revoked who procures or uses any other hunting license, or hunts with gun or dogs without a license during this period shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than fifty dollars (\$50.00) or imprisoned for not less than thirty days, and in addition shall have his license buying privilege suspended for an additional year following such conviction. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury.

2. Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall, upon conviction, be fined not less than two hundred fifty dollars (\$250.00) or imprisoned for not less than ninety days. The flashing or display of any artificial light from any highway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty feet from such highway or public or private driveway, or such flashing or display of such artificial light at any place off such highway or driveway, when such acts are accompanied by the possession of firearms or bow and arrow during the hours between sunset and sunrise, except as authorized herein for the hunting of raccoons, opossums, or frogs, shall constitute prima facie evidence of a violation of the provisions of the preceding sentence.

3. It shall be unlawful for any person, or group of persons, to take, attempt to take, or have in possession doe (female) deer in violation of the provisions of article 7 of chapter 113 of the General Statutes. Any person who takes, attempts to take, or has in possession doe (female) deer in violation of this article shall, upon conviction, be fined not less than one hundred dollars (\$100.00) or imprisoned not less than ninety days, or both fined and imprisoned in the discretion of the court.

4. The provisions of this section relating to penalties shall not apply in the case of deer killed while destroying crops on the land owned or leased by the

person killing such deer. (1935, c. 486, s. 25; 1939, c. 235, s. 2; 1939, c. 269; 1941, c. 231, s. 2; 1941, c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141.)

Editor's Note.—

The 1953 amendment rewrote this section.

ARTICLE 8.

Fox Hunting Regulations.

§ 113-110.1. **Persons required to have fox hunting licenses.**—Any person engaging in fox hunting will be considered to be actively participating, and will be required to have purchased a hunting license, if he owns or handles dogs engaged in the fox hunt; if he is carrying firearms for the purpose of taking foxes, or if he is a member of an organized group formed for the purpose of participating in the fox hunt. Provided, however, persons who are observing a fox hunt, or who have stopped incidentally to witness a part of it, will not be considered active participants, and will not be required to have a license. (1953, c. 1133.)

§ 113-111. **No closed season in certain counties.**—It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Cabarrus, Catawba, Davidson, Davie, Forsyth, Franklin, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Martin, Nash, Perquimans, Pitt, Rockingham, Rowan, Stokes, Tyrrell, Union, Watauga, Yadkin and Yancey counties, and in Bensalem, Shefields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570.)

Local Modification.—Granville: 1957, c. 1001; Pamlico: 1955, c. 504; Sampson: 1959, c. 544; Warren: 1957, c. 197.

Editor's Note.—

There were six 1953 amendments of this section. The first inserted Rockingham in the list of counties, the second inserted Rowan, the third inserted Yadkin, the fourth inserted Tyrrell, the fifth inserted Perquimans and the sixth inserted Martin.

There were eight 1955 amendments of this section. The first inserted Cabarrus in the list of counties, the second inserted Anson and Union, the third inserted Yancey, the fourth inserted Stokes, the fifth inserted Catawba, the seventh inserted Alexander, the eighth inserted Alleghany, and the sixth inserted the words "by any lawful method" in line two.

The amendments relating to Anson, Union and Yadkin counties made it a misdemeanor to bring foxes into the county and set them at large.

The amendment relating to Anson and Union counties expressly prohibited the use of snare. And the amendment relating to Yancey County provided that nothing in the act shall be construed as authorizing the use of a snare.

The 1957 amendment, inserting "Franklin" in this section, makes the use of hounds lawful and forbids the use of guns.

The first 1959 amendment inserted Greene in the list of counties. The second 1959 amendment added the reference to townships in Moore County. And the third 1959 amendment inserted Forsyth in the list of counties.

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. **Trespass for purposes of hunting, etc., without written consent a misdemeanor.**—Any person who willfully goes on the land, waters, ponds, or a legally established water fowl blind of another upon which notices, signs or posters, described in § 113-120.2, prohibiting hunting, fishing, or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a

misdemeanor and punished by a fine of not more than fifty dollars (\$50.00) or by confinement in jail for not more than thirty days, provided that except as to water fowl blinds no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents. (1949, c. 887, s. 1; 1953, c. 1226.)

Editor's Note.—The 1953 amendment inserted the provisions as to water fowl blinds.

§ 113-120.2. **Regulations as to posting of property.**—The notices, signs or posters described in § 113-120.1 shall measure not less than ten inches by twelve inches and shall be conspicuously posted on private lands not less than 150 yards and not more than 500 yards apart close to and along the boundaries. At least one such notice, sign or poster shall be posted on each side of such land, and one at each corner thereof, provided said corner can be reasonably ascertained. (1949, c. 887, s. 2; 1953, c. 1226.)

Editor's Note. — The 1953 act re-enacted this section without change.

§ 113-120.3. **Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.**—Any person who shall mutilate, destroy or take down any "posted", "no hunting" or similar notice, sign or poster on the lands, waters, or legally established water fowl blind of another, or who shall post such sign or poster on the lands, waters or legally established water fowl blind of another, without the consent of the owner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen dollars (\$15.00). (1949, c. 887, s. 3; 1953, c. 1226.)

Editor's Note.—The 1953 amendment tabulated water fowl blind" for "lands or substituted "lands, waters, or legally es- waters" in two places in this section.

§ 113-120.4. **Entrance on navigable waters, etc., for purpose of fishing, hunting or trapping not prohibited.**—Nothing in this article shall be construed to prohibit the entrance of any person upon navigable waters and the bays and sounds adjoining such waters for the purpose of fishing, hunting or trapping. (1949, c. 887, s. 4; 1953, c. 1226.)

Editor's Note.—The 1953 amendment added the words "hunting or trapping" at the end of the section.

SUBCHAPTER IV. FISH AND FISHERIES.

ARTICLE 12.

General Provisions for Administration.

§ 113-129. **Commissioner of Commercial Fisheries.**—The Director, with the approval of the Board of Conservation and Development, shall appoint a Commercial Fisheries Commissioner who shall serve under the direction and supervision of the Director and shall make such reports to him at such time or times as he may require. By and with the consent of the Board, the Commissioner may appoint assistants or may remove them and appoint their successors. Their duties shall be prescribed by the Commissioner. The salary of the Commissioner and his assistants shall be fixed by the Board with the approval of the Budget Bureau, and if the Commissioner is absent or unable to act, the Board shall appoint one of the assistant commissioners to have and to exercise all his powers. The Commissioner and his assistants shall each execute and file with the Secretary of State a bond, payable to the State of North Carolina, in the sum of five thousand dollars for the Commissioner and twenty-five hundred dollars for each assistant, with sureties to be approved by the Secretary of

State, the condition being that they will faithfully perform their duties and will account for and pay over, pursuant to law, all moneys received by them in their office. (1915, c. 84, s. 1; 1917, c. 290, s. 1; C. S., s. 1870; 1925, c. 310; 1953, c. 808, s. 5.)

Editor's Note.—

The 1953 amendment struck out the former first two sentences of this section

and inserted the present first sentence in lieu thereof.

ARTICLE 13.

Powers and Duties of Board and Commissioners.

§ 113-135. Duties of the Board.—

To enter into reciprocal agreements with coastal states on the Atlantic Seaboard with regard to fin fish, shrimp and other migrating marine life. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086.)

Editor's Note.—The 1953 amendment added the above as the last paragraph of this section. As the rest of the section was

not affected by the amendment it is not set out.

§ 113-136. Regulations as to fish, fishing, and fisheries made by Board.—

The Board of Conservation and Development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the maximum numbers and minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, scallops, and other water products, and all types of marine vegetation which may grow in the waters or on the bottoms of any navigable waters, as it may deem necessary; and all regulations, prohibitions, restrictions, and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court: Provided, however, no rule or regulation shall be adopted by the Board of Conservation and Development which will require the culling of oysters taken or sold by the owner or his agents from his private bed during the closed season, on which private bed no oysters have been planted which have come from public grounds during the planting season. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251.)

Local Modification. — Brunswick, New Hanover and Pender: 1959, c. 444.

The second 1953 amendment added the proviso at the end of the section.

Editor's Note.—

The first 1953 amendment, which inserted the words "maximum numbers and" in line five, stated that its purpose was to grant authority to the Wildlife Resources Commission to establish creel limits.

Notwithstanding any of the provisions of chapter 444, Session Laws 1959, the provisions of this section shall apply to the taking of shrimp in the coastal waters of Brunswick and Pender counties which lie north and northwest of the northern edge of the Intercoastal Waterway.

§ 113-137. Regulations affecting existing interests not effective for two years.—

In making regulations the Board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and no changes in the existing regulations which, if they should go into effect immediately, would tend to cause fishermen to lose their property

shall go into effect until two years from the date that the change has been made by the Board. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1879; 1953, c. 452.)

Editor's Note.—The 1953 amendment substituted "regulations" for "laws" in line three.

§ 113-140. Violations investigated; nets seized and sold; bonds of Commissioners liable.—It is the duty of the Commissioner of Game and Inland Fisheries and the Commissioner of Commercial Fisheries, or any of their assistants or deputies, upon a complaint made either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go to such place and investigate same. They shall seize and remove all nets or other appliances set or being used or that have been used in violation of the fisheries laws of the State. Such nets and appliances may be stored either in the county in which they were seized or in the county in which the Commissioner of Commercial Fisheries maintains his principal headquarters. Such nets or other appliances shall be sold at public auction in the county where stored after advertisement for twenty (20) days at the courthouse and three other public places in the county in which the seizure was made. If the nets or other appliances are to be sold in a county other than the one in which they were seized, such advertisement shall be made in the county where the nets or other appliances were seized and similar advertisement shall also be made in the county where the nets or other appliances are to be sold. The proceeds of sale shall be applied to the payment of the costs and expenses of such removal, and any remaining balance shall be paid into the school fund of the county in which the violation was committed. The failure of the Commissioners or their deputies to perform the above prescribed duty shall render their bonds liable to a penalty of five hundred dollars, one half to go to the informant and the other one half to be paid to the school fund of the county in which the action is brought. (1911, c. 18; C. S., s. 1884; 1941, c. 113; 1955, c. 1078.)

Editor's Note.—The 1955 amendment and last sentences, in lieu of the former inserted all of the section, except the first second sentence.

§ 113-141. Arrests without warrant; investigation of unlawful transportation of sea food.—The Commissioner of Game and Inland Fisheries and the Commissioner of Commercial Fisheries, their assistants and deputies, shall have power, without warrant, to arrest any person or persons violating any of the fisheries laws in their presence, or upon reasonable grounds to believe that such person or persons are violating the fisheries laws in their presence, who shall be carried before a magistrate for trial or hearing as is required by law in case of persons arrested without warrant. Authority also expressly is vested in the commissioners, their assistants and deputies, when they or either of them has reason to believe that any sea food products are unlawfully possessed, or are being transported unlawfully, or are about to be transported unlawfully, without the license tax therefor and thereon having been paid, to stop, or cause to be stopped, any vehicle or conveyance of transportation, of whatsoever kind, for the purpose of investigation and examination; and if upon such investigation and examination it appears that any sea food products are unlawfully possessed, or that the license tax therefor and thereon has not been paid, the said commissioners, their assistants or deputies, making such investigation and examination shall have the power and authority, without first having applied for and obtained warrant so to do, to arrest the person or persons owning and/or having in his or their possession for transportation and actually engaged in the transportation of the said sea food products on which said license taxes have not been paid, and take him, or them, for trial before some magistrate in the county where such arrest is made; and it shall not be obligatory upon the said commissioners, their assistants or deputies, first to apply for and obtain warrant before making such

investigation and inspection. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2.)

Editor's Note.—

The 1957 amendment inserted, in the first sentence, the words "or upon reasonable grounds to believe that such person or persons are violating the fisheries laws in their presence." Section 3 of the amenda-

tory act provides that it shall not be construed to repeal any of the provisions of article 24 of chapter 143 as they modify §§ 113-91 and 113-141.

Cited in *State v. Ellis*, 241 N. C. 702, 86 S. E. (2d) 272 (1955).

ARTICLE 13A.

Commercial Fisheries Advisory Board.

§ 113-142.2. Creation; function, purpose and duty.—The purpose of this article is to create a board to be known as the "Commercial Fisheries Advisory Board," the function, purpose and duty of which shall be to study all matters and activities in connection with the commercial fishing industry in the waters of North Carolina and to meet with and make recommendations to the commercial fisheries committee of the Board of Conservation and Development. (1955, c. 1031, s. 1.)

§ 113-142.3. Appointment of members; areas represented.—On or before July 1, 1955, the Governor of North Carolina is hereby authorized, empowered and directed to appoint a Commercial Fisheries Advisory Board to be composed of seven (7) members as follows:

(1) One member from the Southport area, which area extends from the South Carolina line northwardly to Rich Inlet, and thence westwardly to include all of the waters within said area.

(2) One member from the New River Inlet area, which area is bounded on the South by the Southport area and extends northwardly to Bogue Inlet and thence westwardly and includes all of the waters within said area.

(3) One member from the Morehead area, which area is bounded on the South by the New River Inlet area and extends northwardly to Ocracoke Inlet thence westwardly across Pamlico Sound to the Neuse River line thence up Neuse River to Adams Creek thence westwardly.

(4) One member from the Pamlico area, which area is bounded on the South by the Morehead area and on the North by a line extending across Pamlico Sound to Pamlico Point, thence up the South side of Pamlico River to the highway bridge, thence westwardly.

(5) One member from the Hatteras area, which area is bounded on the South by the Pamlico area and on the North by a line extending from Rodanthe westwardly.

(6) One member from the Albemarle area, which area is bounded on the South by the Hatteras area and extends northwardly to the Virginia line and includes all of the waters within said area.

(7) One member from the State at large to be designated as chairman. (1955, c. 1031, s. 2.)

§ 113-142.4. Qualifications of members; all phases of commercial fishing represented.—The members of the Board so appointed shall have personal knowledge of the commercial fishing industry and shall have an interest in its welfare and development. The members so appointed shall represent, as well as is practicable and possible, all income levels and all phases of the commercial fishing industry. (1955, c. 1031, s. 2.)

§ 113-142.5. Terms of members; vacancies.—Of the original membership of the Board appointed by the Governor, three members shall be appointed for four years beginning July 1, 1955, two members shall be appointed for two years beginning July 1, 1955, and two members shall be appointed for

one year beginning July 1, 1955, and until their successors are appointed and qualified. Thereafter, all members shall be appointed for four-year terms, and until their successors are appointed and qualified. In the event of a vacancy on the Board the Governor is authorized to make an appointment to fill the vacancy for the remainder of the unexpired term. (1955, c. 1031, s. 2.)

§ 113-142.6. **Organization and meetings.**—At its first meeting, the Board shall organize and elect a vice-chairman and a secretary.

The Board shall meet at the call of the commercial fisheries committee of the Board of Conservation and Development but shall meet at least once annually immediately preceding the July meeting of the Board of Conservation and Development. (1955, c. 1031, s. 2.)

§ 113-142.7. **Compensation and expenses.**—The members of the Board shall receive not more than five dollars (\$5.00) per diem and actual travel expenses while in attendance of meetings of the Board or engaged in the business of the Board; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, of chapter 143, of the General Statutes of North Carolina. (1955, c. 1031, s. 2.)

ARTICLE 14.

Licenses for Fishing in Inland Waters.

§ 113-143.1. **Special trout fishing license.**—A special mountain trout fishing license is required of all persons who fish in waters which are stocked with mountain speckled, brook, rainbow, or brown trout at the expense of the State, and which are designated by the North Carolina Wildlife Resources Commission as Public Mountain Trout Waters. A resident of this State may obtain a resident special mountain trout fishing license upon payment of one dollar (\$1.00) for the use of the Wildlife Resources Commission, and ten cents (10¢) for the use of the issuing agent; and a nonresident may obtain a nonresident special mountain trout fishing license upon payment of two dollars (\$2.00) for the use of the Wildlife Resources Commission, and ten cents (10¢) for the use of the issuing agent. Such license must be kept about the person of the licensee at all times while fishing in waters so designated. All monies received from the sale of special mountain trout fishing licenses, except the issuance fees, shall be deposited in the name of the State Treasurer, and shall be used by the Wildlife Resources Commission for propagation, protection, and management of such trout, and for no other purpose. (1953, cc. 432, 828; 1955, c. 198, s. 2.)

Editor's Note.—Chapters 432 and 828 of the Session Laws of 1953 both directed the insertion of a new section, § 113-143.1. The section as used was from chapter 828. The section in chapter 432 is identical, with the exception that the word "native" appears before the word "mountain" in line three. Both acts were made effective January 1, 1954.

The 1955 amendment rewrote the former second sentence to appear as the present second and third sentences. Section 3 of the amendatory act provides that the provisions requiring special mountain trout licenses for fishing in designated public mountain trout waters shall not apply to trout fishing within the Great Smoky Mountains National Park.

§ 113-144. **Resident State license.**—Any person, upon application to the Director of the Department of Conservation and Development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the State of North Carolina, shall, upon payment of the sum of four dollars (\$4.00) as a license fee for the use of the Department and a fee of ten cents (10c) for the use of the official authorized to issue licenses, be entitled to a "resident State license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under the preceding section: Provided that twenty-five cents (25c) of this fee

shall be set aside as a special fund for the purchase and lease of lands and waters, to be developed for the protection and propagation of fish or to be used for public fishing, or for the purpose of securing federal funds, if available, for the purposes described above through the means of matching federal funds in such proportion as the federal laws may require, and that twenty-five cents (25c) of each such fee shall be expended by such Commission, in its discretion, for the purposes of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. (1929, c. 335, s. 2; 1945, c. 567, s. 2; 1949, c. 1203, s. 2; 1957, c. 849, s. 2.)

Editor's Note.—

The 1957 amendment, effective January 1, 1958, increased the license fee in line five from three to four dollars. Section 3 of the amendatory act provided that the

act shall not be construed to modify or repeal any of the provisions of article 24 of chapter 143 as the same affects this section.

§ 113-145. Nonresident State licenses.—Any person, without regard to age or sex, upon application to the Director of the Department of Conservation and Development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a nonresident of the State, shall, upon the payment of six dollars (\$6.00) for the use of the Department and ten cents (10¢) for the use of the official authorized in writing to issue licenses, be entitled to a "nonresident State fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided that fifty cents (50¢) of the "nonresident State fishing license" fee referred to above shall be set aside as a special fund for the purchase and lease of lands and waters to be developed for the protection and propagation of fish and for the acquisition by lease or purchase of waters for public fishing: Provided further, that any nonresident desiring to fish for one day or more shall be entitled to a nonresident daily fishing license upon payment of the sum of one dollar (\$1.00) for the use of the Wildlife Resources Commission and ten cents (10¢) for the use of the selling agent for each day; and that any nonresident desiring to fish for five days or less shall be entitled to a five-day fishing license upon payment of the sum of two dollars and fifty cents (\$2.50) for the use of the Wildlife Resources Commission and ten cents (10¢) for the use of the selling agent, and each such daily or five-day nonresident fishing license shall authorize the holder thereof to fish, during the period for which such license is issued, in any of the waters of North Carolina: Provided further, that any resident of the State desiring to fish for one day or more in the waters of any county in the State of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of sixty cents (60¢) for each day, the sum of ten cents (10¢) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60¢), the clerk of the court or game warden shall issue a permit allowing said nonresident to fish: Provided further, that any nonresident twelve years of age or under regardless of sex shall be allowed to fish in the waters of North Carolina without paying any of the license or permit fees set forth in this section: Provided further that any nonresident holding a State license to fish in the inland waters of an adjoining state shall be allowed to fish in any waters of North Carolina which constitute the boundary between the State of North Carolina and said adjoining state upon presentation of said license when required by a wildlife protector, provided that said adjoining state extends the same privileges to persons holding licenses or permits to fish issued by the State of North Carolina. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; 1945, c. 567, s. 3; 1953, c. 1147; 1955, c. 198, s. 1; 1959, c. 164.)

Editor's Note.—

The 1953 amendment struck out the

former second and third provisos relating to short term licenses or permits for non-

residents, it being the stated purpose of the amendment "to eliminate the use of nonresident fishing permits covering periods of less than six days."

The 1955 amendment inserted the second proviso.

The 1959 amendment added the last proviso.

§ 113-152. Licenses to be kept about person of licensees.

Cited in *State v. Ellis*, 241 N. C. 702, 86 S. E. (2d) 272 (1955).

§ 113-154.1. **Fishing from bridges.**—Subject to other applicable provisions of laws and regulations relating to fishing, it shall be lawful for persons to fish with hook and line from the walkways, sidewalks or catwalks of any bridge in North Carolina which is under the supervision and control of the State Highway Commission, provided that such sidewalks are at least four feet wide or that such pedestrian walks are located outside the main guardrail of the bridge: Provided further, however, it shall be unlawful for any person to fish from the draw span of any bridge; provided further, that the provisions of this section shall not apply to the county of Carteret. (1959, c. 405.)

§ 113-155: Repealed by Session Laws 1955, c. 678.

§ 113-157. **Violation made misdemeanor; punishment.**

Cited in *State v. Ellis*, 241 N. C. 702, 86 S. E. (2d) 272 (1955).

ARTICLE 15.

Commercial Licenses and Regulations.

§§ 113-158, 113-159: Repealed by Session Laws 1953, c. 1134.

§§ 113-161 to 113-163: Repealed by Session Laws 1953, c. 1134.

§§ 113-165 to 113-168: Repealed by Session Laws 1953, c. 1134.

§§ 113-170 to 113-174: Repealed by Session Laws 1953, c. 1134.

ARTICLE 15A.

Licenses and Taxes on Commercial Fisheries.

§ 113-174.1. **Definitions.**—(1) The term "non-foodfish" means nonedible fish taken from the waters of this State for the purpose of manufacturing them into oil, fish scrap, manure, and other industrial products.

(2) The term "fin-fish" shall include all fish caught for purposes of eating which are not classified as crustaceans or shellfish.

(3) The term "shellfish" shall include oysters, clams, mussels, and escallops.

(4) The term "crustacean" shall include crabs, shrimp, and stone crabs.

(5) A "pound" is construed to apply to that part of the net which hold fish and from which fish are taken. (1953, c. 1134.)

§ 113-174.2. **Licenses to fish; issuance, terms and enforcement.**—

(a) Every person, firm or corporation, before engaging in any commercial fishing in the State, shall file with an inspector of the county in which he desires to fish, or with the Commissioner of Commercial Fisheries or any of his assistants, a sworn statement setting forth the number and kind of boats intended to be used in commercial fishing. Upon filing this sworn statement and after payment of fees and taxes prescribed by law for fishing different kinds of apparatus or for tonging or dredging shellfish in the waters of the State, the Commissioner shall issue to the applicant a license as prescribed by law.

(b) The Commissioner shall keep in a book especially prepared a record of all licenses which shall state to whom issued, the number and kinds of nets,

boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the Commissioner.

(c) The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars (\$25.00) for each and every offense.

(d) All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the boat or vessel the necessary license as furnished by the Commissioner. Any boat or vessel used in catching oysters without having complied with the provisions of this article may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings shall be paid into the school fund. (1953, c. 1134; 1955, c. 888, s. 1.)

Editor's Note.—The 1955 amendment rewrote the first sentence of subsection (a).

§ 113-174.3. License fees and tax on non-food fish boats, nets, and processing plants.—(a) All boats or vessels of any kind used in operating purse seines shall pay a license fee of \$1.50 per ton on gross tonnage, customhouse measurements, which fee shall be independent and separate from the seine or net tax on the seines or nets used on said boats or vessels. This license fee shall be for one year from January first of each year and shall not be issued at a proportionate reduction in amount for any period less than one year.

(b) All operators of boats or vessels of any kind used in operating purse seines shall apply for and obtain a license for each such purse seine and shall pay for the license an annual tax of ten dollars (\$10.00). This tax levied on a purse seine shall be in lieu of all other fees and taxes levied against seines or nets.

(c) Any person or firm engaged in the processing of non-food fish within the borders of the State shall pay an annual license tax to be collected by the Commissioner of Commercial Fisheries on each plant as follows: On fish scrap and oil extracting or separating plant, one hundred dollars (\$100.00); on dehydrating plant, fifty dollars (\$50.00) for each plant. (1953, c. 1134.)

§ 113-174.4: Repealed by Session Laws 1955, c. 888, s. 2.

§ 113-174.5. License tax on dealers and packers.—An annual license tax for the year beginning January first in each year, to be collected by the Commissioner of Commercial Fisheries, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below as follows: On oysters, as is provided in article 16A; scallops, five dollars (\$5.00); clams, five dollars (\$5.00); crabs, five dollars (\$5.00); fish, ten dollars (\$10.00); shrimp, ten dollars (\$10.00); provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp and who ship only the fish or shrimp caught in such licensed nets. An annual tax of five dollars (\$5.00) is imposed on individuals who sell oysters or clams in the shell other than to licensed dealers. (1953, c. 1134.)

§ 113-174.6. Purchase tax on dealers; schedule; collection.—All dealers in and all persons who purchase, catch, or take for canning, packing,

shucking or shipping the sea products enumerated below shall be liable to a tax to be collected by the Commissioner of Commercial Fisheries as follows: On oysters taken either from private or public beds, as authorized in article 16A, coon oysters, four cents (4¢) a bushel; escallops, five cents (5¢) a gallon; clams, six cents (6¢) a bushel; soft crabs, two cents (2¢) a dozen; hard crabs, ten cents (10¢) a barrel; shrimp, cooked or green, fifteen cents (15¢) per hundred pounds. (1953, c. 1134.)

§ 113-174.7. License tax on trawl boats, dredge boats, motor boats, and haul boats.—There is hereby levied annually upon each trawl boat, dredge boat, motor boat and haul boat using commercial fishing equipment a tax as follows:

(a) A tax of two dollars and fifty cents (\$2.50) each, on boats up to and including eighteen (18) feet in overall length.

(b) A tax of fifty cents (50¢) per foot of overall length on boats having an overall length in excess of eighteen (18) feet and up to and including twenty-six (26) feet.

(c) A tax of seventy-five cents (75¢) per foot of overall length on boats having an overall length in excess of twenty-six (26) feet. (1953, c. 1134; 1955, c. 888, s. 3.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 113-174.8. Residents may catch shellfish for own use.—Except as provided in § 113-174.7, no tax shall be levied or collected from bona fide residents or citizens of this State who take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00) or imprisoned not exceeding thirty (30) days. (1953, c. 1134; 1955, c. 888, s. 3½.)

Editor's Note.—The 1955 amendment added the exception clause at the beginning of the section.

ARTICLE 15B.

Commercial License Regulations.

§ 113-174.9. Printed regulations furnished dealers.—It is the duty of the Commissioner of Commercial Fisheries, upon issuing any license under the provisions of this subchapter to furnish with the license the printed regulations controlling the waters in which the applicant proposes to fish. (1953, c. 1134.)

Editor's Note.—The act inserting this article was made effective January 1, 1954.

§ 113-174.10. Dealers to keep and furnish statistics.—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, escallops, clams, shrimp, and fish taken from the public grounds or natural bed of the State, or the natural waters or streams of the State, shall keep a permanent record of all such products, showing the quantity of each product so purchased, packed, canned, or shipped. All such records shall be open at all times to the Commissioner, assistant commissioner, or anyone under the direction of the Commissioner. (1953, c. 1134.)

§ 113-174.11. Disturbing marks or property of Board prohibited.—(a) Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the Board in marking the restricted areas relating to any and all fishing, or marking other areas in which

oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or who shall injure or destroy any boat or other property of any kind used by the Board or any officer or employee thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court.

(b) Any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) and imprisoned thirty (30) days in jail, at the discretion of the court. (1953, c. 1134.)

§ 113-174.12. Explosives, drugs, and poisons prohibited; use of electrical device to take catfish in Cape Fear River.—It shall be unlawful to place in any of the waters of this State any dynamite, giant or electric power, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. Anyone violating this section shall, upon conviction, be fined not less than one hundred dollars (\$100.00) and imprisoned not less than thirty (30) days.

The Director of the Department of Conservation and Development and the Executive Director of the North Carolina Wildlife Resources Commission may issue permits for the taking of fish for scientific purposes by means of drugs from the waters under their respective jurisdictions. Such permits shall be issued only if the Director of the Department of Conservation and Development or the Executive Director of the North Carolina Wildlife Resources Commission, as the case may be, finds that the persons requesting the permits are qualified to handle the drugs and that the fish are to be used for proper scientific purposes. The permits shall set forth the conditions and limitations under which the drugs are to be used. Notwithstanding any other provisions of this section or of law, it shall be lawful for any person to whom such permit was issued to take fish by means of drugs in accordance with the conditions and limitations contained in the permit.

It shall not be unlawful to take catfish by the use of a hand-operated crank-type device generating a pulsating electrical current in the Cape Fear River between Lock and Dam No. 1 in Bladen County and the New Hanover County line: Provided that within six (6) months after June 5, 1957, a survey shall be conducted and a hearing held by the Commercial Fisheries Division of the Department of Conservation and Development with reference to the effect of this use of the electrical devices permitted by this paragraph upon other fish. If said Commercial Fisheries Division finds that fish other than catfish are being destroyed by the use of said electrical devices, said Commission shall have the authority to make such rules and regulations as it may deem necessary with reference to the further use of said electrical devices. (1953, c. 1134; 1955, c. 1053, s. 1; 1957, c. 1056.)

Editor's Note.—The 1955 amendment added the second paragraph. The 1957 amendment added the third paragraph.

§ 113-174.13. Possession of fish killed by explosives as evidence.—The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish by the person in possession thereof. (1953, c. 1134.)

§ 113-174.14. Discharge of deleterious matter into waters prohibited.—Except as provided in G. S. 113-174.12, it shall be unlawful to discharge or permit to be discharged into the waters of the State any deleterious or poisonous substance inimical to the fishes inhabiting the water; and any person or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by

general law or special act before the 4th day of March, 1915. (1953, c. 1134; 1955, c. 1053, s. 2.)

Editor's Note.—The 1955 amendment added the exception clause at the beginning of the section.

§ 113-174.15. **Operation of boats in violation of rules and laws forfeits boats and apparatus.**—If any person, firm, or corporation shall use or operate any boat or appliance of any kind, in violation of any rule of the Board, or any of the fish laws, it shall be the duty of the Commissioner of Commercial Fisheries to revoke any license issued and seize the boat and any apparatus or appliance so used or operated; but the Commissioner of Commercial Fisheries shall have authority to compromise by agreement with the owner of such boat or appliance for any such violation, and may return such boat or appliance so seized to the owner and reinstate license. (1953, c. 1134.)

§ 113-174.16. **Violations of fisheries law misdemeanor; license forfeited.**—Upon failure of any person, firm or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the Commissioner of Commercial Fisheries, and upon satisfactory settlement may be reinstated with the consent of the Commissioner of Commercial Fisheries. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor. (1953, c. 1134.)

ARTICLE 16.

Shellfish; General Laws.

§ 113-179. **Prerequisites for lease; application; deposit; survey; location.**

A deposit of twenty dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for. (1909, c. 871, ss. 3, 9; 1919, c. 333, s. 6; C. S., s. 1906; 1953, c. 842.)

Editor's Note.—The 1953 amendment substituted "twenty dollars" for "ten dollars" in the last sentence. As only this sentence was affected by the amendment the rest of the section is not set out.

§ 113-181. **Term and rental.**—All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre per year for the first ten years and one dollar per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years, of the lease. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; C. S., s. 1908; 1933, c. 346; 1953, c. 1139.)

Editor's Note.—

The 1953 amendment deleted the former next to last sentence which read: "This rental shall be in lieu of all other taxes and imposts whatever, and shall be con-

sidered as all and the only taxation which can be imposed by the State, counties, municipalities or other subordinate political bodies".

§ 113-200: Repealed by Session Laws 1959, c. 1301.

§ 113-210.1. **Weight limit for oyster dredges.**—If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the State by the use of oyster dredges weighing over one hundred pounds, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding \$50.00 or imprisoned not exceeding thirty days. (1953, c. 175, s. 1.)

ARTICLE 16A.

Development of Oyster and Other Bivalve Resources.

§ 113-216.2. **Powers of Board of Conservation and Development; oyster rehabilitation program.**

II. The Board of Conservation and Development is authorized and empowered to adopt rules and regulations to enforce the provisions of this article and to carry out its true purpose and intent, and in particular, dealing with and controlling the following subjects:

A. To limit the number of bushels of marketable oysters which may be taken from public beds in any one day and the number, weight, and size of dredges not inconsistent with G. S. 113-210.1, but no one boat may take more than seventy-five (75) bushels in one day.

B. To close any or all portions of the public oyster beds when it is determined that such action will be beneficial to the shellfish industry or for the protection and propagation of oysters or because of prevailing marketing conditions.

C. To levy licenses, taxes, and fees not in excess of the following:

1. A tax not exceeding eight cents (8¢) per bushel on oysters taken from public beds and a tax of eight cents (8¢) per bushel on seed oysters taken from public beds under such rules and regulations as adopted by the Board of Conservation and Development.

3. A license of twenty-five dollars (\$25.00) on each packer, shucker, and canner, and to require the contribution of not more than fifty per cent (50%) of their oyster shells accumulated annually for planting on public beds.

D. To require persons dredging oysters from public beds to obtain a license and to deny the issuance of licenses to nonresidents, or to boats owned by nonresidents, or on which a lien is held by a nonresident.

E. To regulate, control, or prohibit the importation of new species of mollusks such as the Pacific oyster, *Ostrea gigas*.

F. To regulate, control, or prohibit the shipment of oysters in the shell out of the State of North Carolina and the sale of the oysters in the shell for shipment out of the State. If the Board permits the sale of such oysters to nonresidents or for the purpose of shipment out of the State the purchasers shall pay a tax of fifty cents (50¢) per bushel in addition to any other tax or fee levied. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; 1953, c. 1153, ss. 1, 2.)

Editor's Note.—The first 1953 amendment inserted the words "not inconsistent with G. S. 113-210.1" in paragraph A of subdivision II. And the second 1953 amendment, effective January 1, 1954, changed paragraph C of subdivision II by adding the part of subparagraph 1 beginning with the word "taken" in line one.

It also directed the striking out of subparagraph 2, which read: An annual license of fifteen dollars (\$15.00) on each oyster dredge boat.

As subdivision I of the section was not affected by the amendments, only subdivision II is set out.

ARTICLE 18.

Propagation of Oysters.

§ 113-222. **Purchase of material; pay for work; contracts.** — The said Board may purchase the necessary shells, "coon oysters," "seed oysters," or other propagating materials, and may cause same to be distributed in a designated territory or territories, and the said Board may provide proper compensation for any work or labor connected with the procuring of said materials, or the planting or distributing of said materials; or the said Board may let out by private contract any part of the said procuring or distributing materials, or both. (1921, c. 132, s. 3; C. S., s. 1959(c); 1953, c. 1146.)

Editor's Note.—The 1953 amendment struck out the former provision limiting the cost of planting propagating materials to ten cents a bushel.

ARTICLE 21.

Commercial Fin Fishing; General Regulations.

§ 113-244. **Poisoning streams.**—Except as provided in G. S. 113-174.12, if any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968; 1955, c. 1053, s. 3.)

Editor's Note.—The 1955 amendment added the exception clause at the beginning of the section.

§ 113-245. **Putting explosives in waters forbidden.**—Except as provided in G. S. 113-174.12, no person, firm or corporation shall put or place in any waters within or on the boundaries of this State any electricity, explosives or poisonous substances whatsoever for the purpose of catching, injuring or killing fish. Except as provided in G. S. 113-174.12, no person, firm or corporation shall allow substances, poisonous to fish to be turned into or allowed to run, flow, wash or be emptied into any waters within this Commonwealth, designated by the Board as fish producing waters, unless it be shown to the satisfaction of the Board or to the proper court that every reasonable and practicable means has been used to abate and prevent the pollution of waters in question by emptying into same any deleterious or poisonous substances: Provided this section shall not apply to dyestuffs or sewage discharged from cotton mills.

(1955, c. 1053, s. 4.)

Editor's Note.—The 1955 amendment added the exception clauses at the beginning of the sentences of the first paragraph. As the rest of the section was not changed, only the first paragraph is set out.

§ 113-247. **Sunday fishing.**—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not more than fifty dollars; provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters or to the canals draining Lake Phelps in Washington and Tyrrell counties and the waters of Tar River in Pitt County, and to the waters of Tar River in Edgecombe County, as provided for by regulations of the Wildlife Resources Commission permitting the use of nets for taking non-game fish; provided, further, that this section shall not apply to the taking of rockfish and any other non-game fish with skim and dip nets used in accordance with regulations of the Wildlife Resources Commission on that portion of the Roanoke River between the highway bridge on U. S. Highway No. 301 at Weldon and the highway bridge on

U. S. Highway No. 258 north of Scotland Neck. The provisions of this section shall not apply to Craven, Gaston, and Mecklenburg counties, nor to portions of streams adjoining said counties. (1883, c. 338; Code, s. 1116; Rev., s. 3841; C. S., s. 1970; 1933, c. 438; 1951, c. 1045, s. 1; 1955, c. 706; 1959, c. 274, ss. 1, 2; c. 291.)

Editor's Note.—The 1955 amendment added the part of the first proviso beginning with "or to the canals" in line six.

The first 1959 amendment changed the punishment provision, which formerly read "fined not less than two hundred nor

more than five hundred dollars or imprisoned not more than twelve months." It also added the second sentence. The second 1959 amendment added the second proviso to the first sentence.

ARTICLE 23.

Propagation of Fish.

§ 113-257. **Erection of dams, ponds, etc.**—No dams, ponds, or other devices which will prevent the free migration of fish shall be erected or placed by a person licensed under this article, in any stream, flowing over his property. No person shall use the ponds so licensed for any purpose other than for commercial fish purposes. Provided that bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time, shall be known and designated as private ponds. The Wildlife Resources Commission is hereby authorized to issue permits to such owners of such private ponds to take from such private ponds game fish and sell the same for propagation purposes only. Nothing in this section shall be construed to authorize the sale of such game fish for any purpose other than propagation purposes: Provided that the North Carolina Wildlife Resources Commission is hereby authorized by appropriate rules and regulations to license the operation of commercial trout fishing ponds and to revoke such licenses for cause. "Commercial trout fishing pond" is defined as an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied from such stream by the diversion and storage of water through screened and regulated supply lines, which pond shall be stocked exclusively with hatchery-reared mountain trout obtained from a privately-owned hatchery for the purpose of commercial angling. For each calendar year or part thereof which any licensee operates, said licensee shall pay to the Wildlife Resources Commission an annual license fee of twenty-five dollars (\$25.00) for each pond, and such annual license shall be issued only upon the payment of said twenty-five dollars (\$25.00). (1929, c. 198, s. 3; 1953, c. 794; 1959, c. 988.)

Editor's Note.—The 1953 amendment added the first proviso and the two following sentences.

The 1959 amendment added the second proviso and the last two sentences.

ARTICLE 26.

Marine Fisheries Compact and Commission.

§ 113-377.6. **Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor.**—The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the State of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the stat-

utes of the State of North Carolina which may be necessary to carry out the intent and purposes of the Compact between the signatory states.

The Auditor of the State of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as such Auditor may deem proper and to report the results of such examination to the Governor of such State. (1949, c. 1086, s. 6; 1955, c. 236, s. 2.)

Editor's Note.—The 1955 amendment substituted "Auditor" for "Comptroller" in the second paragraph.

§ 113-377.7. Commission subject to provisions of Executive Budget Act.—The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the Executive Budget Act, article 1 of chapter 143 of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1.)

Editor's Note.—The 1955 amendment rewrote this section.

SUBCHAPTER VI. WELL DRILLING.

ARTICLE 28.

Drillers Using Power Machinery.

§§ 113-415 to 113-419: Repealed by Session Laws 1959, c. 779, s. 3.

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

- Sec.
 114-4.1. Assistant attorney general assigned to Department of Revenue and Department of Motor Vehicles.
 114-4.2. Assistant attorney general and staff assigned to State Highway Commission and Director of Highways.
 114-4.3. Additional assistant attorney general.

Article 3.

Division of Criminal Statistics.

- Sec.
 114-10. Division of Criminal Statistics.
 114-11.1. Statistical data to be furnished to the Chief Justice.

Article 4.

State Bureau of Investigation.

- 114-14.1. Transfer of personnel.

ARTICLE 1.

Attorney General.

§ 114-2. Duties.

Directives as to Legal Duties of Constitutional Officers.—The Attorney General has no constitutional authority to issue a directive to any other constitutional officer concerning his legal duties. *State v. Loesch*, 237 N. C. 611, 75 S. E. (2d) 654 (1953).

Advisory Duty as to Solicitors.—The duty of the Attorney General as to the

solicitors of the State is purely advisory. *State v. Loesch*, 237 N. C. 611, 75 S. E. (2d) 654 (1953).

The responsibility for interpreting a tax statute is placed on the Commissioner of Revenue by § 105-264, and the Attorney General's opinion in regard thereto is advisory only, by virtue of N. C. Const., art. 3, § 14, and this section. *In re Vir-*

ginia-Carolina Chemical Corp., 248 N. C. 531, 103 S. E. (2d) 823 (1958).

ment of Colored People v. Eure, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

Quoted in National Ass'n for Advance-

§ 114-4.1. **Assistant attorney general assigned to Department of Revenue and Department of Motor Vehicles.**—The Attorney General is authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned to the Department of Revenue and the Department of Motor Vehicles, and such assistant attorney general shall also perform such additional duties as may be assigned to him by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. (1955, c. 56.)

§ 114-4.2. **Assistant attorney general and staff assigned to State Highway Commission and Director of Highways.**—The Attorney General is authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned, together with an adequate number of staff attorneys, to the State Highway Commission and the Director of Highways, and such assistant attorney general and staff attorneys shall also perform such additional duties as may be assigned to them by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general and staff members. There shall be appropriated to the State Highway Commission or Department from the State Highway Fund such sum as may be necessary to pay the salaries of said assistant attorney general, other members of the legal staff herein provided for, and necessary secretaries. The State Highway Commission shall provide adequate office equipment and supplies. (1957, c. 65, s. 9.)

§ 114-4.3. **Additional assistant attorney general.** — The Attorney General is authorized to appoint an assistant attorney general in addition to those now provided by law, who shall be subject to the general provisions of the statutes relating to assistant attorneys general. (1959, c. 1265.)

§ 114-6. **Duties of Attorney General as to civil litigation.**

Quoted in National Ass'n for Advancement of Colored People v. Eure, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

§ 114-7. **Salary of Attorney General.**—The Attorney General shall receive an annual salary of thirteen thousand five hundred dollars (\$13,500.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the salary to the present amount from the time that the Attorney General took the oath of office and began serving the term for which he was elected in 1952.

The 1957 amendment increased the salary from \$12,080.00 to \$13,500.00 from the time the Attorney General took the oath of office and began serving the term for which he was elected in 1956.

ARTICLE 2.

Division of Legislative Drafting and Codification of Statutes.

§ 114-9.1. **Revisor of Statutes.**—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (c) shall be known as the Revisor of Statutes and shall receive a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1947, c. 114, s. 1; 1957, c. 541, s. 10.)

Editor's Note. — Prior to the 1957 amendment the salary was fixed by the Governor "with the approval of the Council of State."

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. **Division of Criminal Statistics.**—The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(a) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(b) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(c) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(d) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2.)

Editor's Note.—The 1955 amendment sections (c), (d) and (e) as (b), (c) and deleted references to civil statistics, omitted (d).
former subsection (b) and relettered sub-

§ 114-11.1. **Statistical data to be furnished to the Chief Justice.**—The clerks of the superior court shall furnish to the Chief Justice all such statistical data with respect to civil and criminal litigation in the superior courts as may be required by the Chief Justice, such data to be furnished on forms provided by the Chief Justice for this purpose and at such times as he shall require the same. Any clerk of superior court in the State of North Carolina who shall wilfully fail or refuse to furnish such statistical data, after demand has been made therefor by the Chief Justice, shall be subject to be amerced, upon motion of the Chief Justice, in the sum of two hundred fifty dollars (\$250.00), in the superior court of the county in which such clerk resides, such amercement to inure to the benefit of the school fund of said county. (1955, c. 1257, s. 3; 1959, c. 297.)

Editor's Note. — Prior to the 1959 amendment this section referred only to statistical data as to civil litigation.

ARTICLE 4.

State Bureau of Investigation.

§ 114-13. **Director of the Bureau; personnel.**—The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Budget Bureau under § 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Budget Bureau under § 143-36 et seq. The salaries of clerical and stenographic

help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of G. S. 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles, such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1.)

Editor's Note.—The 1955 amendment added the second paragraph of this section.

§ 114-14.1. Transfer of personnel.—The Director of the State Bureau of Investigation shall have authority to transfer members of the Bureau from one locality in the State to another as he may deem necessary. When any member of the State Bureau of Investigation is transferred from one point to another for the convenience of the State, or otherwise than upon the request of the employee, the Bureau shall be responsible for transporting the household goods, furniture, and personal effects of the employee and members of his household. (1955, c. 1185, s. 2.)

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new bureau; photographing and fingerprinting records.

Editor's Note.—By Session Laws 1953, c. 55, the name of the Bureau of Identification having its principal offices at the

State prison was changed to "Consolidated Records Section — Prison Department." See §§ 148-74 to 148-81.

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SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

State Plan for Public Education.

§ 115-1. **General and uniform system of schools.**—A general and uniform system of public schools shall be provided throughout the State, in accordance with the provisions of article IX of the Constitution of North Carolina, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years, and to every person twenty-one years of age, or over, who has not completed a standard high school course of study, or who desires to study the vocational subjects taught in such school. The minimum six months school term required by article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and city administrative unit a uniform school term of nine months without the levy of a State ad valorem tax therefor, and in order that substantial equality of educational opportunity may be available to all children of the State. (1955, c. 1372, art. 1, s. 1.)

Editor's Note.—Chapter 1372 of the 1955 Session Laws rewrote all the provisions of this chapter of the General Statutes as contained in Volume 3A and the 1953 Supplement, after deleting certain obsolete sections. A number of other 1955 acts relate to this chapter and have been incorporated herein. These acts are

chapters 366, 664, 817, 1231, 1256, 1292, 1335 and 1374. Chapter 1372 provides that it shall not be construed to repeal any local or special acts relating to the public schools.

Cited in *State v. Lenoir*, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 115-2. Administration of system vested in State Board of Education.—The general supervision and administration of the free public school system shall be vested in the State Board of Education, to consist of the Lieutenant Governor, the State Treasurer, the State Superintendent of Public Instruction, and ten (10) members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. All appointive members of the State Board of Education shall serve for a term of eight years and in four classes, as provided in the Constitution. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The Governor shall transmit to the presiding officers of the Senate and House of Representatives, on or before the 60th legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; and thereafter, pursuant to joint resolution, the Senate and House of Representatives shall meet in joint session for consideration of an action upon such appointments.

The provisions of this article shall not affect the terms of office of the members of the State Board of Education as now constituted.

The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be the secretary of the Board. (1955, c. 1372, art. 1, s. 2.)

Cited in *Jeffers v. Whitley*, 165 F. Supp.

951 (1958).

§ 115-3. Educational districts.—The State of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:

First District

Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

Second District

Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.

Third District

Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.

Fourth District

Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.

Fifth District

Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.

Sixth District

Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.

Seventh District

Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.

Eighth District

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (1955, c. 1372, art. 1, s. 3.)

§ 115-4. Administrative units classified.—Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way. (1955, c. 1372, art. 1, s. 4.)

Cross Reference.—See note to § 115-126.

Suit against Administrative School Unit.

—A city administrative school unit may be sued only when and as authorized by statute. *Smith v. Hefner*, 235 N. C. 1, 68

S. E. (2d) 783 (1952).

An administrative school unit may not be held liable for torts committed by its trustees or employees. *Smith v. Hefner*, 235 N. C. 1, 68 S. E. (2d) 783 (1952).

§ 115-5. School system defined.—The school system of each county and city administrative unit shall consist of twelve years of study or grades, and shall be graded on the basis of a school year of not less than nine months. The system may be organized in one of two ways as follows: The first eight grades shall be styled the elementary school and the remaining four grades, the high school; or if more practicable, a junior high school may be formed by combining the first year of high school with both the seventh and eighth grades or with the eighth grade alone, and a senior high school which shall comprise the last three years of high school work. For purposes of Title V of the National Defense Education Act of 1958 (Public Law 85-864) the term "secondary school" shall be applicable to grades seven through twelve. (1955, c. 1372, art. 1, s. 5; 1959, c. 573, s. 1.)

Editor's Note. — The 1959 amendment added the last sentence.

§ 115-6. Schools classified and defined.—The different types of public schools are classified and defined as follows:

1. An elementary school, that is, a school which embraces a part or all of the eight elementary grades.

2. A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education.

3. A union school, that is, a school which embraces both elementary and high school grades.

4. A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.

5. A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades.

6. A vocational school known and designated as an industrial education center conducted for adults as well as mature or select high school students. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1.)

Editor's Note. — The 1959 amendment added subdivision 6.

§ 115-7. **Term "district" defined.**—The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be two different kinds of districts:

1. The nontax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education, but having no special local tax fund voted by the people for supplementing State and county funds.

2. The local tax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education but having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds. (1955, c. 1372, art. 1, s. 7.)

Equivalent of Township. — *Brown v. Candler*, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

§ 115-8. **Officials defined.** — The governing board of a county administrative unit is "the.....county board of education." The governing board of a city administrative unit is "the.....city board of education." The governing board of the school district is "thedistrict committee." The executive officer of either a county or city administrative unit shall be called "superintendent." The executive head of a district or school shall be called "principal." (1955, c. 1372, art. 1, s. 8.)

§ 115-9. **Tax levying authorities defined.**—As used in this chapter, the term "tax levying authorities" shall mean the board of county commissioners in all cases except where the boundaries of a city administrative unit shall be coterminous with or situate wholly within the boundaries of an incorporated city or town, in which case the term "tax levying authorities" shall mean the governing body of such city or town; provided, the municipal governing body may, by appropriate resolution, transfer this authority to the board of county commissioners with the approval of the board of county commissioners. (1955, c. 1372, art. 1, s. 9.)

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-10. **Organization of Board.** — 1. **Presiding Officer.**—The State Board of Education shall elect from its membership a chairman and vice chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice chairman shall preside; in the absence of both the chairman and the vice chairman, the Board shall name one of its own members as chairman pro tempore.

2. **Regular Meetings of Board.**—The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

3. **Special Meetings.**—Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman; provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and

special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

4. Voting.—No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion. The secretary as a Board member is entitled to vote on all matters before the Board.

5. Voting on Adoption of Textbooks.—A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

6. Committees.—The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall appoint members to the several committees, and the secretary shall be an ex officio member of each committee so created and named.

7. Record of Proceedings.—All the proceedings of the Board shall be recorded in a well bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19.)

Editor's Note. — The 1959 amendment rewrote the first sentence of subsection 3.

§ 115-11. Powers and duties generally.—The powers and duties of the State Board of Education are defined as follows: 1. General Supervision and Administration.—The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in section five of article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

2. Successors to Powers of President of Literary Fund and to Boards or Commissions.—The Board shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina; and to all the powers, functions, duties, and property of all abolished commissions and boards including the State School Commission, the State Textbook Commission, the State Board for Vocational Education, and the State Board of Commercial Education, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State.

3. Power to Divide the Administrative Units into Districts.—The Board shall have power to create in any county administrative units a convenient number of school districts, upon the recommendation of the county board of education. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The Board may modify the district organization in any administrative unit when it is deemed necessary for the economical and efficient administration and operation of the State school system, when requested to do so by the appropriate county or city board of education.

4. Divisions of Functions of Board.—The Board shall divide its duties into two separate functions, insofar as may be practicable, as follows:

a. All those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board, shall be under the direction of the State Superintendent in his capacity as the constitutional administrative head of the public school system.

b. All those matters relating to the supervision and administration of the fiscal affairs of the public school fund committed to the administration of the State Board of Education shall be under the supervision and management of the controller.

5. Appointment of Controller.—The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board. The salary of the controller shall be fixed by the Governor subject to the approval of the Advisory Budget Commission and shall be paid from Board appropriations.

6. Apportionment of Funds.—The Board shall have authority to apportion and equalize over the State all State school funds.

7. Investments.—The Board is authorized to direct the State Treasurer to invest in interest bearing securities any funds which may come into its possession, and which it deems expedient to invest, as other funds of the State are now or may be hereafter invested.

8. Acceptance of Federal Funds and Aid.—The Board is authorized to accept for the schools of the State any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.

9. Power to Purchase at Mortgage Sales; Payment of Drainage Assessments.—The State Board of Education is authorized to purchase at public sale any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district theretofore constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual.

10. Power to Adjust Debts for Purchase Price of Lands Sold; Sale of Mortgages, etc.—The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds, or other evidence of indebtedness without payment, when, in the discretion of said Board, it appears that it is proper to do so. The Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness.

11. Power to Establish City Administrative Units. — The Board shall have power, in its discretion, to alter the boundaries of any city administrative unit, to establish additional city administrative units when, in its opinion, such change is desirable for better educational advantages or better school administration: Provided, that such change in administration shall not have the effect of abolishing any special taxes that may have been voted in such unit.

12. Power to Allot Special Teaching Personnel and Funds for Clerical Assistants to Principals.—The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher load from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to county and city administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered, in its discretion, to make allotments of funds for clerical assistants for classified principals and for attendance officers.

13. Power to Make Provisions for Sick Leave.—The Board is authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not to exceed five days per school term and promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each administrative unit not exceeding one per cent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.

14. Miscellaneous Powers and Duties.—All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt a standard course of study upon recommendation of the State Superintendent of Public Instruction.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To regulate the conferring of degrees and to license educational institutions.

f. To report to the General Assembly on the operation of the State Literary Fund.

g. To approve the establishment of schools for adult education under the direction and supervision of the State Superintendent of Public Instruction.

h. To manage and operate a system of insurance for public school property. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11.)

Editor's Note.—The 1957 amendment struck out the words "Board, subject to the approval of the Director of the Budget" in paragraph numbered "5", and substituted in lieu thereof the words "Governor subject to the approval of the Advisory Budget Commission."
Cited in *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-12. **Administrative head of public school system.**—The State Superintendent of Public Instruction, as administrative head of the public school system, shall perform the duties prescribed by law and he shall be secretary of the State Board of Education. (1955, c. 1372, art. 3, s. 1.)

Cited in *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

§ 115-13. **Office and salary.**—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars (\$10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of thirteen thousand five hundred dollars (\$13,500.00): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the General Fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374.)

§ 115-14. **Administrative duties.**—It shall be the duty of the State Superintendent of Public Instruction:

1. To organize and establish a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system.

2. To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.

3. To report biennially to the Governor thirty days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.

4. To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction. (1955, c. 1372, art. 3, s. 3.)

§ 115-15. Duties as secretary to State Board of Education. — As secretary, under the direction of the Board, it shall be the duty of the State Superintendent of Public Instruction:

1. To administer through the Department of Public Instruction the instructional policies established by the Board.

2. To keep the Board informed regarding developments in the field of public education.

3. To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

4. To make available to the public schools a continuous program of comprehensive supervisory services.

5. To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

6. To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

7. To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

8. To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board and the controller a copy of said minutes.

9. To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 3, s. 4.)

ARTICLE 4.

Powers and Duties of Controller.

§ 115-16. Controller to be administrator of fiscal affairs. — 1. Executive Administrator.—The controller is constituted the executive administrator of the Board in the supervision and management of the fiscal affairs of the Board. In this capacity it shall be his duty, under the direction of the Board, to administer the funds provided for the operation of the schools of the State for one hundred eighty days on such standards as may be determined by the Board and always within the total funds appropriated therefor.

2. Fiscal Affairs of Board Defined.—All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the State Board of Education, are included within the meaning of the term “fiscal affairs of the Board” and, under the direction of the Board, shall be supervised and managed by the controller. The fiscal affairs of the Board shall also include:

- a. The preparation and administration of the State school budget, including all funds appropriated for the maintenance of the nine months’ public school term.
- b. The allotment of teachers.
- c. The protection of State funds by appropriate bonds.
- d. Workmen’s compensation as applicable to school employees.
- e. Sick leave.
- f. And all fiscal matters embraced in the objects of expenditure referred to in section IX, “Public Schools”, in the act entitled “An Act to Make Appropriations for the Maintenance of the State’s Departments, Bureaus, Institutions, and Agencies, and for Other Purposes”, including therein:
 1. Support of nine months’ term.
 2. State Board of Education.
 3. Vocational education.
 4. Purchase of free textbooks.
 5. Vocational textile training school.
 6. Administration of the State School Plant Construction Improvement and Repair Fund.
- g. The administration of such federal funds as may be made available by acts of Congress for the use of public schools.
- h. Administration of all State funds derived from the sale and rental of textbooks in the public schools.
- i. The operation of plant, and other auxiliary agencies under the administration of the Board.
- j. Administration of the Public School Insurance Fund. (1955, c. 1372, art. 4, s. 1.)

§ 115-17. Duties of controller defined.—The controller, under the direction of the Board, shall perform the following duties:

1. He shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:
 - a. State appropriation for maintenance of the nine months’ public school term, which shall include all the objects of expenditure enumerated in G. S. 115-79.
 - b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.
 - c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans, or grants, to county boards of education for school building purposes.
 - d. State and federal funds for vocational education and other funds as may be provided by act of Congress for assistance to the educational program.
 - e. Vocational rehabilitation funds.
 - f. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.
 - g. Any miscellaneous funds within the jurisdiction of the Board not included in the above.
2. He shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each administrative unit.
3. He shall certify to each administrative unit the teacher allotment as determined by the Board under G. S. 115-59. The superintendents of the administrative units shall then certify to the State Superintendent the names of the persons

employed as teachers and principals by districts. The State Superintendent shall then determine the certificate ratings of the teachers and principals, shall certify such ratings to the controller, who shall then determine in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each county and city administrative unit for teachers and principals to be included in the State budget for the current fiscal year.

4. He shall satisfy himself before issuing any requisition upon the Budget Bureau for payment out of the State treasury of any funds placed to the credit of any administrative unit, under the provisions of G. S. 115-84:

a. That funds are lawfully available for the payment of such requisition; and

b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

5. He shall procure, through the Division of Purchase and Contract, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units, covering the items of janitor's supplies, instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.

6. He shall purchase from the various publishers the textbooks needed and required in the public schools in accordance with contracts made by the State Board of Education.

7. He shall, in cooperation with the State Auditor, have jurisdiction in the auditing of all school funds, under the provisions of G. S. 115-97, and also in the auditing of all other funds which by law are committed to the administration of the Board.

8. He shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.

9. He shall employ all necessary employees who work under his direction in the administration of the fiscal affairs of the Board.

10. He shall report directly to the Board upon all matters coming within his supervision and management.

11. He shall furnish to the State Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties.

12. He shall perform such other duties as may be assigned to him by the Board from time to time. (1955, c. 1372, art. 4, s. 2.)

ARTICLE 5.

County and City Boards of Education.

§ 115-18. How constituted. — The county board of education in each county shall consist of the number of members which have been or may be appointed by the General Assembly in its biennial act or acts appointing members of boards of education. The term of office shall be for two years, except as may be otherwise provided in the said act or acts; provided that this section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, s. 1.)

Local Modification.—McDowell: 1957, c. 144; Orange: 1959, c. 176.

A member of the county board of education holds a public office under the State and is thus subject to the prohibition against double office holding contained in

Art. XIV, § 7, N. C. Const. *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952).

Under sec. 7, Art. XIV, of the Constitution, one person cannot hold the office of county commissioner and also be a

member of the county board of education. State v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

Cited in Walker v. Moss, 246 N. C. 196, 97 S. E. (2d) 836 (1957); Jeffers v. Whiteley, 165 F. Supp. 951 (1958).

§ 115-19. **How nominated and elected.**—Nominations for membership on county boards of education shall be made biennially at party primaries or conventions at the same time and in the same manner as that in which other county officers are nominated. At such primaries or conventions each political party shall nominate members of county boards of education to take the place of the members of such boards whose terms next expire. The names of the persons so nominated in each county shall be duly certified by the chairman of the county board of elections within ten days after their nomination is declared to the State Superintendent of Public Instruction, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education of the House of Representatives in the next regular session of the General Assembly within ten days after it convenes. The General Assembly shall elect or appoint one or more, from the candidates so nominated, members of the county board of education for such county. Upon failure of the General Assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the State Board of Education. The term of office of each member shall begin on the first Monday in April of the year in which he is elected, and shall continue until his successor is elected and qualified. This section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, s. 2.)

Local Modification.—Buncombe: 1953, c. 632; Durham: 1957, c. 429; Graham: 1959, c. 85; Haywood: 1953, c. 1259; Iredell: 1957, c. 951; Jackson: 1959, c. 78; Lee: 1953, c. 705; Surry: 1953, c. 780, s. 4; Washington: 1953, c. 493.

Editor's Note.—Session Laws 1959, c. 436 provides that notwithstanding any public-local or local act to the contrary,

the members of the board of education of Polk County shall be nominated and elected as prescribed by this section.

As to former statute, see State v. Fortner, 236 N. C. 236, 72 S. E. (2d) 594 (1952).

Cited in Walker v. Moss, 246 N. C. 196, 97 S. E. (2d) 836 (1957).

§ 115-20. **County board of elections to provide for nominations.**—The county board of elections, under the direction of the State Board of Elections, shall make all necessary provisions for such nominations as are herein provided for. (1955, c. 1372, art. 5, s. 3.)

§ 115-21. **City board of education, how constituted; how to employ principals, teachers, janitors and maids.**—The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within thirty days, the State Board of Education may fill such vacancy or vacancies.

In the city administrative units, principals and teachers shall be elected and janitors and maids appointed by the board of education of such administrative unit upon the recommendation of the superintendent of city schools. (1955, c. 1372, art. 5, s. 4.)

§ 115-22. **Members to qualify.**—Those persons who shall be elected or appointed members of the county board of education by the General Assembly, and those persons elected or appointed members of the city board of education, must qualify by taking the oath of office on or before the first Monday in April next succeeding their election or appointment. A failure to qualify within that time shall constitute a vacancy: Provided, that in the event that the General As-

sembly shall fail to elect members of the board of education by the first Monday in April, members shall qualify as soon as practicable after they are elected. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification thereof. A failure to qualify within that time shall constitute a vacancy. This section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, s. 5.)

Effect of Failure to Qualify on Day Prescribed.—A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, and where the members of the board appointed by the General Assembly failed to take the oath of office on the date prescribed by statute, but took oath on the next succeeding day, their failure to qualify on the day prescribed did not impair the existence of the corporate body, and where they had dis-

charged the statutory duties imposed upon them, and no vacancy had been declared by the State Board of Education, and no proceedings in the nature of quo warranto had been instituted to determine their right to office, the acts of the appointees as members of the board could not be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its statutory duties. *Crabtree v. Board of Education*, 199 N. C. 645, 155 S. E. 550 (1930).

§ 115-23. Vacancies in nominations for membership on county boards.—If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the General Assembly of the members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate. (1955, c. 1372, art. 5, s. 6.)

§ 115-24. Vacancies in office.—All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise, shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the General Assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the General Assembly in such cases shall have occurred before the primary or convention held in such county, then in that event nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or conventions of such county. All such vacancies that are not filled by the county executive committee under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the State Board of Education. This section shall not have the effect of repealing any local or special act relating to the board of education of any county. (1955, c. 1372, art. 5, s. 7.)

Purpose of Section.—The county board of education becomes incapable of performing its corporate functions whenever vacancies reduce its membership below the number required to constitute a quorum. In order to obviate the legal paralysis incident to such an eventuality and to maintain the county board of education at its full membership, the legislature has expressly authorized by this section county executive committees of political parties and the State Board of Education to fill vacancies occurring in the membership of the board. *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952).

Unexpired Term Divided into Two Parts.—When this section is reduced to simple terms, it specifies that whenever a vacancy occurs in the membership of a county board of education, the resulting unexpired term is divided into two parts; that the first part begins as soon as the vacancy occurs and continues until the meeting of the next regular session of the General Assembly, and the second part embraces all of the unexpired term thereafter remaining; that the power to fill the vacancy for the first part of the unexpired term resides in the county executive committee of the political party of the former member whose office is vacant during the

thirty days next succeeding the occurrence of the vacancy, but passes to and vests in the State Board of Education in case the appropriate county executive committee does not fill the vacancy for the first part of the unexpired term within the thirty days specified; and that the power to fill the vacancy for the second part of the unexpired term belongs to the General Assembly exclusively. *State v. Fortner*, 236 N. C. 264, 72 S. E. (2d) 594 (1952).

The second sentence of this section does not undertake to compel the county execu-

tive committee or the State Board of Education to fill vacancies in the membership of the county board of education for the first part of the unexpired term from the candidates nominated by the party primaries or conventions of the county. According to its express wording, this sentence applies only to vacancies "to be filled by the General Assembly," i. e., vacancies for the second parts of unexpired terms. *State v. Fortner*, 236 N. C. 264, 72 S. E. (2d) 594 (1952).

§ 115-25. Eligibility for board membership.—No one shall be eligible to serve as a member of a county or city board of education who is not known to be a person of intelligence, good moral character, good business qualifications, and known to be in favor of public education. No person while actually engaged in teaching in the public schools, or serving as an employee of the schools, or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, no member of a district committee, and no person prohibited by article XIV, section seven, of the Constitution, shall be eligible as a member of a county or city board of education. (1955, c. 1372, art. 5, s. 8.)

§ 115-26. Organization of board. — At the first meeting of the new county board in April, the members of all such boards as shall have been appointed by the retiring General Assembly shall organize by electing one of their members as chairman for a period of one year, or until his successor is elected and qualified. The chairman of the county board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of their members temporary chairman. The superintendent of schools, whether a county or city superintendent, shall be ex officio secretary to his respective board. He shall keep the minutes of the meetings of the board but shall have no vote: Provided, that in the event of a vacancy in the superintendency, the board may elect one of its members to serve temporarily as secretary to the board. (1955, c. 1372, art. 5, s. 9.)

Local Modification. — Moore: 1959, c. 977, s. 1.

§ 115-27. Board a body corporate. — The board of education of each county in the State shall be a body corporate by the name and style of "TheCounty Board of Education", and the board of education of each city administrative school unit in the State shall be a body corporate by the name and style of "The.....City Board of Education". The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January first, one thousand nine hundred, or who became bodies corporate by special act of the General Assembly but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January first, one thousand nine hundred, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education or the city board of education of a city administrative unit wherein same are located, the clerk of the superior court of the county where-

in such property or such land or lands are located shall convey said property or land or lands to the board of education of the administrative unit in which the land or lands are located.

County and city boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units; they shall execute the school laws in their units; and shall have authority to make agreements with other boards of education to transfer pupils from one administrative unit to another unit when the administration of the schools can be thereby more efficiently and more economically accomplished. (1955, c. 1372, art. 5, s. 10.)

Board Has Legal Existence Apart from Members.—Since the county board of education is a corporate body, it necessarily has a legal existence separate and apart from its members. *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952); *McLaughlin v. Beasley*, 250 N. C. 221, 108 S. E. (2d) 226 (1959).

Actions against Board.—A county school board under the provisions of this section is a body corporate, and while it may sue and be sued in its corporate name, this fact, standing alone, is not determinative as to what actions may be maintained against it. *Eller v. Board of Education*, 242 N. C. 584, 89 S. E. (2d) 144 (1955).

A county school board of education has immunity from liability for torts of its members or agents except such liability as may be established under our Tort Claims

Act, § 143-291 et seq. *Eller v. Board of Education*, 242 N. C. 584, 89 S. E. (2d) 144 (1955).

An adjoining property owner was entitled to maintain an action against county school board for recovery of compensation for an alleged taking of plaintiff's land arising out of the construction and operation of a sewage disposal device by the school board which allegedly rendered plaintiff's spring unfit for use and his dwelling unfit for habitation, since complaint did not allege or attempt to allege a cause of action in tort. *Eller v. Board of Education*, 242 N. C. 584, 89 S. E. (2d) 144 (1955).

An action may be maintained against a county board of education on a teacher's contract. *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

§ 115-28. Meetings of the board.—All county and city boards of education shall meet on the first Monday in January, April, July, and October of each year, or as soon thereafter as practicable. A board may elect to hold regular monthly meetings, and to meet in special session upon the call of the chairman or of the secretary as often as the school business of the administrative unit may require. (1955, c. 1372, art. 5, s. 11.)

A county board of education has no authority to transact business except at a regular or special meeting, and statements or promises made by the individual members thereof have no binding effect on the board unless it expressly authorized them. *Kistler v. Randolph County Board of Ed.*, 233 N. C. 400, 64 S. E. (2d) 403 (1951).

Attended by a Quorum.—A county board of education can exercise its power only in a regular or special meeting attended by at least a quorum of its members. It cannot perform its functions through its members acting individually, informally, and separately. *Iredell County Board of Ed. v. Dickson*, 235 N. C. 359, 70 S. E. (2d) 14 (1952). See *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952).

The statute creating the county board

of education does not specify in terms the number of members competent to transact its corporate business in the absence of other members. As a consequence, the common-law rule that a majority of the whole membership is necessary to constitute a quorum applies. *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952). See *Iredell County Board of Ed. v. Dickson*, 235 N. C. 359, 70 S. E. (2d) 14 (1952).

That action by a board of education was taken at a special meeting rather than a regular meeting has no bearing on the question of the bad faith or abuse of discretion in taking such action, since special meetings are permitted by this section. *Kistler v. Randolph County Board of Ed.*, 233 N. C. 400, 64 S. E. (2d) 403 (1951).

§ 115-29. **Compensation of board members.**—County and city boards of education may fix the compensation for each member not to exceed five dollars (\$5.00) per diem and seven cents (7c) per mile to and from the places of meeting and no member of the board of education shall receive any compensation for any services rendered except the per diem provided herein for attending meetings of the board or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board.

The State Nine Months School Fund shall provide one hundred dollars (\$100.00) of the cost of the per diem and mileage of each county board of education. Funds for the per diem and a mileage for all meetings of city boards of education and for the per diem and expenses of any meetings of the county board of education in excess of the one hundred dollars (\$100.00) provided by the State, shall be provided from the current expense fund budget of such city or county.

This section shall not have the effect of repealing any local or special act relating to the compensation or expenses of members of any county or city boards of education. (1955, c. 1372, art. 5, s. 12.)

Local Modification. — Ashe: 1957, c. 1125; Catawba: 1955, c. 69; Clay: 1957, c. 924, s. 5; Craven: 1957, c. 97; Franklin: 1957, c. 289; Harnett: 1957, c. 339; Hyde: 1953, c. 606 s. 2; Jackson: 1957, c. 68; Orange: 1953, c. 281, s. 1; Polk: 1957, c. 210, amending 1953, c. 1175; Richmond: 1957, c. 451; Rockingham: 1957, c. 655; Surry: 1959, c. 914; Transylvania: 1953, c. 1320; 1957, c. 174, s. 6.

§ 115-30. **Removal of member of county or city board.**—In case the State Superintendent of Public Instruction shall have sufficient evidence that any member of a county or city board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education. (1955, c. 1372, art. 5, s. 13.)

§ 115-31. **Suits and actions.** — 1. A county or city board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all money or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the board of county commissioners.

2. In all actions brought in any court against a county or city board of education, the order or action of the board shall be presumed to be correct and the burden of proof shall be on the complaining party to show the contrary. (1955, c. 1372, art. 5, s. 14.)

The right to sue for the protection or recovery of the school funds of a particular school administrative unit belongs by necessary implication to the governing board of that unit. Indeed, this section confers upon the county board of education in explicit terms the power to sue for the preservation and recovery of the money or property of the county administrative unit. *Branch v. Robeson County Board of Ed.*, 233 N. C. 623, 65 S. E. (2d) 124 (1951).

§ 115-32. **Power to subpoena and to punish for contempt.**—County and city boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of a board and which, in the discretion of the

board, requires investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoenas upon payment of their lawful fees.

County and city boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business. (1955, c. 1372, art. 5, s. 15.)

§ 115-33. Witness failing to appear; misdemeanor. — Any witness who shall wilfully and without legal excuse fail to appear before a county or city board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1955, c. 1372, art. 5, s. 16.)

§ 115-34. Appeals to board of education and to superior court. — An appeal shall lie from the decision of all school personnel to the appropriate county or city board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

An appeal shall lie from the decision of a county or city board of education to the superior court of the State in any action of a county or city board of education affecting one's character or right to teach. (1955, c. 1372, art. 5, s. 17.)

Where the county board of education ordered the removal of school committeemen, and the committeemen appealed to the superior court, the judgment of the superior court judge holding the act of the board of education in removing the committeemen invalid and dismissing the appeal for want of jurisdiction was inconsistent and erroneous. Board of Education v. Anderson, 200 N. C. 57, 156 S. E. 153 (1930).

§ 115-35. Powers and duties of county and city boards generally.—

1. To Provide an Adequate School System.—It shall be the duty of county and city boards of education to provide an adequate school system within their respective administrative units, as directed by law.

2. General Powers and General Control.—All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon county and city boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

3. Power to Divide Administrative Units into Attendance Areas. — County boards of education shall have authority to divide their various units into attendance areas without regard to district lines, and city boards of education shall have authority to divide their various units into attendance areas.

4. Power to Regulate Extra Curricular Activities.—County and city boards of education shall make all rules and regulations necessary for the conducting of extra curricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

5. Fixing Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed and determined by county and city boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time. (1955, c. 1372, art. 5, s. 18; 1957, c. 262.)

Local Modification.—Person, as to subsection 4: 1957, c. 183. formerly appearing after "shall" in line two of subsection 4.

Editor's Note.—The 1957 amendment deleted the words "have authority to" Discretion of Boards.—The courts may compel the county board of education to

act upon discretionary powers conferred on them by the legislature, but cannot tell them how they must act. *Key v. Board*, 170 N. C. 123, 86 S. E. 1002 (1915).

Location, Transfer, etc., of High School.

—In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish high schools in the districts of their several counties. In the absence of abuse, this discretion cannot be set aside or controlled by the courts. The principle stated and applied in deciding the question presented by the appeal in *Newton v. School Committee*, 158 N. C. 186, 73 S. E. 886 (1923), is well settled. *Clark v. McQueen*, 195 N. C. 714, 143 S. E. 528 (1928).

The statutes vest in the sound discretion of the board of education of a county the right to transfer an existing school in one district to an adjoining district for the advantage of the residents of the county, and with the fair exercise

of this discretion, or in the absence of manifest abuse, the courts will not interfere, or give injunctive relief. *Clark v. McQueen*, 195 N. C. 714, 143 S. E. 528 (1928). But see § 115-76.

Selection of School Sites.—The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. *McInnish v. Board*, 187 N. C. 494, 122 S. E. 182 (1924).

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school the county is not liable on the note, the purchasing agent having no connection with the county board of education. *Keith v. Henderson County*, 204 N. C. 21, 167 S. E. 481 (1933).

§ 115-36. Length of school day, school month, and school term.—

1. **School Day.**—The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours. Boards of education, however, may authorize rural schools in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day.

2. **School Month.**—A school month shall consist of twenty teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions in the unit or district make it desirable that school be taught on such days. Whenever it is desirable to complete the school term of one hundred eighty days in a shorter term than nine calendar months, the board of education of any administrative unit may, in its discretion, require that school shall be taught on legal holidays, except Sundays, and in accordance with the custom and practice of such community.

3. **School Term.**—There shall be operated in every school in the State a uniform school term for instructing pupils of one hundred eighty days: Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred eighty days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, the low average of daily attendance in any school justifies such suspension, or when the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof: Provided, further, that when the operation of any school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary. (1955, c. 1372, art. 5, s. 19.)

§ 115-37. **Subjects taught in public schools.**—County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, alcoholism, and narcoticism at the appropriate grade levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101.)

Cross References.—As to further provisions for teaching of “fire prevention” in the colleges and schools of the State, see § 68-7. As to instruction in the prevention of forest fires, see § 113-60.

ment inserted the words “fire prevention”, and the second 1957 amendment inserted the words as to “government of the State of North Carolina, government of the United States.”

Editor’s Note.—The first 1957 amend-

§ 115-38. **Kindergartens.** — County and city boards of education may provide for their respective administrative units, or for any district in a county administrative unit, kindergartens as a part of the public school system when a tax to support same is authorized by a majority of the voters at an election held in such unit or district under provisions for holding school elections herein.

Such kindergarten instruction as may be established under the provisions of this section, or established in any other manner, shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with standards adopted by the State Board of Education. (1955, c. 1372, art. 5, s. 21.)

§ 115-39. **Requirements and limitations of board in selecting superintendent and his term of office.** — At a meeting to be held on the first Monday in April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July first and shall serve for a term of two years, or until his successor is elected and qualified. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent’s certificate and has had three years’ experience in school work in the past ten years, together with a doctor’s certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent’s certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of two years; and the qualifications, provisions, approval, and date of election shall be the same as for county superintendents. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1.)

Local Modification.—Clay (as to term of office of county superintendent): 1953, c. 706.

Editor’s Note.—The 1957 amendment substituted “February” for “January” near the beginning of the first paragraph.

§ 115-40. Office, equipment, and clerical assistants for superintendent.—It shall be the duty of the various boards of education to provide the superintendent of schools with an appropriate office. Likewise, it shall be the duty of the various boards of education to furnish adequately the superintendent's office and provide all necessary office supplies. Authority is hereby given to boards of education to employ sufficient clerical assistants and purchase sufficient office machines and equipment to the end that the business of the superintendent of schools shall always be conducted in a prompt and efficient manner. (1955, c. 1372, art. 5, s. 23.)

§ 115-41. Prescribing duties of superintendent not in conflict with law.—All acts of county and city boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1955, c. 1372, art. 5, s. 24.)

§ 115-42. Removal of county or city superintendent.—County or city boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Superintendent of Public Instruction shall have sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, he shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of said board of education to hear the evidence in such case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor; provided, that such superintendent shall have the right to try his title to office in the courts of the State. (1955, c. 1372, art. 5, s. 25.)

§ 115-43. Removal of committeemen for cause.—In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges. If the board of education finds that the evidence supports the charges made to such an extent that the actions and conduct of said committeeman are not for the best interests of the schools, then the board shall proceed to remove such committeeman and appoint his successor: Provided, that such committeeman shall be given proper notice of the hearing and that a record of the findings of the board shall be recorded in the minutes of the meeting. (1955, c. 1372, art. 5, s. 26.)

Committeeman May Be Removed Only for Cause.—A school committeeman for a district, although appointed by the county board of education holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

After Notice and Fair Hearing.—Any school committeeman against whom the statutory proceeding for removal is brought must be given notice of the proceeding, and of the charges against him, and afforded an opportunity to be heard and to produce testimony in his defense, and the county board of education shall

not remove him from his office unless it determines after a full and fair hearing on the merits that one or more of the specified causes for removal has been established by the evidence. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

Review of Board's Proceedings.—A proceeding for the removal of a school district committeeman is judicial or quasi-judicial in character, and, there being no statutory provision for appeal, the procedure to obtain a review of the board's proceedings is by certiorari. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

Inconsistent Judgment.—Where a county board of education orders the re-

moval of school committeemen, judgment of the superior court holding the act of the board invalid and also dismissing the appeal for want of jurisdiction is inconsis-

ent and erroneous. Board of Education v. Anderson, 200 N. C. 57, 156 S. E. 153 (1930).

§ 115-44. **Assistant superintendent and supervisors.**—County and city boards of education shall have authority to employ an assistant superintendent, and supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent and supervisors shall be assigned by the superintendent with the approval of the board of education. (1955, c. 1372, art. 5, s. 27.)

§ 115-45. **Authority of board over teachers, supervisors and principals.**—County and city boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors; the kind of reports they shall make, and their duties in the care of school property.

County and city boards of education shall have power to investigate and pass upon the character of any teacher or school official in the public schools of the unit, and to dismiss any teacher or school official for immoral or disreputable conduct as provided in G. S. 115-145; also to investigate and pass upon the fitness of any applicant for employment in any public school in the administrative unit.

If the superintendent reports to the board that the work of any teacher, principal, or supervisor is unsatisfactory or that any such person is not observing the rules and regulations of the board, the board has full authority at any time during the year, upon notice of ten days, to investigate the charges, and if sustained, to take appropriate action according to the findings of the board. (1955, c. 1372, art. 5, s. 28.)

§ 115-46. **Providing for training of teachers.**—County and city boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1955, c. 1372, art. 5, s. 29.)

§ 115-47. **Pay of teachers and other school employees.**—It shall be the duty of every county and city board of education to provide for the prompt monthly payment of all salaries due teachers, other school officials and employees, all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds. (1955, c. 1372, art. 5, s. 30.)

§ 115-48. **Tax levying authorities authorized to borrow and boards of education limited in expenditures.**—If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting such expenses, it shall be the duty of the tax levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amounts so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the tax levying authorities in addition to the amount approved in the budget, unless this item is specifically included in the budget. However, if a county or city board of education shall wilfully create a debt or shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the tax levying authorities, the indebtedness shall not be a valid obligation of the county or city, as the

case may be, and the members of the board responsible for making the debt may be held liable for the same. (1955, c. 1372, art. 5, s. 31.)

Local Modification.—Mecklenburg and city of Charlotte: 1959, c. 448. (1928), where it was held, under the facts and circumstances, that county commissioners were liable for a debt created by the county board of education.

Editor's Note.—See *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744

§ 115-49. Salary schedule for teachers.—Every county and city board of education may adopt, as to teachers and school officials not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county or city board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a county board of education, upon the recommendation of the committee of a district, may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1955, c. 1372, art. 5, s. 32.)

§ 115-50. Authority for salary vouchers.—The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of a school in a city administrative unit, and in a county administrative unit by the principal and the chairman of the local committee: Provided, that in special tax districts in county administrative units all vouchers drawn against special funds of such districts except salary vouchers shall be supported by an order to pay same signed by the chairman of the committee of such district; and all vouchers, whether for salary or other objects of expenditure, which are chargeable against district funds, shall specify the district against which it is charged. (1955, c. 1372, art. 5, s. 33.)

Local Modification. — Mecklenburg: 1959, c. 378, s. 11.

§ 115-51. Lunchrooms may be provided. — In such cases as may be deemed advisable by a county or city board of education, and in any school where same may be deemed necessary because of the distance of the said school from places where meals may be easily obtained, it shall be permissible for a board of education as a part of the functions of the public school system to provide cafeterias where meals may be sold, and to operate or cause same to be operated for the convenience of teachers, school officers, and pupils of the said school. There shall be no personal liability upon the said board of education or members thereof, arising out of the operation of such eating places and it is understood and declared that the same are carried on and conducted in connection with the public schools, and because of the necessity arising out of the consolidation of the said schools and inconvenience and interruption of the schools caused by seeking meals elsewhere: Provided, that no part of the appropriation made by the State for the public schools shall be expended for the operation of said cafeterias or eating places.

All lunchrooms and cafeterias operated under the provisions of this section shall be operated on a nonprofit basis, and any earnings therefrom over and above

the cost of operation shall be used for the purpose of reducing the cost of meals served therein, or to serve better meals, and for no other purpose: Provided, that it shall not be mandatory that the provisions of G. S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such lunchrooms and cafeterias. (1955, c. 1372, art. 5, s. 34.)

§ 115-52. Purchase of equipment and supplies.—It shall be the duty of county and city boards of education to purchase all supplies, equipment and materials in accordance with contracts made by or with the approval of the State Division of Purchase and Contract. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the county or city board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1955, c. 1372, art. 5, s. 35.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 448.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.—Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance as above described with a county or city board of education, by such act waives any defense based upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a county or city board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal or discretionary function of such county or city board of education if, and to the extent, such county or city board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any county or city board of education of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such

defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or city board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county or city board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon; Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus drivers while driving school buses when the operation of such school buses is paid from the State nine months' school fund.

The several county and city boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of this section shall be fully applicable to the ownership and operation of such activity school buses. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2.)

Local Modification.—Mecklenburg and city of Charlotte: 1959, c. 931.

Editor's Note. — The 1957 amendment added the last paragraph.

The 1959 amendment added "while driv-

ing school buses when the operation of such school buses is paid from the State nine months' school fund" at the end of the next to last paragraph.

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-54. **Residence, oath of office, and salary of superintendent.**—Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published. (1955, c. 1372, art. 6, s. 1.)

Constitutional Office. — The office of county superintendent of public instruction is such an office as comes within the provision of Art. XIV, § 7, of the Constitution, which prohibits the holding of

more than one office by any person. *Whitehead v. Pittman*, 165 N. C. 89, 80 S. E. 976 (1914).

Cited in *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

§ 115-55. Vacancies in office of superintendent.—In case of vacancy by death, resignation, or otherwise, in the office of a county or city superintendent, such vacancy shall be filled by the county or city board of education in which such vacancy occurred. During the time any county or city superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the State Superintendent of Public Instruction and the controller of the State Board of Education, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3.)

Editor's Note. — The 1959 amendment inserted "controller of the" in the thirteenth line.

§ 115-56. Duties of superintendent as secretary to board of education.—County and city superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection. It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediately provisions to remedy any unsafe or unsanitary conditions existing in any school building.

It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same. (1955, c. 1372, art. 6, s. 3.)

§ 115-57. Duties of superintendents toward school personnel.— It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, the school committees, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

The superintendent shall distribute to all school personnel all blanks, registers,

report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

If the superintendent shall fail in these duties, or such other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Superintendent or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the State Superintendent, or he may be dismissed by his board of education. (1955, c. 1372, art. 6, s. 4.)

§ 115-58. Superintendent to approve and record election of principals and teachers.—It shall be the duty of the county superintendent to approve, in his discretion, the election of all teachers and personnel by the several school committees of the administrative unit. He shall then present the names of all principals, teachers and other school personnel to the county board of education for approval or disapproval, and he shall record in the minutes the action of the board in this matter.

It shall be the duty of the city superintendent to record in the minutes the action of the city board of education in the election of all principals, teachers and other school personnel elected upon the recommendation of the superintendent. (1955, c. 1372, art. 6, s. 5.)

§ 115-59. Superintendent to prepare organization statement and request for teachers.—On or before the twentieth day of May in each year, the superintendent of each administrative unit shall present to the State Board of Education a statement, certified by the chairman of the board of education and the superintendent, showing the organization of the schools in his unit, together with such other information as said Board may require. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the State Board of Education may promulgate, said Board shall determine for each administrative unit, by districts, the number of elementary and high school teachers to be included in the State budget on the basis of the average daily attendance for the preceding year. The highest average daily attendance for a continuous six months' period of the first seven months of the preceding school year shall be used as a basis for such allotment: Provided, that loss in attendance due to epidemics shall be taken into consideration in the initial allotment of teachers: Provided further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance.

It shall be the duty of the superintendent and the board of education of each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the State Board of Education to make changes in the allocation of teachers to meet changed requirements of the said unit. (1955, c. 1372, art. 6, s. 6.)

§ 115-60. Superintendents shall keep proper financial records.—It shall be the duty of each superintendent to keep in his office a complete, accurate and detailed record of all financial transactions of his board of education. Such records shall be kept in accordance with modern accounting methods and as prescribed and approved by the State Board of Education. If any superintendent shall fail to keep the records of the acts of the board of education so that they may be audited in accordance with law, the board of education may remove him from office. (1955, c. 1372, art. 6, s. 7.)

§ 115-61. County superintendents shall keep record of local taxes.—County superintendents shall keep a separate financial record of each special taxing district in the county and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the law-

ful expenses of such district to which the funds collected belong. The superintendent shall not sign any voucher to pay out the funds of any special taxing district unless he is authorized to do so by a written order signed by the chairman of the committee of the district: Provided, that he may sign salary vouchers for teachers duly elected by the committee as the same may become due. (1955, c. 1372, art. 6, s. 8.)

§ 115-62. **Record of fines, forfeitures, and penalties.**—It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this end all county officials who in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. The county accountant or auditor shall furnish the superintendent on the first day of each month a list in detail of all such funds that may have been paid into the school fund during the preceding month. (1955, c. 1372, art. 6, s. 9.)

§ 115-63. **Superintendents must furnish boundaries of special taxing districts.**—It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed. (1955, c. 1372, art. 6, s. 10.)

§ 115-64. **Disbursement of local funds.**—County and city local school funds shall be disbursed in the same manner as State school funds are disbursed. It shall be the duty of the county superintendent in addition to approving and signing State vouchers to approve and sign all vouchers for the disbursement of all county and district funds except funds belonging to a city administrative unit. The county treasurer shall honor no voucher that is not first approved and signed by the county superintendent. No voucher shall be signed by the county or city superintendent for more money than is provided in the county or city school budget. The county superintendent shall not sign a voucher drawn on district funds for more money than is apportioned to or raised by the special tax during the fiscal year of a special taxing school district.

County and city superintendents shall not approve and sign the voucher of any teacher who does not hold a certificate as required by law, nor for more money than the salary schedule in force in the city administrative unit or special taxing district entitles the teacher to receive.

It shall be the duty of county and city superintendents to sign all vouchers issued by order of their respective boards of education and signed by the chairman, and no voucher shall be paid by the county or city treasurer that is not thus signed. (1955, c. 1372, art. 6, s. 11.)

When Treasurer's Duty to Honor.—The treasurer of the school fund cannot pay out any of the money coming into his hands as such except upon order approved by the county superintendent. See *County Board v. County of Wake*, 167 N. C. 114, 83 S. E. 257 (1914).

§ 115-65. **Superintendent shall not pay teacher without contract.**—No voucher for the salary of a principal or teacher shall be signed by the county or city superintendent unless a copy of the contract has been filed with him: Provided, that substitute and interim teachers may be paid under rules of the State Board of Education. (1955, c. 1372, art. 6, s. 12.)

§ 115-66. **When superintendent may withhold pay of teachers.**—The chairman and secretary of a county or city board of education may refuse to sign the salary voucher for the pay of any supervisor, principal or teacher who

delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law, the vouchers shall be signed and the supervisor, principal, or teacher paid. (1955, c. 1372, art. 6, s. 13.)

§ 115-67. Superintendents may suspend principals and teachers.—County and city superintendents shall have authority to suspend any principal or teacher who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall wilfully refuse to cooperate in teachers' meetings: Provided, that any principal or teacher who may be suspended by the superintendent, shall have the right to appeal first to the board of education and then, if not satisfied, to the courts. (1955, c. 1372, art. 6, s. 14.)

§ 115-68. City superintendents, powers, duties and responsibilities.—All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units. (1955, c. 1372, art. 6, s. 15.)

ARTICLE 7.

School Committees—Their Duties and Powers.

§ 115-69. Eligibility and oath of office.—Each school committeeman shall be a person of intelligence, of good moral character, of good business qualifications, and one who is known to be in favor of public education and who resides in the district; and before entering upon the duties of his office, he shall take oath for the faithful performance thereof, which oath may be taken before the county superintendent.

No person, while employed as teacher in either a public school or a private school, or while serving as a member of any county or city board of education or serving as an employee of the schools or who is prohibited by article XIV, section seven, of the Constitution, shall be eligible to serve as a member of a district committee. (1955, c. 1372, art. 7, s. 1.)

§ 115-70. Appointment; terms; vacancies; advisory committees.—At the first regular meeting during the month of April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially thereafter, the county board of education named by the General Assembly which convened in February of such year or elected at the preceding general election, as the case may be, shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three, nor more than five persons for each school district, whose term of office shall be for two years; provided, that in the event of death, resignation or removal from the district of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term; provided, that in units desiring the same, by action of the county board of education one-third of the members may be selected for a term of one year, one-third of the members for a term of two years, and one-third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms. This section shall not have the effect of repealing any local or special acts relating to the appointment or terms of office of school committees.

The county board of education may appoint an advisory committee of three members for each school building in the district, who shall care for the school

property and perform such other duties as may be defined by the county board of education. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2.)

Local Modification.—Polk: 1959, c. 442.

Editor's Note.—The 1957 amendment substituted "February" for "January" near the beginning of the first paragraph.

Removal of Committeeman.—A school committeeman for a district, although appointed by the county board of education,

holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

§ 115-71. Organization of school committee; meetings.—The school committee, at its first meeting after the membership has been completed by the county board of education, shall elect from its number, a chairman and secretary, who shall keep a record of its proceedings in a book to be kept for that purpose, which shall be open to public inspection. The names and addresses of the chairman and secretary shall be reported to the county superintendent and recorded by him. The committee shall meet as often as the school business of the district may require. (1955, c. 1372, art. 7, s. 3.)

§ 115-72. How to employ principals, teachers, janitors and maids.—The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of the district shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under eighteen years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4.)

Local Modification.—Polk: 1957, c. 1209.

The election of a principal or teacher by the school committee of a district has no validity whatever until such election has been approved by both the county superintendent of schools and the county board of education. *Iredell County Board of Ed. v. Dickson*, 235 N. C. 359, 70 S. E. (2d) 14 (1952).

As to re-election of principal or teacher, see *Iredell County Board of Ed. v. Dickson*, 235 N. C. 359, 70 S. E. (2d) 14 (1952).

Personal Liability of Committeeman.—In *Robinson v. Howard*, 84 N. C. 152

(1881), it was held that a school committeeman was not liable personally on a contract by which he employed a teacher, and that the remedy was by mandamus to compel the payment of the money by the proper officer in the way provided by law. If, though, the act is wrongful and malicious, an action will lie against the officer in his personal capacity to recover damages for the wrong committed by him. *Spruill v. Davenport*, 178 N. C. 364, 100 S. E. 527 (1919).

Refusal of the county superintendent to approve the election of a teacher on the

ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. *Cody v. Barrett*, 200 N. C. 43, 156 S. E. 146 (1930).

Jurisdiction of County Board of Education to Elect Principal.—The county board

of education is not authorized to elect a principal of a school unless it appears that the local school authorities are in disagreement as to such election, and therefore, in a suit to compel the county board to approve an election made by the local school authorities, a plea in abatement on the ground that the county board had already elected another to the position is properly overruled in the absence of a showing of disagreement by the local school authorities. *Harris v. Board of Education*, 216 N. C. 147, 4 S. E. (2d) 328 (1939).

§ 115-73. Committee's responsibility as to school property.—It shall be the duty of the school committee to protect all school property in its district. To this end, it is given custody of all schoolhouses, schoolhouse sites, grounds, textbooks, apparatus, and other school property in the district, with full power to control same as it may deem best for the interests of the public schools and the cause of education, but not in conflict with the rules and regulations of the county board of education. It shall be the duty of the committee to report any misuse or damage of school property immediately to the county board of education: Provided, that if the committee is unable or shall fail to take due care of all school property of the district, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1955, c. 1372, art. 7, s. 5.)

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

ARTICLE 8.

Creating and Consolidating School Districts.

§ 115-74. Creation and modification of school districts by State Board of Education.—The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts.

Nothing in this section shall prevent city administrative units from consolidating with county administrative units in which such city administrative unit is located, upon petition of the board of education of the city administrative unit and the approval of the county board of education and of the State Board of Education: Provided, that nothing in this section shall affect the right of any city administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432.)

Cross Reference.—As to limitation on power of legislature to change lines of school districts, see Art. II, § 29 of the Constitution.

Editor's Note. — The 1959 amendment added the proviso at the end of the first paragraph.

Constitutionality of Article.—For case

holding constitutional a former statute covering the same subject-matter as this article, see *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924), cited and approved in *Blue v. Board*, 187 N. C. 431, 122 S. E. 19 (1924).

Methods of Changing School District.—*Kreeger v. Drummond*, 235 N. C. 8, 68 S. E. (2d) 800 (1952), reh. den. 235 N. C. 758, 69 S. E. (2d) 721 (1952).

Courts Will Not Interfere in Absence of Abuse of Discretion.—Unless the school authorities act contrary to law, or there is a manifest abuse of discretion on their part, the courts will not interfere with their action in creating or consolidating school districts, or in the discharge of any other discretionary duty conferred upon them by law. *Kreeger v. Drummond*, 235 N. C. 8, 68 S. E. (2d) 800 (1952), reh. den. 235 N. C. 758, 69 S. E. (2d) 721 (1952).

The courts will not interfere with the control and supervision of the county board of education in the exercise of its

statutory discretion given in the formation of school districts and their consolidation, or intervene in behalf of any one who supposes himself to be aggrieved by their action therein, except upon a clear showing that it was acting contrary to law, and then they will only restrain its action to the extent necessary to keep it within the law and the rightful exercise of its powers. *Davenport v. Board*, 183 N. C. 570, 112 S. E. 246 (1922).

Abolition of Special School Districts.—For cases construing former statute abolishing special school districts, see *Board of Education v. Burgin*, 206 N. C. 421, 174 S. E. 286 (1934) (use of unexpended fund by new district); *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56 (1934), holding that statute did not alter the policy that a county may include in its debt service fund in its budget the indebtedness lawfully incurred by any of its school districts.

§ 115-75. **Districts formed of portions of contiguous counties.** — School districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. Rules for the organization, support and operation of districts so formed are subject to the agreement of the boards of education concerned, and as a guide to the working out of such agreements the formulas contained in § 115-123 should be followed as far as applicable. (1955, c. 1372, art 8, s. 2.)

§ 115-76. **Consolidation of districts and discontinuance of schools.** —County boards of education shall have the power and authority to consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school.

In determining whether two or more public schools shall be consolidated, or in determining whether or not a school shall be closed and the pupils transferred therefrom, the State Board of Education and the boards of education of the several counties shall observe and be bound by the following rules, to wit:

1. In any question involving the discontinuance or consolidation of any high school with an average daily attendance of sixty or more pupils, the board of education of the county in which such school is located and the State Board of Education shall cause a thorough study of such school to be made, having in mind primarily the welfare of the students to be affected by a proposed consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such consolidation, the cost of providing additional school facilities in the event of such consolidation, and the importance of such school to the people of the community in which the same is located and their interest in and support of same. Before the entry of any order of consolidation, the county board of education shall provide for a public hear-

ing in regard to such proposed consolidation, at which hearing the county and State boards of education and the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said boards may, in the exercise of their discretion and by concurrent action, approve the consolidation proposed: Provided, however, that when a high school is ordered closed, pursuant to law, the pupils attending such school may be assigned to another high school, if the board of education of the administrative unit in which such school is located consents to such assignment.

2. Provision shall not be made by the State Board of Education for the operation of a high school with an average daily attendance of less than sixty pupils unless the State Board of Education and the State Superintendent of Public Instruction, after a careful survey by them, find that geographic or other conditions make it impractical to provide for such pupils otherwise. Upon such finding, the State Board of Education may make provision for the operation of such school.

3. Notwithstanding the limitations imposed by the provisions of subsection two of this section, the State Board of Education shall make provision for the continued operation of any high school now operating in any county administrative unit and having an average daily attendance of at least forty-five but fewer than sixty pupils, and shall allot to such school the number of teachers to which it may be entitled pursuant to law and rules of the State Board of Education if the continued operation of such school be requested by the board of education of such county by the inclusion of such school in the organization statement for the following year filed pursuant to the provisions of law: Provided, however, that at the time of making such request, the county board of education presents to the State Board of Education a certified statement that it has on hand and allocated for such purpose sufficient funds to pay the salaries, in accordance with the State standard salary schedule, of such additional teacher or teachers for said school as may be required in order to comply with minimum teacher requirements for a standard high school as now or hereafter defined and sufficient funds to pay the county's contribution for such teacher or teachers to the Teachers' and State Employees' Retirement System of North Carolina, as provided by G. S. 135-8 (c), and that said county board of education will employ such teacher or teachers.

For the purpose of providing the funds required by the proviso of this subsection, the boards of commissioners of the several counties are authorized to appropriate nontax funds, and the several county boards of education are authorized to accept and use privately donated funds.

4. The provisions of this section shall not deprive any city or county board of education of the authority to assign or enroll any and all pupils in schools in accordance with the provisions of G. S. 115-176 to 115-179. (1955, c. 1372, art. 8, s. 3.)

Editor's Note.—The cases cited in the annotations below were decided under the former statutes.

Consolidation of Tax and Nontax Districts.—A non-special school tax district may be consolidated with a special tax district, without the approval of the voters of the non-special tax district when the consolidation is for administrative or attendance purposes only and does not involve a supplemental tax. *Gates School Dist. Committee v. Gates County Board of Ed.*, 235 N. C. 212, 69 S. E. (2d) 529 (1952); *Gates School Dist. Committee v. Gates County Board of Ed.*, 236 N. C. 216,

72 S. E. (2d) 429 (1952).

Where an administrative unit has voted a supplemental tax pursuant to the provisions of the statute, neither a nontax district nor any part thereof may be consolidated with such administrative or tax districts, without losing the right to levy the existing supplemental tax, unless an election is held in the territory to be added and the majority of those who vote in such election voted in favor of the proposed tax. And the tax authorized must be equal to the supplemental tax previously authorized in the administrative unit, including any tax levied therein to meet the

interest and sinking fund of any bonds theretofore issued by the district proposed to be enlarged. *Gates School Dist. Committee v. Gates County Board of Ed.*, 235 N. C. 212, 69 S. E. (2d) 529 (1952). See *Gates School Dist. Committee v. Gates County Board of Ed.*, 236 N. C. 216, 72 S. E. (2d) 429 (1952).

It is not necessary to the valid consolidation of nonspecial school tax districts with special school tax districts that it be approved by the voters of the nonspecial school tax districts, when the questions of taxation and bond issues are not involved, and especially so when the consolidation has been made according to the provisions of a Public-Local Law applicable to the county wherein the consolidation has been made. *Board v. Bray Bros. Co.*, 184 N. C. 484, 115 S. E. 47 (1922).

Special school tax districts, organized and exercising governmental functions in the administration of the school laws, are quasi-public corporations subject to the constitutional provisions in restraint of contracting debts for other than necessary purposes, except by the vote of the people of a given district, Const., Art. VII, § 7; and semble, that where an existent tax and nontax district are thereunder consolidated, it would require the submission of the question to those living within the district thus formed, but outside of the district that has theretofore voted the tax as provided for enlargement of local tax districts. *Paschal v. Johnson*, 183 N. C. 129, 110 S. E. 841 (1922); *Barnes v. Leonard*, 184 N. C. 325, 114 S. E. 398 (1922).

The authority given the county board of education to redistrict the entire county or part thereof, and to consolidate school districts, etc., was amended by Public Laws of 1921, ch. 179, providing, among other things, for such consolidation of existing districts under a uniform rate of taxation not exceeding the lowest in any one district, meets the requirements of our Constitution, Art. VII, § 7, but to the extent the amendatory statute permits consolidation of local school tax districts with adjacent territory or local schools that have never voted any tax, the provisions of the statute relating to enlargement of local tax districts must apply so as to permit those living in such proposed new territory to vote separately upon the question of taxing themselves for the purpose. *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922).

Issuance of Bonds. — Where there has been a valid consolidation of local-tax school districts, having an equal tax rate for the purpose, by proper proceedings

under the statute the new district may then approve the question of an additional special tax, and where this has been done under the authority of a valid statute, and an issue of bonds properly approved by the voters, such bonds are constitutional and valid. *Paschal v. Johnson*, 183 N. C. 129, 110 S. E. 841 (1922).

Reallocation of Funds from Bond Issue. —The bond order and the advertised statement of the purpose for which funds from a proposed school bond issue were to be used stipulated, inter alia, improvements in the elementary school of one district by the addition of eight classrooms, and improvements in the elementary and high school of another district. Thereafter the county board of education, on the basis of a survey, proposed to use the entire funds allocated for such improvements for the erection of a new high school building for the use of both schools. It was held that the county board of education has no power to reallocate the funds for the erection of the new high school in the absence of a finding in good faith that the erection of such new high school would so relieve the pupil load on the elementary schools that the use of the funds for the improvement and enlargement of the elementary schools would no longer be necessary because of changed condition. *Gore v. Columbus County*, 232 N. C. 636, 61 S. E. (2d) 890 (1950).

Consolidation Prerequisite to Closing High School Operated as Union School. — As a prerequisite to the enforcement of an order to close a high school presently operated as a union school, the area in this district must be consolidated in a manner provided by law, with some other high school district or districts. *Kreeger v. Drummond*, 235 N. C. 8, 68 S. E. (2d) 800 (1952), reh. den. 235 N. C. 758, 69 S. E. (2d) 721 (1952).

Ample Facilities Must Be Provided in Consolidated District. — If a consolidation or consolidations are to be made pursuant to the provisions of the statute, it should be made to appear that ample school facilities have been provided in the proposed consolidated district or districts to which the children residing in the old district are to be transferred. *Kreeger v. Drummond*, 235 N. C. 8, 68 S. E. (2d) 800 (1952).

Authority Discretionary. — Ordinarily the courts will not interfere with the discretionary authority of the county board of education to select school sites and consolidate schools of a district, and, with the approval of the State Board of Education, to consolidate school districts.

Gore v. Columbus County, 232 N. C. 636, 61 S. E. (2d) 890 (1950).

Enjoining or Setting Aside Creation or Consolidation of School Districts.—Although the law may confer upon school authorities the discretionary authority to create or consolidate school districts, the superior court may enjoin or set aside the creation or consolidation of school districts by such authorities when their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of their

discretion, or is without authority of law. Gates School Dist. Committee v. Gates County Board of Ed., 236 N. C. 216, 72 S. E. (2d) 429 (1952).

Circumstances Insufficient to Show Abuse of Discretion in Consolidating School Districts.—See Gates School Dist. Committee v. Gates County Board of Ed., 236 N. C. 216, 72 S. E. (2d) 429 (1952).

As to transfer of pupils under former statute, see Kreeger v. Drummond, 235 N. C. 8, 68 S. E. (2d) 800 (1952).

§ 115-77. Enlarging tax districts and city units by permanently attaching contiguous property.—The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city administrative units, real property contiguous to said local tax districts or city administrative units, upon the written petition of the owners thereof and the taxpayers of the family or families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit or the committee of such tax district, as the case may be. Provided the petition must be signed by persons who are the owners thereof and the taxpayers of the families living on such real property on the date the petition is filed with the county board of education. Provided further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section; and provided further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within sixty (60) days after the approval of such transfer is given by the State Board of Education. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4.)

Editor's Note. — The 1959 amendment added the second, third and fourth provisos.

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 9.

County and City Boards of Education and Budgets.

§ 115-78. Objects of expenditure for operation of public schools.—The objects of expenditure for the operation of the public school system shall be listed by county and city boards of education in the school budget under three separate funds: A. The current expense fund; B. the capital outlay fund; and C. the debt service fund.

A. The current expense fund shall include:

1. General Control.—Salaries and travel of superintendent, assistant superintendent, business manager, and attendance officer; salaries of clerical assistants, property cost clerks, and the treasurer, including cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.

2. Instructional Service.—Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors; salaries and travel of teachers of vocational education including agriculture, home economics, trades

and industries and distributive education; clerical and travel expenses of principals; commencement expenses; and instructional supplies.

3. Operation of Plant.—Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.

4. Maintenance of Plant.—Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.

5. Fixed Charges.—Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.

6. Auxiliary Agencies.—Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.

B. The capital outlay fund shall provide for the purchase of sites, the erection of all school buildings properly belonging to school plants, improvement of new school grounds, alteration and addition to buildings, purchase of furniture, equipment, trucks, automobiles, school buses, and other necessary items for the better operation and administration of the public schools in the following divisions:

1. New Buildings and Grounds.—Estimated total cost of new buildings including grounds, heating, plumbing and electrical equipment, furniture and instructional apparatus, architect and engineering fees, and other costs; provided, the estimated cost of the site shall be included in the total estimated cost of the building but not as a separate item; provided further, that no contract for the purchase of the site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G. S. 115-87 shall, insofar as the same may be applicable, be used to settle the disagreement.

2. Old Buildings and Grounds.—Cost of additional sites and improvement of grounds, alterations and additions to existing buildings, installing new heating, electrical or plumbing systems, and adding additional furniture and instructional apparatus.

3. Auxiliary Agencies.—Cost of new library and textbooks, new school buses operated for first time as an addition to fleet, activity buses, garage building and equipment, new and additional equipment for the superintendent's office, and interest on temporary loans for capital outlay fund.

C. The debt service fund shall provide for the payment of principal and interest on indebtedness incurred for school purposes, as such principal and interest fall due, and the payment of moneys required to be paid into sinking funds. The term "indebtedness," as used in this article, includes bonds, notes and State loans, including, in the case of the county debt service fund, indebtedness assumed by the county as well as indebtedness incurred by the county. Where the indebtedness for school purposes of any city, town, school district, school taxing district, township, city administrative unit or other political subdivision in a county (hereinafter referred to in this article as "local district") has not been assumed by the county, the county debt service fund shall provide for payment, apportioned on a per capita basis as provided in subsection 4 of G. S. 115-80, of principal and interest

on indebtedness of local districts, as such principal and interest fall due, and for payment of moneys required to be paid into sinking funds of local districts.

D. Other objects of expenditure, including educational television, may be included in the school budget when authorized by the General Assembly, the State Board of Education, or county and city boards of education, when funds for the same are made available. (1955, c. 1372, art. 9, s. 1; 1957, c. 1220; 1959, c. 573, ss. 5, 6.)

Local Modification.—Jones: 1955, c. 564. “including educational television” in line one of subdivision D.

Editor’s Note.—The 1957 amendment rewrote subsection 1 of subdivision B.

The 1959 amendment added all of subsection 1 of subdivision B following the words “board of county commissioners” in the seventh line thereof and inserted

As to former statute, see *Onslow County Board of Education v. Onslow County Board of Com’rs*, 240 N. C. 118, 81 S. E. (2d) 256 (1954).

§ 115-79. Objects of expenditure included in State budget.—The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items:

1. General control:
 - a. Salary of superintendent.
 - b. Travel of superintendent.
 - c. Salaries of clerical assistants.
 - d. Salaries of property and cost clerks.
 - e. Office expenses.
 - f. Per diem and travel of county board of education.
2. Instructional service:
 - a. Salaries of elementary and high school teachers.
 - b. Salaries of elementary and high school principals.
 - c. Salaries of supervisors.
 - d. Instructional supplies.
3. Operation of plant:
 - a. Wages of janitors.
 - b. Fuel.
 - c. Water, light, and power.
 - d. Janitor’s supplies.
 - e. Telephones.
4. Fixed charges, compensation.
 - a. School employees.
 - b. Injuries to school pupils.
 - c. Tort claims.
5. Auxiliary agencies:
 - a. Transportation of pupils:
 - (1) Wages of bus drivers.
 - (2) Gas, oil and grease.
 - (3) Gas storage equipment.
 - (4) Salaries of mechanics.
 - (5) Repair parts and batteries.
 - (6) Tires and tubes.
 - (7) License and title fees.
 - (8) Garage equipment.
 - (9) Contract transportation.
 - (10) Major replacements of chassis and bodies.
 - (11) Principals’ bus travel.
 - b. Libraries: Supplies, repairs and replacements.
 - c. Child health program.

In making provision from State funds, the State Board of Education shall ef-

fect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. (1955, c. 1372, art. 9, s. 2.)

As to former statute, see Onslow County Board of Com'rs, 240 N. C. 118, 81 S. E. Board of Education v. Onslow County (2d) 256 (1954).

§ 115-80. Rules for preparation of school budgets.—1. County-Wide Current Expense Fund Budget.—County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.

The county-wide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

When necessity is shown by county or city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure not in the current expense fund provided by the State, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, it shall make a sufficient tax levy to provide the funds: Provided, that nothing in this chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

2. Supplemental Tax Budget.—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole

or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities, except where such levy is voted in a district, in which case the written consent of the chairman of the district committee shall also be obtained before any of said proceeds are expended: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one per cent (1%) thereof.

3. Capital Outlay Budget.—In the same manner and at the same time each county and city administrative unit may file with the board of county commissioners a capital outlay budget, subject to the approval of the said board.

4 Debt Service Budget.—In the same manner and at the same time the county board of education shall file a budget for the school debt service fund of the county, and a budget for the debt service fund of each local district, the indebtedness of which has not been assumed by the county and when the payment of the principal and interest of such indebtedness is required to be provided for by taxes levied by the board of county commissioners. In like manner and at the same time the board of education of each city administrative unit, when such unit has outstanding indebtedness and the payment of principal and interest of such indebtedness is required to be provided for by taxes levied by a board or body other than the board of county commissioners, shall file a budget for the debt service fund of such unit. The budget for the debt service fund of the county shall include (a) the principal and interest on indebtedness of the county and assumed by the county falling due in the fiscal year for which the budget is prepared, (b) the installment payable in such fiscal year to a sinking fund for county indebtedness and (c) a per capita apportionment to each local district based upon (a) and (b) above, exclusive of installments payable to a sinking fund for the retirement of funding and refunding bonds or notes and the interest on the same, and computed with the last enrollment of the county unit and of such local district certified to the county accountant or county auditor by the State Board of Education: Provided, the inclusion of such per capita apportionment shall not supersede an apportionment provided for in any public-local or private law pursuant to which the bonds of such local district were issued: Provided, further, such per capita apportionment shall not exceed the amount of principal and interest of the indebtedness of the local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of bonds of such local district. The budget of each local district shall include the principal and interest on the indebtedness of such local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of indebtedness of such local district.

The county accountant shall examine the county debt service budget and the debt service budget of each local district, shall determine their accuracy and make his recommendation to the tax levying authorities. Accordingly, such tax levying authorities shall levy the taxes necessary and sufficient to pay all items contained in each such budget. (1955, c. 1372, art. 9, s. 3.)

Premiums for insurance of its public school buildings is a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733 (1935).

§ 115-80.1. Establishment of capital reserve fund; appropriations; depositary.—(a) A capital outlay budget of any school administration unit within the county may contain an amount to be appropriated for payment into a special fund which shall be designated “..... County School Capital Reserve Fund”, hereinafter referred to as “the reserve fund”. Such amount, together with similar amounts which may be contained in subsequent

capital outlay budgets of any such school administrative unit, shall be for the purpose of anticipating future needs for school capital outlay and for financing all or a part of the cost thereof: Provided, withdrawals from the reserve fund, as hereinafter provided, for the cost of needs in a particular school administrative unit shall be limited to the amount or the aggregate amounts contained in the approved capital outlay budget or budgets of the particular unit, together with a proportionate share of the net earnings from investment of the reserve fund.

(b) Upon approval of a capital outlay budget by the board of county commissioners, which budget contains such amounts so appropriated, the reserve fund shall be deemed to have been duly established. The reserve fund shall be maintained as a separate account from all other funds, and payments thereto or deposits therein shall be in such bank or trust company as the board of county commissioners may designate as depository thereof. The board shall promptly designate such depository upon establishment of the reserve fund, and all such deposits shall be secured as provided by G. S. 159-28 of the Local Government Act. (1959, c. 524.)

§ 115-80.2. Withdrawals from the reserve fund.—Each withdrawal from the reserve fund shall be authorized by order passed by the board of county commissioners and upon petition therefor as hereinafter provided. The board of education of any school administrative unit in the county may petition for a withdrawal, which petition shall be by resolution duly adopted by said board of education, and a certified copy of such resolution shall be transmitted to the board of county commissioners. The resolution shall set forth:

- (1) A request to the board of county commissioners for the withdrawal;
- (2) The amount of such withdrawal;
- (3) A brief description of the needs and the name or location of the school or schools where such needs exist;
- (4) A statement that the withdrawal is for the purpose of financing the cost of such needs either together with other funds available for the same, specifying their amounts and source, or that there are no other funds available therefor, as the case may be; and
- (5) A declaration that the fulfillment of such needs is necessary for the maintenance of the public school term as required by the Constitution and laws of North Carolina.

Upon receipt of the petition by the board of county commissioners, said board of commissioners may, in its discretion, pass an order authorizing the withdrawal either in conformity with the petition or with modification thereof or may decline to pass such order: Provided, said board of county commissioners shall not pass an order authorizing withdrawal of an amount in excess of the amount set forth in the petition or in excess of the amount in the reserve fund to the credit of the administrative unit requesting withdrawal. Each withdrawal so authorized shall be by check drawn on the depository for an amount equal to the amount so authorized, which check shall be signed by the chairman of the board of county commissioners and by the county accountant and shall be deposited for disbursement in the same manner as other school capital outlay funds are disbursed. (1959, c. 524.)

§ 115-80.3. Investment of moneys in reserve fund.—Pending their use for the purposes hereinbefore authorized, all or part of the moneys in the capital reserve fund may be invested in either bonds, notes, bills, or certificates of indebtedness of the United States of America; or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America; or in bonds or notes of the State of North Carolina; or in bonds of any county, city or town of North Carolina which have been approved by the local govern-

ment commission for the purpose of such investment; or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States with its principal office in this State, to the extent that such investment is insured by the federal government or any agency thereof. The proceeds of the sale or realization of such investments and any interest received from such investments shall accrue to the capital reserve fund. (1959, c. 524.)

§ 115-80.4. Unlawful expenditure or withdrawal of reserve fund.—It shall be unlawful to withdraw or expend, or to cause to be withdrawn or expended, all or any part of the capital reserve fund except as authorized by this article. (1959, c. 524.)

§ 115-80.5. Accounting for reserve fund.—The county accountant shall keep accurate accounts of all receipts, disbursements and assets of the reserve fund and, at the close of each fiscal year and at such other times as the board of county commissioners may request, prepare and submit to said board a statement of receipts and disbursements and of the assets of the reserve fund. He shall annually, and within thirty days after the close of each fiscal year, furnish such statement to the board of education of each school administrative unit in the county. (1959, c. 524.)

§ 115-81. Tax levying authorities must report action on budgets.—The tax levying authorities shall report to the administrative units filing budgets for local funds the action on said budgets on or before the tenth day of July of each year. (1955, c. 1372, art. 9, s. 4.)

§ 115-82. Copies of budgets to be filed with State Board of Education.—Copies of all budgets must be filed with the State Board of Education. Copies of all school budgets for the current expense fund, the capital outlay fund and the debt service fund, after approval by local authorities as provided by this article, shall be filed with the State Board of Education. (1955, c. 1372, art. 9, s. 5.)

§ 115-83. Operating budget.—It shall be the duty of the county and city boards of education, upon the receipt of the tentative allotment of State funds for operating the schools and the approval of all local funds budgets, including supplements to State funds for operating schools of a higher standard, funds for capital outlay and funds for debt service, to prepare an operating budget on forms provided by the State and file same with the State Superintendent of Public Instruction and the State Board of Education on or before the first day of October. Each operating budget shall be checked by the appropriate State school officials to ascertain if it is in accordance with the allotment of State funds and the approval of local funds; and when found to be in accordance with same, such budget shall be the total operating budget for said county or city administrative unit. (1955, c. 1372, art. 9, s. 6.)

§ 115-84. Provision for disbursement of State funds.—The deposit of State funds in the State treasury to the credit of the county and city administrative units shall be made in monthly installments, at such time and in such a manner as may be practicable to meet the needs and necessities of the nine months school term in the various county and city administrative units: Provided, that prior to the crediting of any monthly installments, it shall be the duty of the county or city board of education to file with the controller of the State Board of Education a certified statement of all expenditures and of all salaries and other obligations that may be due and payable in the succeeding month, said statement to be filed on or before the first day of each month.

When it shall appear to the controller from said certified statement that any

amounts are due and necessary to be paid, he shall draw a requisition on the Budget Bureau covering the same; and upon the receipt of notice from the State Treasurer showing the amount placed to their credit, the duly constituted authorities may issue State warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries for administrative officers of county or city units if any reports required to be filed with the State school authorities are more than thirty days overdue. (1955, c. 1372, art. 9, s. 7.)

§ 115-85. Fidelity bonds.—The State Board of Education shall, in its discretion, determine what State and local employees shall be required to give bonds for the protection of State school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the State Board of Education is authorized to place the same and pay the premiums thereon.

Boards of education in each county and city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who, as employees of such administrative units, are authorized or permitted to receive any school funds from whatever source, and all persons responsible for, or authorized to handle school property, to be bonded for the faithful discharge of their duties as to such school funds in such an amount as in the discretion of said county and city boards of education shall be deemed sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the State of North Carolina. The amount deemed necessary to cover the cost of such surety bond shall be included as an item in the current expense funds of the school budget of each school administrative unit and shall be paid from the funds provided therein; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds protected. (1955, c. 1372, art. 9, s. 8; 1959, c. 573, s. 7.)

Editor's Note. — The 1959 amendment inserted "an amount" in lieu of "a man- ner" in the seventh line of the second paragraph.

§ 115-86. Apportionment of local funds among administrative units.—All county-wide current expense funds shall be apportioned to the administrative units of a county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit, except that county-wide current expense funds for the operation of an industrial education center shall be allocated to the administrative unit operating such center on the basis of a budget approved by the board of county commissioners for such center.

County-wide capital outlay funds for the cost of new school sites, or addition to present school sites, new school buildings, new additional construction at existing buildings and equipment for such new buildings and for new additional construction shall be apportioned to the administrative units of a county on the basis of budgets approved by the board of county commissioners for each administrative unit and for the amounts and purposes approved by said board of commissioners. All other capital outlay school funds shall be apportioned to the administrative units of a county on the same per capita enrollment basis used for apportionment of current expense funds.

Upon the basis of budget approval and upon receiving the certificate of per capita enrollment, the county auditor or accountant shall determine the proportion of all county-wide tax and nontax revenue and other funds accruing to the current expense, and capital outlay funds, which is apportionable to the county and city administrative units within a county. The proportion thereof allocable to each administrative unit in said county shall be set up to the credit of such administrative unit by the county auditor or accountant.

On the basis of such apportionment, it shall be the duty of the county treasurer, or other county official performing such duties, to remit all of such funds for current expense and capital outlay as they are collected promptly at the end of each month to each administrative unit within the county.

In the event that a greater amount is collected and paid to any administrative unit than is authorized to be spent in its approved budget for current expense, and capital outlay funds, the same shall remain an unencumbered balance to be credited to those funds in the following fiscal year, and shall not be spent, committed, or obligated, unless a supplemental budget is first approved by the board of education and the board of county commissioners.

Collections of all taxes and other revenues accruing to a debt service fund shall be deposited promptly to the credit of such fund in the manner provided by law. Apportionments to local districts contained in the budget for the county debt service fund shall be paid and credited to the debt service funds of the local districts in such manner as may be practicable so as to provide for prompt payment of items of principal and interest therein, as the same fall due.

Funds derived from payments on insurance losses shall be used in the repair or replacement of buildings damaged or destroyed or, in the event the buildings are not replaced, shall be used to reduce the school indebtedness of the county or of the local district to which said payment has been made, or for other capital outlay purposes within said county or local district. (1955, c. 1372, art. 9, s. 9; 1959, c. 915, s. 3.)

Editor's Note. — The 1959 amendment added the exception clause at the end of the first paragraph.

Apportionment of County-Wide Taxes. —The principle upon which county-wide taxes were apportioned under the earlier

law was fundamentally just and was preserved in the School Machinery Act of 1939. *Board of School Trustees v. Benner*, 222 N. C. 566, 24 S. E. (2d) 259 (1943).

§ 115-87. Procedure in cases of disagreement or refusal of tax levying authorities to levy taxes.—In the event of a disagreement between the county or city boards of education and the tax levying authorities as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, or any item of either fund, the chairman of the county or city board of education and the presiding officer of the tax levying authorities shall arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item. If agreement cannot be reached in this manner, the board of education whose budget is in question and the tax levying authorities shall each have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board.

In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between such boards and he shall render his decision thereon within five days, but either the board of education or the tax levying authorities shall have the right to appeal to the superior court within ten days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive and he shall give judgment requiring the tax levying authorities to levy the tax which will provide the amount of the current expense fund, the capital outlay fund, and the debt service fund, which he finds necessary to maintain the schools in the administrative unit. In case of an appeal to the Supreme Court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the nine months' school fund

and from other sources, an amount for the current expense fund and the prorated part of capital outlay fund equal to the amount of these funds for the previous year. Also, in case of an appeal, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The tax levying authorities shall forthwith levy the taxes according to the judgment rendered and upon refusal to do so, the members of said authority shall be in contempt and may be punished accordingly. (1955, c. 1372, art. 9, s. 10.)

Local Modification.—Madison: 1957, c. 627.

Meeting Must Be Held. — Where the commissioners have refused to levy a tax to provide an additional salary for the county superintendent and the meeting called for by statute has not been held nor the clerk called upon to arbitrate the matter it is erroneous to grant a writ of mandamus to the superintendent to compel the commissioners to levy the tax. *Rollins v. Rogers*, 204 N. C. 308, 168 S. E. 206 (1933).

Appeal to Court—Trial by Jury Not Required.—The statute providing the procedure in cases of disagreement between a board of education and the board of

county commissioners as to the budget confers upon the courts duties of a judicial nature, not requiring a trial by jury to determine the disputed matter upon an issue of fact, and the provisions of this section are not void as being repugnant to Art. I, § 19 of the State Constitution. *Board v. Board*, 174 N. C. 469, 93 S. E. 1001 (1917); *Board v. Board*, 182 N. C. 571, 109 S. E. 630 (1921); *In re Board of Education*, 187 N. C. 710, 122 S. E. 766 (1924).

Applied, former statute, in *Onslow County Board of Education v. Onslow County Board of Com'rs*, 240 N. C. 118, 81 S. E. (2d) 256 (1954).

§ 115-88. Jury trial as to amount needed to maintain schools.—The tax levying authorities or boards of education shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding term of the superior court, and shall have precedence over all other business of the court. Provided, that if the judge holding the court shall certify to the Chief Justice of the Supreme Court, either before or during such term, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said term, the Chief Justice shall immediately call a special term of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such term. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the tax levying authorities shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the Supreme Court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1955, c. 1372, art. 9, s. 11.)

Applied, former statute, in *Onslow County Board of Com'rs*, 240 N. C. 118, 81 S. E. (2d) 256 (1954).

§ 115-89. Operation of county and city school budget.—1. **Duty of County and City Boards of Education.**—It shall be the duty of the county and city boards of education to pay all obligations incurred in the operation of the public schools promptly and when due, and to this end said boards of education

shall inform the tax levying authorities from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations in order that the tax levying authorities may make provisions for the funds to be available: Provided, that if a county or city board of education shall wilfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax levying authorities, the indebtedness shall not be a valid obligation of the administrative unit and the members of the board responsible for making the debt may be held liable for the same.

2. Duty of Tax Levying Authorities.—It shall be the duty of the tax levying authorities to provide, when and as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expenses, as set forth in a statement prepared by the county or city boards of education and which expenditures are in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amount so borrowed in accordance with the provisions of "The County Finance Act" and "The Local Government Act". The interest on all such notes shall be provided by the tax levying authorities in addition to the amount approved in the budget, unless this item is specifically taken care of in the budget. (1955, c. 1372, art. 9, s. 12.)

§ 115-90. **How school funds are paid out.**—The school funds shall be paid out as follows:

1. State School Funds.—All State school funds shall be released only on warrants drawn on the State Treasurer, signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the city board of education for city administrative units.

2. County, City, and District School Funds.—All county, city, and district school funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and the secretary of the county board of education for county units and the chairman and the secretary of the city board of education for city administrative units. In county administrative units such warrants shall be countersigned by such officer as the county government laws may require and in city administrative units such warrants shall be countersigned by the treasurer of the administrative unit: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of, and are within the budget amounts appropriated for the particular administrative unit, and further, when each warrant is accompanied by an invoice, statement, voucher or other basic document which, upon examination by the countersigning officer, satisfies such countersigning officer that issuance of such warrant is proper: Provided, further, that in county units before the chairman and secretary of the board of education shall draw a voucher on funds belonging to a local tax district, they shall have an order signed by the chairman of the committee of such district authorizing the expenditure of such funds.

3. When Signatures of Chairman and Secretary May Be Affixed by Machine.—The signature of the chairman and the secretary of county and city boards of education required by this section on school warrants may be affixed to such warrants by signature machines. When such machines are used on warrants drawn on the State Treasurer, the same may be used only in accordance with such rules and regulations as may be prescribed by the State Board of Education with the approval of the State Treasurer. The use of such signature machines shall not be employed in any county or city administrative unit until the governing board thereof has adopted a resolution authorizing the use of same and

accepting the full responsibility for any nonauthorized or improper use of such machines. In all cases where such signature machines are used, the secretary to the county board of education and the surety on his bond, or the secretary to the city board of education and the surety on his bond, shall be liable for any illegal, improper, or unauthorized use of such machines.

4. Special Funds of Individual Schools.—County and city boards of education shall, unless otherwise provided for by law, designate the bank, depository, or trust company authorized to do business in North Carolina, in which all special funds of each individual school shall be deposited. Such funds shall be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the respective boards of education: Provided, that the schools handling less than three hundred dollars (\$300.00) in any school year may not be required, in the discretion of the boards of the respective units, to follow this procedure for depositing and disbursing funds.

In all schools a complete record shall be kept by the treasurer and reports made of all the money received and disbursed by him in handling funds of the school: Provided, that nothing in this section shall prevent the depositing of all these special funds with the treasurer of the county or city administrative units and the disbursing of said funds upon the signatures of the chairman and secretary of the respective boards of education.

5. Records and Reports.—The State Superintendent of Public Instruction and the State Board of Education shall have full power and authority to make rules and regulations prescribing the manner in which records shall be kept by all county and city administrative units as to the expenditure of the current expense funds, the capital outlay funds and the debt service funds derived from local sources, and for making reports thereof to the State Superintendent of Public Instruction. (1955, c. 1372, art. 9, s. 13; 1959, c. 573, s. 8.)

Local Modification. — Moore: 1959, c. 573, s. 8, added all of the first proviso following the 977, s. 2; Rowan, as to subsection 2: 1955, c. 419, words “administrative unit” in subsection 2.

Editor's Note. — The 1959 amendment

ARTICLE 10.

The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-91. **Treasurer of school funds.**—1. County School Administrative Unit. — The county treasurer of each county shall be the treasurer of all county school funds and school district funds of the county school administrative unit. He shall receive and disburse all such school funds and shall keep such funds separate and distinct from all other funds.

Before entering upon the duties of his office, the county treasurer shall furnish bond in some surety company authorized to do business in North Carolina in an amount to be fixed by the board of county commissioners, which bond shall be a separate bond, not including liability for other funds, and shall be conditioned for the faithful performance of his duties as treasurer of the county school funds and district school funds of the county administrative unit, and for the payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of county commissioners may from time to time, if necessary, require the county treasurer to increase the amount of his bond or furnish additional security.

In all counties in which the office of county treasurer has been abolished as authorized by G. S. 155-3, or when by any other law a bank or trust company has been substituted therefor such bank or trust company shall act as treasurer and depository of all county school funds and district school funds: Provided, however, that such bank or trust company acting as treasurer of county school

funds and district school funds shall not be required to maintain the system of bookkeeping and accounting imposed upon the county treasurer by G. S. 155-7, but the duty and responsibility of keeping and maintaining the accounting system as to county and district schools shall be the duty and responsibility of the county accountant or county auditor serving as such under the provisions of G. S. 153-115; provided, further, that nothing contained in this section shall relieve the superintendent of any county administrative unit from maintaining such accounting system and furnishing such reports as are now or may hereinafter be imposed upon him by law.

2. City School Administrative Unit.—Unless otherwise provided by law, the board of education of a city administrative unit shall appoint a treasurer of all the school funds of such unit. The treasurer so appointed shall continue to fill such position at the will of the board of education of such unit. No person authorized to make the expenditures or draw vouchers therefor, or to approve the same, shall act as treasurer of such funds.

Before entering upon the duties of his office, the treasurer of a city administrative unit shall file with the board of education a good and sufficient bond with surety by some surety company authorized to do business in North Carolina in an amount to be fixed by the board of education of such administrative unit, which shall be a separate bond, not including liability for any other funds, and shall be conditioned for the faithful performance of the duties of treasurer of the city administrative unit school funds and for the proper accounting for all such funds as may come into his possession by virtue of his office as treasurer and for payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of education may from time to time, if necessary, require him to increase the amount of his bond, or furnish additional security.

The treasurer of city administrative unit school funds is hereby required to maintain and keep, with respect to said funds, like records and accounts and make such reports with respect to said funds as herein provided to be made, kept, and maintained by the treasurer of county and district school funds of county administrative units.

3. Special Funds of Individual Schools.—The county board of education of all county administrative units and the board of education of all city administrative units shall, by proper resolution duly recorded, appoint a treasurer of all special school funds for each school in the respective administrative unit. In all individual schools, a complete record shall be kept by the treasurer so appointed and reports made of all money received and from what source and of all money disbursed and for what purpose: Provided, however, that nothing in this subsection 3 shall prevent the handling of these special school funds under subsection 1 or subsection 2 of this section. The treasurer of all special funds and the principal of each school shall make a monthly report and such other reports as may be required to the superintendent of the administrative unit wherein such individual school is located, showing the status of each special school fund, upon forms to be supplied for that purpose. (1955, c. 1372, art. 10, s. 1; 1957, c. 365.)

Local Modification.—Guilford: 1955, c. 671.

Editor's Note.—The 1957 amendment changed the second paragraph of subsection 2 by deleting from the second sentence the words "The amount of the bond shall not be less than one-half the total amount of money received by him or his predecessor during the previous year, and."

Legislature May Change Custodian of

Fund.—Ordinarily the county treasurer is the proper custodian of all sinking fund securities, including school sinking funds and securities held for the retirement of term bonds where the county has assumed the payment of such bonds, but the General Assembly may designate or change the custodian of sinking fund securities. *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

§ 115-92. **Action against treasurer to recover funds.**—If it shall appear that any part of the public school funds received by the county treasurer,

or person or depository acting as treasurer, or the treasurer of a city administrative unit, has not been properly applied to the credit of the county or city board of education, as the case may be, such board or boards of education shall bring action on the bond of such official or depository to recover such part of the funds as has not been so applied to such board or boards of education. In the event such board does not bring appropriate action against the treasurer, or person or depository acting as treasurer, the tax levying authorities shall bring action in the name of the State for any breach of the bond of the treasurer of any school funds for any failure to account properly for the funds received by him. If the tax levying authorities shall fail to bring such action, it may be brought in the name of the State upon the relation of any taxpayer. (1955, c. 1372, art. 10, s. 2.)

§ 115-93. Annual reports of treasurer.—The treasurer of every county and city board of education shall report to the State Superintendent of Public Instruction on the first Monday of August of each year the entire amount of money received and disbursed by him during the preceding fiscal year. Such reports shall be made on blanks furnished by the State Superintendent and all information called for on such blanks shall be furnished in detail and by item as may be requested on said report.

On the same date that the treasurer reports to the State Superintendent, he shall file a duplicate of such report in the office of the county or city board of education, as the case may be. Likewise, the treasurer of every county or city school fund shall make such other reports as the board of education may from time to time require.

The treasurer of every school fund shall, when required by the county or city board of education, produce his books and vouchers for examination and shall also exhibit all moneys due the public school fund. (1955, c. 1372, art. 10, s. 3.)

§ 115-94. Duties of treasurer on expiration of his term.—Each treasurer of public school funds, in going out of office, shall deposit in the office of the board of education of the administrative unit of which he is treasurer his books in which are kept his school accounts and all records and blanks pertaining to his office. He shall at the time he goes out of office, file with the board of education and with his successor, a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the State Superintendent of Public Instruction and to the superintendent of the administrative unit the receipts and disbursements for the current fiscal year as a whole. (1955, c. 1372, art. 10, s. 4.)

§ 115-95. Penalty for failure to report and to perform other duties.—If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or fail to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1955, c. 1372, art. 10, s. 5.)

§ 115-96. Speculating in teachers' salary vouchers.—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or State officer shall engage in the purchasing of the salary voucher of any of the school personnel at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned and shall be liable to removal from office at the discretion of the court. (1955, c. 1372, art. 10, s. 6.)

§ 115-97. **Audit of school funds.**—All school funds shall be audited and reports made for each fiscal year.

1. **State School Funds.**—The State Board of Education, in cooperation with the State Auditor, shall cause to be made an annual audit of the State school funds disbursed by county and city administrative units and such additional audits as may be deemed necessary.

2. **County and City Administrative Units and District School Funds.**—County and city boards of education shall cause to be made an annual audit of all county, city, and district school funds including the records and accounts of the boards of education and those of their respective treasurers, and the school boards shall provide for the payment of the cost thereof in the school budgets of the respective administrative units.

The auditor's report shall show: (1) Sources of revenue and purposes for which expenditures were made; (2) comparison of approved school budget with the actual transactions; (3) statement of outstanding indebtedness, including county school bonds, amounts due the county or city board of education, and all unpaid accounts; (4) appraisal of all school property; and (5) such other items as may be prescribed by the county or city boards of education and the Local Government Commission and which will aid in making a complete audit.

The annual audits shall be completed as near to the close of the year as practicable and copies of said audit shall be filed with the chairman of the board of education, the superintendent of schools, the county auditor, the State Board of Education, the director of the Local Government Commission and the State Superintendent of Public Instruction not later than October the first after the close of the fiscal year on June the thirtieth. By October the first after the close of the fiscal year, a summary statement of the report on the audit shall be published in some newspaper published in the county, or posted at the courthouse door if no newspaper is published in such county.

3. **Special Funds of Individual Schools.**—County and city boards of education shall cause to be made, at the same time the audit of the county or city funds is made, an audit of the special school funds of each school in the respective administrative units. Such annual audits shall be completed as near the close of the year as practicable and copies of each audit shall be filed with the chairman of the board of education and the superintendent of schools of the administrative unit in which the school is located and the State Board of Education not later than October the first after the close of the fiscal year on June the thirtieth.

4. **Payment of Audit Cost.**—County and city boards of education shall include in the school budgets of the respective administrative units funds for the payment of the costs of the audits of county, city, district, and special funds of individual schools as required under subsections 2 and 3 of this section: Provided, that nothing in this section shall prevent the respective boards from prorating the cost of auditing of special funds to the special funds of each school. (1955, c. 1372, art. 10, s. 7.)

§ 115-98. **Fines, forfeitures and penalties.**—It shall be the duty of every public officer, including clerks of the several courts and all justices of the peace, as well as all others in any way related or connected with the assessing, collecting and handling of any of those funds mentioned in the Constitution, article IX, section 5, which shall belong to and remain in the several counties and which shall be faithfully appropriated for establishing and maintaining the free public schools:

1. To keep in a proper record book supplied by the county an itemized, detailed statement of the respective amounts received by him in the way of fines, penalties, amercements and forfeitures.

2. To account for and pay to the county treasurer all of said funds received by him within thirty days after the receipt thereof, to the end that all of said

funds may be faithfully appropriated by the county board of education for the purposes mentioned in the Constitution.

3. To enter immediately upon the docket or record book all of said funds which are assessed, and which shall not be remitted except for good and sufficient reasons, which reasons shall be stated on the docket and at all times be open to public inspection.

4. Any officer, including justices of the peace, violating any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment at the discretion of the court. (1955, c. 1372, art. 10, s. 8.)

Local Modification.—Brunswick, as to former statute: 1955, c. 336.

§ 115-99. Unclaimed fees of jurors and witnesses paid to school fund.—All moneys due jurors and witnesses which remain unclaimed in the hands of any clerk of the superior court or of the clerk of any inferior court for more than one year shall be paid over to the county treasurer by the clerk of said court, on the first day of January, of each year, for the use of the public schools. All such moneys shall be used as other public school revenue. (1955, c. 1372, art. 10, s. 9.)

§ 115-100. Miscellaneous funds.—It shall be the duty of the county superintendent of schools at least once a year and as directed by the county board of education to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes where applicable are correctly accounted for to the school fund each year; he shall likewise examine the records of the several courts of the county, including justices of the peace, and their reports filed with the clerk of the superior court, to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be the duty of the superintendent to make a prompt report thereof to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of fines, forfeitures, penalties and other funds accruing to the public school fund to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court. The clear proceeds of such funds shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including justices of the peace, who shall wilfully fail or refuse to account for all such funds coming into the hands of such officer, shall upon conviction thereof, be guilty of a felony and punished as provided by law in cases of embezzlement. (1955, c. 1372, art. 10, s. 10.)

ARTICLE 11.

Loans from State Literary Fund.

§ 115-101. Loans by State Board from State Literary Fund.—The State Literary Fund includes all funds derived from the sources enumerated in section four, article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may make loans from the State Literary Fund to the counties for the use of county and city boards of education under such rules and regulations as it may adopt and according to

law for the purpose of aiding in the erection and equipment of school plants. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the State Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1.)

Cross Reference. — As to authority to sell notes evidencing loans from State Literary Fund, see § 135-7.1.

Editor's Note.—For act validating notes evidencing loans from Literary Fund, see Session Laws 1945, c. 404.

§ 115-102. **Terms of loans.**—Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed four per centum (4%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the county or city board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county or city board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2.)

§ 115-103. **How secured and paid.**—At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the county or city board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. Upon failure of any administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the county or city board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3.)

§ 115-104. **Loans by county board to school districts.**—The county board of education, from any sum borrowed under the provisions of this article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by or on behalf of the district. (1955, c. 1372, art. 11, s. 4.)

§ 115-105. **State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.**—In any case where a loan has heretofore been made from the State Literary Fund or from and special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5.)

§ 115-106. **Issuance of bonds as part of general refunding plan.**—In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6.)

§ 115-107. **Validating certain funding and refunding notes of counties.**—The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to article twenty-four of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or from special building funds pursuant to either chapter one hundred and forty-seven of the Public Laws of one thousand nine hundred and twenty-one, or article twenty-five of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or chapter two hundred and one of the Public Laws of one thousand nine hundred and twenty-five, or chapter one hundred and ninety-nine of the Public Laws of one thousand nine hundred and twenty-seven, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the six-months school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being chapter eighty-one of the Public Laws of one thousand nine hundred and twenty-seven, as amended. (1955, c. 1372, art. 11, s. 7.)

§ 115-108. **Special appropriation from fund.**—The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars (\$17,500.00) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said fund. (1955, c. 1372, art. 11, s. 8.)

§ 115-108.1. **Loans not granted in accordance with G. S. 115-101.** The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any county or city

board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G. S. 115-101, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G. S. 115-101 and that a dire emergency exists in the administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G. S. 115-102 and shall be evidenced by the note of the county or city board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the county or city board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G. S. 115-103 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2.)

§ 115-108.2. Pledge of nontax revenues to repayment of loans from State Literary Fund.—Any county or city board of education obtaining a loan from the State Literary Fund under the provisions of G. S. 115-108.1 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available nontax revenues, including but not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1.)

ARTICLE 12.

Assumption of School District Indebtedness by Counties.

§ 115-109. Method of assumption; validation of proceedings.—The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the school budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township, city administrative unit or other political subdivision in the county (hereinafter collectively called "local districts"), lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of article 9 of chapter 153 of the General Statutes, known as "The County Finance Act", insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the County Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of such fund among the schools of the county as provided in subsection 4 of § 115-80.

The assumption, as herein provided, by any county, at any time prior to the twenty-eighth day of February, one thousand nine hundred fifty-one, of the indebtedness of local districts for school purposes and all proceedings had in con-

nection therewith are hereby in all respects ratified, approved, confirmed and validated: Provided, that nothing herein shall prevent counties and local taxing districts from levying taxes to provide for the payment of their debt service requirements if they have not been otherwise provided for. (1955, c. 1372, art. 12, s. 1.)

Section Considered in Pari Materia with Special School Bond Act.—Where this section and a special school bond act (Session Laws 1957, ch. 1078), deal with the same general subject, to wit: Assumption by counties of school district indebtedness, these statutory provisions must be regarded as in pari materia. It is presumed (1) that the earlier general act was known to the legislature when it enacted the later special act, and (2) that the later statute was enacted in the light of and in reference to the former general statute on the same subject. *Strickland v. Franklin County*, 248 N. C. 668, 104 S. E. (2d) 852 (1958).

When a provision in a special school bond act which directs that the board of county commissioners "may pay" the bonds from county funds is considered in

pari materia with this section, which established a statewide policy with reference to assumption of school district indebtedness by counties, it must be treated as intended to fit into and be governed by the provisions of the earlier general statute. And when this provision is so considered in pari materia with the general statute, it may be given operative effect entirely within the purview of the general act and in complete harmony with the rest of the special act. Accordingly, the special act (Session Laws 1957, ch. 1078) under which the bonds are to be issued is not unconstitutional or invalid per se nor is it unconstitutional or invalid under N. C. Const., art. 5, § 4, in respect to its application to the particular facts of the case. *Strickland v. Franklin County*, 248 N. C. 668, 104 S. E. (2d) 852 (1958).

§ 115-110. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian.—In any county where the bonds of a local district have been assumed under the provisions of this article, all taxes levied and collected for the purpose of paying the principal of and interest on said bonds, or for creating a sinking fund for the retirement of said bonds, shall be deposited in the school debt service fund of the county. The custodian of all moneys and other assets of a sinking fund created for the retirement of said bonds is hereby authorized to turn over such moneys and assets to the county treasurer, the county sinking fund commissioner or other county officer charged with the custodianship of sinking funds, and such custodian shall thereby be discharged from further responsibility for administration of and accounting for such sinking fund. (1955, c. 1372, art. 12, s. 2.)

§ 115-111. Allocation to district bonds of taxes collected.—The collections of taxes levied for debt service on all taxable property of a county in which local district bonds have been assumed shall be proportionately allocated to each issue of such bonds. (1955, c. 1372, art. 12, s. 3.)

ARTICLE 13.

Refunding and Funding Bonds of School Districts.

§ 115-112. "School district" defined.—The term "school district," as used in this article shall be deemed to include any special school taxing district, local tax district, special charter district, city administrative unit or other political subdivision of a county by which or on behalf of which bonds have been issued for erecting and equipping school buildings, or for refunding the same, and such bonds are outstanding. (1955, c. 1372, art. 13, s. 1.)

§ 115-113. Continuance of district until bonds are paid.—Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the payment of its bonds, such school district shall continue in existence with its boundaries unchanged from those es-

published at the time of issuance of its bonds, unless such boundaries shall have been extended and thereby embrace additional territory subject to the levy of such taxes, until all of its outstanding bonds, together with the interest thereon, shall be paid. (1955, c. 1372, art. 13, s. 2.)

§ 115-114. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.—The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of §§ 159-59 to 159-62 of the General Statutes and the Local Government Act, §§ 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded, shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 3.)

§ 115-115. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.—In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

1. The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

2. It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, §§ 160-379 and 160-383 of the General Statutes (the Municipal Finance Act), as amended, shall be read and understood as if they contained no requirements in respect to such matters.

3. The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 4.)

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ 115-116. Purposes for which elections may be called.—(a) To Vote a Supplemental Tax.—Elections may be called to ascertain the will of the

voters as to whether there shall be levied and collected a special tax in the several administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the current expense funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers, other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, and for making the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the administrative units of the county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit involved.

(b) To Increase a Supplemental Tax Rate.—Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) To Enlarge City Administrative Units.—Elections may be called in any district or districts, or other school area or areas, of a county administrative unit to ascertain the will of the voters in such district or districts, or other school area or areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such district or districts, or other school area or areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other district or districts, or other school area or areas, so consolidated with the city administrative unit the same school taxes as shall be levied in the other portion of the city administrative unit.

(d) To Supplement and Equalize Educational Advantages.—Elections may be called in any area of a county administrative unit which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any part or parts of such area.

(e) To Abolish a Special School Tax.—Elections may be called in any administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) To Vote School Bonds.—Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) To Provide a Supplemental Tax on a County-Wide Basis after Petition for Consolidation of City and County Administrative Units.—Elections may be called for an entire county on the question of a special tax to supplement the current expense funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit, pursuant to the provisions of G. S. 115-74 and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a county-wide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit, shall not be affected. If the vote for the county-wide supplemental tax carries, said tax shall

not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of G. S. 115-74. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9.)

Local Modification. — Brunswick, as to subsection (a) as affecting Southport School District: 1959, c. 600; Lincoln, as to subsection (g): 1959, c. 480, s. 1; Mecklenburg: 1959, c. 378, s. 22.

Cross Reference.—As to constitutional provision requiring election, see Const., Art. VII, § 7, and the annotation thereto.

Editor's Note.—The first 1957 amendment added subsection (g), and the second 1957 amendment rewrote subsection (c).

The 1959 amendment added the proviso and the last sentence to subsection (a).

Effect of Constitutional Provision—Contribution to Retirement Fund.—The statute under which a local unit desiring to supplement State support for the schools is required to submit the question to a popular vote is not in deference to Art. VII, § 7, of the Constitution. It is simply the legislative adoption of a similar method of control over extravagant expenditure pro hac vice. It does not affect the status of the administrative unit as an agency of the State, and when the burden is assumed § 135-8 not only confers authority, but is mandatory in its provisions that the local administrative unit make its contribution to the State Retirement Fund, and that the taxing authorities therein provided the necessary funds. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

For other cases decided under former

laws relating to local tax elections for schools, see *Gill v. Board*, 160 N. C. 176, 76 S. E. 203 (1912); *Chitty v. Parker*, 172 N. C. 126, 90 S. E. 17 (1916); *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924); *Forester v. North Wilkesboro*, 206 N. C. 347, 174 S. E. 112 (1934); *Freeman v. Charlotte*, 206 N. C. 913, 174 S. E. 453 (1934); *Evans v. Mecklenburg County*, 205 N. C. 560, 172 S. E. 323 (1934); *Onslow County Board of Education v. Onslow County Board of Com'rs*, 240 N. C. 118, 81 S. E. (2d) 256 (1954).

For other cases decided under former laws relating to elections on the question of enlarging local tax districts, see *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922); *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922); *Barnes v. Board*, 184 N. C. 325, 114 S. E. 398 (1922); *Board v. Bray Bros. Co.*, 184 N. C. 484, 115 S. E. 47 (1922); *Vann v. Board*, 185 N. C. 168, 116 S. E. 421 (1923); *Plott v. Board*, 187 N. C. 125, 121 S. E. 190 (1924); *Blue v. Board*, 187 N. C. 431, 122 S. E. 19 (1924); *Jones v. Board*, 187 N. C. 557, 122 S. E. 290 (1924); *Carr v. Little*, 188 N. C. 100, 123 S. E. 625 (1924).

Applied, former statute, in *Onslow County Board of Education v. Onslow County Board of Com'rs*, 240 N. C. 118, 81 S. E. (2d) 256 (1954).

Quoted in *Jordan v. Board of Com'rs*, 245 N. C. 290, 95 S. E. (2d) 884 (1957).

§ 115-117. Maximum rate and frequency of elections.—In no event shall a tax for supplementing the current expense fund budget exceed fifty cents (50¢) on the one hundred dollars (\$100.00) valuation of property, real and personal: Provided, that in any school administrative unit, district, or other school area having a total population of not less than one hundred thousand (100,000) said local annual tax that may be levied shall not exceed sixty cents (60¢) on one hundred dollars (\$100.00) valuation of said property.

In the event that a majority of those who shall vote in any election called pursuant to the provisions of this article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same unit, district, or area until the lapse of six months after such prior election; but the foregoing time limitation shall not apply to any election held in any unit, district, or other school area which is larger or smaller than the unit, district, or area in which such prior election shall have been held, or to any election held for a different purpose than such prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10.)

Editor's Note.—Acts 1955, c. 1231 added the proviso to the first paragraph.

The 1957 amendment rewrote the second paragraph.

The 1959 amendment inserted "administrative unit, district, or other school area" in lieu of "district" near the beginning of the proviso in the first paragraph.

§ 115-118. **Who may petition for election.**—County and city boards of education may petition the board of county commissioners for an election in their respective administrative units or for any school area or areas therein.

In county administrative units, for any of the purposes enumerated in G. S. 115-116, the school committee of a district, or a majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding twelve months in a school area less than a district, and which area is adjacent to a city unit or a district to which it is desired to be annexed and which can be included in a common boundary with said unit or district, or the committee of a district formed from portions of two or more contiguous counties, may petition the county board of education for an election. (1955, c. 1372, art. 14, s. 3.)

Quoted in *Jordan v. Board of Com'rs*,
245 N. C. 290, 95 S. E. (2d) 884 (1957).

§ 115-119. **Necessary information in petitions.**—The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

- (1) Purpose or purposes for calling the proposed election.
- (2) A legally-sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.
- (3) The maximum rate of tax which is proposed to be levied. This paragraph shall not apply to a petition for an election to enlarge a city administrative unit.
- (4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July first next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.
- (5) If the petition for an election is to supplement and equalize educational advantages, and if any school district or districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5.)

Local Modification. — Lincoln, as to paragraph (5): 1959, c. 480, s. 2.

Editor's Note.—The 1957 amendment inserted in paragraph (2) the words "legally-sufficient" and "or otherwise" and deleted the word "proposed" formerly ap-

pearing before "election." The amendment also added the second sentence to paragraph (3), and rewrote paragraph (4).

Cited in *Jordan v. Board of Com'rs*, 245 N. C. 290, 95 S. E. (2d) 884 (1957).

§ 115-120. **Boards of education must consider petitions.**—The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board of education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the

endorsement shall be made in the minutes of the board. Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

County and city boards of education shall have no discretion in granting an election to abolish a special school tax in any administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said unit, district or school area, shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax," the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five per cent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year.

If the petition for an election in an area containing a number of districts is signed by the school committeeman of at least a majority of the school districts within a proposed special school taxing area, the board of education in such administrative unit shall endorse such petition and the election shall be held. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100.)

Editor's Note.—The 1957 amendment deleted the former proviso at the end of the first paragraph to the effect that when petition is endorsed by city board of education and signed by majority of voters in affected area the election shall be called.

When Petition Need Not Be Considered by Both County and City Board—Former Law.—It is necessary to have the petition of the annexation of an area to an adjoining city administrative unit approved by both the county and the city board of education in order to authorize the county board of commissioners to call the election as requested in the petition, except that, under the proviso deleted from the first paragraph of this section by the 1957 amendment, where a petition was signed by a majority of the qualified voters who had resided for the preceding twelve months in a school area, less than a district, and which area was adjacent to a city unit or district to which it was de-

sired to be annexed and which could be included in a common boundary with said unit or district, it was only necessary that the city board of education endorse the petition. *Jordan v. Board of Com'rs*, 245 N. C. 290, 95 S. E. (2d) 884 (1957).

Time for Holding Subsequent Election Revoking Local Tax.—Requiring that "no election for revoking a special [now local] tax in any special [now local] tax district shall be ordered and held," within less than two [now one] years from the date at which the tax was voted and the district established, "nor at any time within less than two [now one] years after the date of the last election on the question [of revoking the tax] in the district," invalidates any election on the question of taxation held within two years [now one] after the last election, the second proposition being independent from the first as to "revoking" a special tax in the district, otherwise the second provision would be

identical with the first, and meaningless. *Weesner v. Davidson County*, 182 N. C. 604, 109 S. E. 863 (1921).

The two [now one] years period in which no election may be had should be

computed from the last valid election on the subject. *Weesner v. Davidson County*, 182 N. C. 604, 109 S. E. 863 (1921), approved in *Adcock v. Fuquay Springs*, 194 N. C. 423, 140 S. E. 24 (1927).

§ 115-121. Action of board of county commissioners or governing body of municipality.—Petitions requesting special school elections and bearing the approval of the board of education of the unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminal with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72.)

Editor's Note. — The 1959 amendment added the last sentence.

Duty of County Commissioners Ministerial.—The county commissioners have no discretion to order or not order an election. After the board of education has ap-

proved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. *Board v. Board*, 189 N. C. 650, 127 S. E. 692 (1925).

Quoted in *Jordan v. Board of Com'rs*, 245 N. C. 290, 95 S. E. (2d) 884 (1957).

§ 115-122. Rules governing elections.—In all elections held under this article, the board of county commissioners shall designate the polling place or places, appoint the registrars and judges of election, canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and record such determination on their records.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: A statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July first next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

If the election is to be held for any other purpose permitted by this article, the notice of election shall include the following: A statement of the purpose of the election; a legal description of the area within which the election is to be held; and, if any additional tax is proposed to be levied, the maximum rate of tax proposed to be levied, which shall not exceed the maximum prescribed by this article, and the purpose of the tax.

The notice of the election shall be given by publication at least once a week for at least three weeks in some newspaper published in, or having a general

circulation in, the area in which the election is to be held. The first publication of such notice shall be made not less than thirty days before the election.

New registration of the qualified voters of the territory shall be ordered, unless the territory embraces an entire county or other organized political subdivision with current registration books; and in all cases a new registration may be ordered in the discretion of the board of county commissioners. Notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulated in said district at least twenty days before the close of the registration books. This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which the books will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

The ballots to be used in said election shall include, among other matter written or printed thereon, the words "For Local Tax" and "Against Local Tax" for all elections called under this article except those called under subsection (c) of G. S. 115-116, in which case the ballots shall have written or printed thereon the words "For Enlargement of the (here insert name of city) City Administrative Unit and school tax of the same rate" and "Against Enlargement of the (here insert name of city) City Administrative Unit and school tax of the same rate."

All other details of said election shall be fixed by the board of county commissioners ordering the election, and the expense of holding and conducting the election shall be provided by the board of education of the administrative unit in which the election is held: Provided, that where territory is proposed to be added to a city administrative unit, the expense shall be borne by such unit.

In all cases where an election is called and held under the provisions of this article, and a majority of the qualified voters voting at such election voted in favor of the tax or of propositions submitted, and the results of such election have been officially determined and recorded in the minutes of the board of county commissioners, the validity of such election, and of the registration for such election, shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the results of such election. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7.)

Cross Reference.—As to time registration books must be kept open, see § 163-31.

Editor's Note.—Session Laws 1955, art. 14, s. 10, provides that in all those cases in which proceedings for an election may have been begun but not completed prior to May 26, 1955, such proceedings may be completed and the election held under the statutes in force prior to such date.

The 1957 amendment rewrote the former second paragraph to appear as the present second, third and fourth paragraphs. It also rewrote the paragraph re-

lating to ballots.

Notice in Newspaper.—It is not necessary that the newspaper, in which the notice of election is given be published in the district, it is sufficient if the paper is circulated in the district where the election is to be held. See *Miller v. Duke School Dist.*, 184 N. C. 197, 113 S. E. 786 (1922).

And failure to give the notice has been held immaterial where such failure did not affect the result of the election. See *Younts v. Com.*, 151 N. C. 582, 66 S. E. 575 (1909); *Gregg v. Board*, 162 N. C. 479, 78 S. E. 301 (1913).

§ 115-122.1. Effective date; levy of taxes.—(a) If, in any election authorized by this article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July first next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July first next following such election. (1957, c. 1271, s. 8.)

§ 115-122.2. Conveyance of school property upon enlargement of city administrative unit.—Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within ten days after July first next following such election, convey and transfer to the board of education of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8.)

§ 115-123. Elections in districts created from portions of contiguous counties.—Districts already created and those that may be created from portions of two or more contiguous counties, may hold elections under this article to be incorporated or to vote a special local tax therein for the purposes enumerated in G. S. 115-116.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts already created, the majority of the committeemen must sign the petition. In proposed districts, the petition must be signed by fifteen per cent (15%) of the qualified voters who shall have resided in such area for the preceding twelve months. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For incorporation" and "Against incorporation." If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of "..... Joint Local Tax School District of Counties". The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the school-

house; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred by this section. This committee shall have all the powers and duties of committees of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued in its corporate name. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue, no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for the payment of principal and interest shall be levied and collected as provided hereinabove for the levy and collection of local taxes: Provided, that certified copies of the bond orders and resolutions shall be recorded on the minutes of the board of commissioners of each county constituting a part of the joint school district.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of

the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

The committee of the joint school district shall prepare a budget annually in accordance with the law governing budgets in which the committee will indicate objects and items of expenditure which are proposed to be made from the collection of the special tax of the district. This budget shall show the proportionate part of the expense to be contributed by each county, which part shall be ascertained on the basis of the proportions of the total district school census living in each respective county. When this budget is completed by the committee of the joint district, a copy of it shall be filed with the county board of education of each county, and it shall be the duty of each board of education, if it approves the district budget, to incorporate it in the county budget to be submitted to the board of commissioners of each county. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

All districts formed from portions of contiguous counties before the ratification of this article are hereby authorized and empowered to exercise all the powers and privileges conferred by this article. (1955, c. 1372, art. 14, s. 8.)

§ 115-124. Levy and collection of taxes.—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities, except where such levy is voted in a district, in which case the written consent of the chairman of the district committee shall also be obtained before any of said proceeds are expended: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one per cent (1%) thereof. The superintendent of schools, the county accountant or auditor, the officer in charge of tax records, and the county treasurer shall keep records in their respective offices, showing the valuation of all property in the unit, district, or area; the rate of tax authorized annually to be levied, and the amount annually derived from the local tax. It shall be illegal for any part of the local tax fund to be used for any purpose other than those purposes authorized by the election in the unit, or district. (1955, c. 1372, art. 14, s. 9.)

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

School Sites and Property.

§ 115-125. **Acquisition of sites.**—County and city boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the administrative unit; but no school may be operated by an administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site for a school, school building, school bus garage or for a parking area for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of article 2, chapter 40 of the General Statutes, and the determination of the county or city board of education of the land necessary for such purposes shall be conclusive; provided that not more than a total of thirty (30) acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid; provided, however, that any school administrative unit located within a county having a population of 150,000 or more may acquire by condemnation a total of not more than forty (40) acres for any one school site. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683.)

Editor's Note.—The 1957 amendment rewrote this section.

Constitutionality.—This section does not violate the requirements of just compensation and due process provided by the 14th Amendment to the United States Constitution. *Doby v. Brown*, 135 F. Supp. 584 (1955), aff'd in 232 F. (2d) 504 (1956).

Intent of 1957 Amendment.—The legislative intent, in enacting Session Laws 1957, c. 683, was to rewrite Session Laws 1955, c. 1372, art. 15, s. 1. *Topping v. State Board of Education*, 249 N. C. 291, 106 S. E. (2d) 502 (1959).

Condemnation proceedings for a school site must be considered as instituted under the provisions of § 40-2 pursuant to authority conferred by this section. *Topping v. State Board of Education*, 249 N. C. 291, 106 S. E. (2d) 502 (1959).

The word "site" is broad enough to embrace such land, not exceeding the statutory limit, as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a playground in conjunction with a school may be as essential as land taken for the schoolhouse itself. 24 R. C. L. 582. See *Board v. Forrest*, 190 N. C. 753, 130 S. E. 621 (1925), which presents an able review of the history of this section.

Discretion of School Authorities.—The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the

courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949); *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950); *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714 (1950). See *Kistler v. Randolph County Board of Ed.*, 233 N. C. 400, 64 S. E. (2d) 403 (1951).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. *Brown v. Candler*, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

The advisability of taking the property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. *Burlington City Board of Education v. Allen*, 243 N. C. 520, 91 S. E. (2d) 180 (1956).

Facts Not Showing Abuse of Discretion.—The fact that the site for a high school selected by the school authorities in a mountainous section of the State may be approached only by a crooked highway and over a narrow bridge, and that there may be other satisfactory sites for such school, does not compel or support the

conclusion that the school authorities abused their discretion in selecting the site. *Brown v. Candler*, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

High School and Elementary School on Adjoining Sites.—A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than ten (now thirty) acres of land, if any part thereof must be obtained by condemnation. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of ten (now thirty) acres, since the board has the discretionary power to locate the schools on adjoining sites. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

Selection of Site on Grounds of County Home.—Section 153-9, subsection 9, does not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school when its use would not interfere with the use of the remainder of the site for a county home. *Brown v. Candler*, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

There is no limitation on the acreage

which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed ten (now thirty) acres. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

Service by Publication on Resident Defendant.—The statutes relating to service of process by publication (G. S. 1-98 through 1-108, as amended by chapter 919, Session Laws of 1953) apply to a resident defendant in a proceeding to condemn a school site, no less than to such defendant in any other special proceeding. *Brown v. Doby*, 242 N. C. 462, 87 S. E. (2d) 921 (1955).

Former Procedure. — As to procedure for condemnation of land for a school site under this section as it stood before the 1957 amendment, see *Burlington City Board of Education v. Allen*, 243 N. C. 520, 91 S. E. (2d) 180 (1956).

For case involving title to school property and decided under former statute, see *Board of Education v. Town of Waynesville*, 242 N. C. 558, 89 S. E. (2d) 239 (1955).

Cited in *Eller v. Board of Education*, 242 N. C. 584, 89 S. E. (2d) 144 (1955).

§ 115-126. Sale, exchange or lease of school property.—1. When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any building, building site, or other real property owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property at public auction. Such sale shall be held on the property to be sold or at the courthouse door in the county in which such property is located, and shall be advertised and otherwise conducted as is prescribed by statute for judicial sales of real property. The sale shall then remain open for ten days to permit the making of an upset bid. The resale of such property following such upset bid, and the procedure therefor shall be as prescribed by statute for judicial sales of real property. If the time for making an upset bid shall expire without such bid having been made, the board may confirm the sale if it deems the highest bid to be an adequate price. Upon confirmation of the sale by the board, the chairman and the secretary of the board shall execute a deed to the purchaser of the property upon his compliance with his bid. Confirmation of the sale by the clerk of the superior court shall not be required. The proceeds of the sale shall be paid to the treasurer of the school fund of such county or city administrative unit, and shall be used either to reduce the bonded indebtedness of such administrative unit or for capital outlay purposes.

2. When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any property, other than real property, owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property either through the facilities of the North Carolina Division of Purchase and Contract or at public auc-

tion. If sold at public auction such sale shall be held at such place within such county or city administrative unit as shall be designated by the board, and shall be advertised and otherwise conducted as is prescribed by statute for the sale of personal property under a power of sale contained in a chattel mortgage. Title to the property so sold shall not pass by reason of such sale until the sale has been confirmed by the board and the purchaser has complied with the terms of his bid. The proceeds of such sale shall be paid to the treasurer of the school fund of such county or city administrative unit.

3. If in the opinion of the board the highest bid at any sale or resale of real or personal property sold pursuant to the provisions of this section is not adequate, such bid may be rejected and the property may again be advertised for sale as provided in this section, or may be sold by the board at a private sale for a price in excess of the highest bid as such public sale: Provided such private sale is consummated within a period of one year from the date of the initial public offering.

Any sale of real property at private sale made prior to May 1, 1959 is hereby validated, provided the real property so sold was first advertised for sale at public auction as provided by this section and the price received therefor was in excess of the highest bid received at such public offering.

4. In the acquisition by it of any property for public school purposes any county board of education, or any board of education for any city administrative unit, may exchange therefor, as full or partial payment therefor, any property owned or held by it, without compliance with the provisions of this section: Provided, that for at least ten days before any exchange of real property shall be consummated, the terms of such proposed exchange shall be filed in the office of the superintendent of schools of such administrative unit and in the office of the clerk of the superior court in the county in which such property is located, and a notice thereof published one or more times in a newspaper having a general circulation in the administrative unit at least ten days before the consummation of said exchange.

5. When in the opinion of any county board of education, or of the board of education for any city administrative unit, the use of any property owned or held by it is unnecessary or undesirable for public school purposes, but the sale of such property is not practicable or in the public interest, such board may in its discretion enter into an agreement with any other person, firm or corporation for the lease of such property to such person, firm or corporation for a term not in excess of one year, upon such terms and conditions as the board shall deem advisable and in the public interest.

6. In addition to the foregoing, county and city boards of education are hereby authorized and empowered, in their sound discretion, to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11.)

Local Modification. — Burke: 1959, c. 1037; Franklin: 1959, c. 213; Transylvania: 1953, c. 723.

Editor's Note. — The first 1959 amendment added subsection 6. The second 1959 amendment made subsection 3 applicable to real property as well as to personal property, inserted the proviso to the first paragraph and added the second paragraph.

Lease of Surplus Lands.—A city school administrative unit contemplated by § 115-4 is a governmental agency separate and

distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, has legislative authority to lease the surplus, under this section, either for a public or a private purpose, so long as it exercises its discretion in good faith. Where the lease stipulates that use shall be for a public or semipublic purpose, the law will presume the parties intended and contemplated use of the property without unlawful discrimination because of race, color, religion or other illegal classification.

State v. Cooke, 248 N. C. 485, 103 S. E. (2d) 846 (1958).

Delegation of Authority. — Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a

contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. *Bowles v. Fayetteville Graded Schools*, 211 N. C. 36, 188 S. E. 615 (1936).

§ 115-127. **Deeds to property.**—All deeds to school property shall, after registration be delivered to the superintendent of the administrative unit in which the property is located and he shall provide a safe place for preserving all such deeds. (1955, c. 1372, art. 15, s. 3.)

§ 115-128. **Vehicles owned by boards of education exempt from taxation; registration.**—All school buses, trucks, automobiles and other motor vehicles owned by county and city boards of education and used for transporting pupils to and from school or used by other school personnel in the prosecution of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Department of Motor Vehicles as provided in G. S. 20-84. (1955, c. 1372, art. 15, s. 4.)

§ 115-129. **Provisions for school buildings and equipment.**—It shall be the duty of the boards of education of the several administrative school units of the State to make provisions for the nine months' school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same. (1955, c. 1372, art. 15, s. 5.)

Expense a County-Wide Charge.—It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a county-wide charge. *Reeves v. Board of Education*, 204 N. C. 74, 167 S. E. 454 (1933).

All Expenditures Must Be Authorized.—All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

County Commissioners to Determine What Expenditures Shall Be Made.—The board of commissioners of the county, and not the board of education is charged with the duty to determine what expenditures

shall be made for the erection, repair and equipment of school buildings in the county. *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education, are necessary. When it determines that funds are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated in the approved projects. *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

The right of the board of commissioners to determine what expenditures shall be

made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

But They Cannot Interfere with Authority of Board of Education.—The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949); *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Any change in plan must be initiated by the board of education. Then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 115-130. Erection and repair of schoolhouses.—The building of all new schoolhouses and the repairing of all old schoolhouses shall be under the control and direction of, and by contract with, the board of education in which such building and repairing is done. Boards of education shall not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent as to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the county or city superintendent and the architect before full payment is made therefor: Provided, that this section shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of said board.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any administrative unit, the State Board of Education, under such rules as it may deem advisable, may retain any amount not to exceed fifteen per cent (15%) of said loan or grant, until such completed buildings, erected or repaired, in whole or in part, from such loan or grant funds shall have been approved by a designated agent of the State Board of Education.

Upon such approval by the State Board of Education, the State Treasurer is authorized to pay the balance of the loan or grant to the treasurer of the school administrative unit for which said loan or grant was made. (1955, c. 1372, art. 15, s. 6.)

Cross Reference.—As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Commissioners May Reallocate Proceeds of Bond Issue.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

But May Not Change Purpose for Which Bonds Were Issued.—Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. *Parker v. Anson County*, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Power Discretionary.—The building of

a school is a matter vested by the statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, see *Pickler v. County Board*, 149 N. C. 221, 62 S. E. 902 (1908), or unless the committee is influenced by improper motives, or there is misconduct on their part. See *Smith v. School Trustees*, 141 N. C. 160, 53 S. E. 524 (1906); *Venable v. School Committee*, 149 N. C. 120, 62 S. E. 902 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

Money Available for Erection of Building.—Where a county board of education consolidated five existing high schools into one county-wide high school with the approval of the State Board of Education, and plans for the new school building

were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend this section, which provides that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money...available for its erection." *Edwards v. Yancey County Board of Ed.*, 235 N. C. 345, 70 S. E. (2d) 170 (1952).

Providing Electric Lights.—Under the general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. *Conrad v. Board*, 190 N. C. 389, 130 S. E. 53 (1925).

§ 115-131. Board cannot erect or repair building unless site is owned by board.—County and city boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the said board: Provided, that the board of education of a county or city administrative unit, with the approval of the board of county commissioners is authorized to appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining county or city administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of said boards, whereby children from the unit making such appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county or city board of education of the county embracing such former special charter district. (1955, c. 1372, art. 15, s. 7.)

Not Applicable to Electric Light Wires.—Former § 115-88, similar to this section, did not apply to the erection of electric light wires. It applied only to sites for

school buildings; it did not extend to or include the rights of way. *Conrad v. Board*, 190 N. C. 389, 130 S. E. 53 (1925).

§ 115-132. Duty of board to provide equipment for school buildings.—It shall be the duty of county and city boards of education and tax levying authorities to provide suitable supplies for the school buildings under their jurisdiction. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the State Board of Health, and where such school cannot be connected to

water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the State Board of Health. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1372, art. 15, s. 8.)

Cross Reference.—As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

A county board will not be enjoined from constructing a new school building on the grounds that it has failed to make plans for water and sewer service for the school, where it appears from the complaint that at the time the suit was instituted the construction of the proposed building had progressed only to the stage where bids had been accepted, since presumably the defendants at the proper time will comply with this section and make provision for a proper supply of water. *Lamb v. Randolph County Board of Ed.*

235 N. C. 377, 70 S. E. (2d) 201 (1952).

Specific or special legislative authority is given the county to issue without a vote bonds for sanitary improvements for its schoolhouses necessary for it to maintain, as an administrative unit of the State, the constitutional school term in the county. *Taylor v. Board of Education*, 206 N. C. 263, 173 S. E. 608 (1934).

The authority of a county to issue without a vote bonds for sanitary improvements for its schoolhouses necessary to maintain the constitutional school term was not affected by the School Machinery Act of 1933. *Taylor v. Board of Education*, 206 N. C. 263, 173 S. E. 608 (1934).

§ 115-133. Duties of boards of education to keep buildings in repair and determine use of school property.—It shall be the duty of county and city boards of education and tax levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all committeemen, principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Boards of education shall promulgate rules and regulations by which school buildings may be used for other than school purposes, to the end that the community may be encouraged to use school buildings for civic or community meetings of all kinds which may be beneficial to the members of the community and at the same time preserve and properly care for public school buildings. (1955, c. 1372, art. 15, s. 9; 1957, c. 684.)

Editor's Note.—The 1957 amendment made the promulgation of rules and regulations mandatory.

§ 115-133.1. Duties of boards of education and tax levying authorities to insure public school buildings and equipment.—(a) The board of every administrative unit in the public school system of this State, in order to safeguard the investment made in public schools, shall

- (1) Insure and keep insured to the extent of not less than seventy-five per cent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage; and
- (2) Insure and keep insured adequately the equipment and contents of said building.

(b) The tax levying authority for each administrative unit shall appropriate funds necessary for compliance with the provisions of subsection (a).

(c) Wilful failure to comply with the provisions of (a) and (b) above, is declared a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days. Every twenty-four hours without such insurance constitutes a separate offense. (1957, c. 1040.)

Editor's Note.—The act inserting this section is effective as of January 1, 1958.

ARTICLE 16.

State Insurance of Public School Property.

§ 115-134. **Authority and rules for organization of system.**—The State Board of Education is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school property. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The Board shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in its opinion is necessary to insure and protect effectively public school property, and it shall fix their compensation with the approval of the Personnel Department. (1955, c. 1372, art. 16, s. 1.)

§ 115-135. **Public School Insurance Fund; decrease of premiums when fund reaches five per cent (5%) of total insurance in force.**—There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in this article is referred to as "the fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to "the fund" the sum of two million dollars (\$2,000,000.00), which shall be paid from and charged to the State Literary Fund as setup and defined in this chapter. When the reserves in "the fund" shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars (\$1,000,000.00), there shall be transferred from "the fund" back to the State Literary Fund the sum of one million dollars (\$1,000,000.00) and when "the fund" shall again be increased to the extent of another one million dollars (\$1,000,000.00), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars (\$1,000,000.00) in full reimbursement of the sum of two million dollars (\$2,000,000.00), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in "the fund" for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in this article. Such part of the money in "the fund" as may not be needed for the payment of current demands thereon shall be invested by the State Treasurer in such securities as constitute permissible investments for State sinking funds, and all of the earnings thereon shall be paid into "the fund." The State Treasurer shall an-

nually report to the State Board of Education and to the General Assembly the status of "the fund" and a detailed statement of the investments therein and earnings therefrom.

When the fund herein provided for reaches the sum of five per cent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain "the fund" at five per cent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of "the fund" are sufficient to maintain the same at five per cent (5%) of the total insurance in force, no premiums shall be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the fund shall be increased beyond five per cent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this article within such five-year period. (1955, c. 1372, art. 16, s. 2.)

§ 115-136. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.—All county and city boards of education may insure all property within their units against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in "the fund" hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in "the fund" shall be insured by "the fund" as of the expiration of the policy. Each school governing board shall give notice of its election to insure in "the fund" at least thirty days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect, "the fund" shall act as co-insurer of the properties covered by such insurance to the same extent and in the same manner as is provided for co-insurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1955, c. 1372, art. 16, s. 3; 1957, c. 686, s. 3.)

Editor's Note.—The 1957 amendment substituted the word "law" for the word "land" in line fifteen.

§ 115-137. Inspections of insured public school properties.—The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local school authorities shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4.)

§ 115-138. Information to be furnished prior to insuring in fund; providing for payment of premiums.—County and city boards of education shall at least thirty days before insuring in "the fund," furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in "the

fund" shall be reached by agreement in accordance with the procedure hereinafter set up for adjustment of losses. County and city boards of education and the tax levying authorities shall be required to provide for the payment of premiums for insurance on the school properties of each unit, respectively, to the extent of not less than seventy-five per cent (75%) of the current insurable value of the said properties, including the insurance in fire insurance companies and the insurance provided by "the fund" as set out herein. (1955, c. 1372, art. 16, s. 5.)

§ 115-139. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.—The State Board of Education shall determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school units at the lowest cost possible in keeping with the payment of cost of administration of this article, and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each county and city administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until the county or city board of education requests that said insurance be cancelled or until such property becomes uninsurable in the manner set out in G. S. 115-141. From time to time the local school authorities shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local school authorities shall within thirty (30) days from notice thereof pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six per cent (6%) per annum. (1955, c. 1372, art. 16, s. 6.)

§ 115-140. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.—In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, "the fund" shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which "the fund" is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and "the fund" shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of

Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local governing board having charge of the property, and the two so appointed shall select a third—all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local governing board shall fail for fifteen days to agree upon the third appraiser, then, on request of the State Board of Education or the local governing board having charge of the property, such third appraiser shall be selected by the resident judge of the superior court of the judicial district in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local governing board having such property in charge. The costs of the appraisal shall be paid by "the fund." Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the county administrative unit to the county treasurer, and pay the amount of loss or damage to property of a city administrative unit to the treasurer of said unit upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7.)

§ 115-141. Maintenance of inspection and engineering service; cancellation of insurance.—The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in "the fund" as hereinbefore provided, and to expend for such purpose not in excess of ten per cent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local school board shall be given at least thirty (30) days' notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper: Provided, that the findings and results of the inspection of local school property by the agents of the Board shall be reported to county and city boards of education and to the board of county commissioners of such units as carry insurance with the State thirty (30) days before budget making time in order that all school property shall be properly taken care of and made safe from fire hazards. (1955, c. 1372, art. 16, s. 8.)

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. Contracts of principals and teachers terminated at end of 1954-1955 term; employment thereafter.—(1) The contracts of all principals and teachers now employed in the public schools of North Carolina are hereby terminated as of the end of the school term 1954-1955. County and city superintendents shall give each principal and teacher notice by mail of the termination of his contract, but the failure to give such notice shall not have the effect of continuing in force the contract of any principal or teacher beyond the end of the 1954-1955 school term.

(2) Any teacher or principal desiring election as teacher or principal in a particular administrative unit shall file his or her application in writing with the county or city superintendent of such unit. The application shall state the name

and number of the certificate held, when the certificate expires, experience in teaching, if any, and the administrative unit in which the applicant last taught. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers and principals before any salary vouchers shall be paid. The contracts of teachers and principals shall be made for the next succeeding school year or for the unexpired part of a current school year. No county or city board of education shall enter into a contract for the employment of more teachers, including vocational teachers, than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such teachers from local funds. All contracts shall be subject to the condition that when the position for which any principal or teacher is employed is terminated the contract is likewise terminated. (1955, c. 664.)

When Contract Binding.—As to when teachers' contracts became binding obligations of county commissioners under former law, see *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-143. Health certificate required for teachers and other school personnel.—Any person serving as county superintendent, city superintendent, supervisor, district principal, building principal, teacher, or any other employee in the public schools of the State, shall file in the office of the county or city superintendent each year, before assuming his or her duties, a certificate from the county physician, local health director, or other reputable physician, certifying that the said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties.

The examining physician shall make the aforesaid certificate on an examination form supplied by the State Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the State Superintendent of Public Instruction, with approval of the State Health Director, and such rules and regulations may include the requirement of an X-ray chest examination.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14.)

Editor's Note.—The 1957 amendment, "State Health Director" for "State Health Officer" in line six of the second paragraph. effective January 1, 1958, substituted "local health director" for "health officer" in line five of the first paragraph, and substituted

§ 115-144. Resignation of supervisor, principal or teacher.—After entering into a written contract, any teacher, principal, or supervisor desiring to resign or abrogate his contract must give not less than thirty days' notice in writing to the county or city superintendent by whom employed. In the event the resignation is submitted within less than thirty days prior to the opening of school, or if there is evidence that the contract has been wilfully breached, the employing authorities shall have authority to request the State Superintendent of Public Instruction, in his discretion, to revoke the employee's certificate for a period of one year. (1955, c. 1372, art. 17, s. 2.)

§ 115-145. Removal of principals and teachers.—The county and city boards of education and district committees, with the approval of the superintendent, may dismiss a principal or teacher for immoral or disreputable conduct

or for failure to comply with the provisions of the contract. The superintendent of schools, with the approval of the committee or the board of education, has authority and it is his duty to dismiss a principal or teacher who has proven himself incompetent, or who wilfully refuses to discharge the duties of a public school principal or teacher, or who may be persistently neglectful of such duties. However, no principal or teacher shall be dismissed until charges have been filed in writing in the office of the superintendent and such principal or teacher given at least five days' notice in which time he shall have the opportunity to appear before the board of education or the district committee before whom the matter is being investigated. After a full and fair hearing the action of the board of education or the committee shall be final: Provided, the principal or teacher shall have the right to appeal to the county board of education if the action was taken by a district committee, and thereafter to the courts, or directly to the courts if the action was taken by a county or city board of education.

In cases where principals or teachers have been dismissed by boards of education for immoral or disreputable conduct and where such conduct in the opinion of the superintendent of schools warrant it, he shall notify the State Superintendent of Public Instruction who shall have authority to revoke such principal's or teacher's certificate, if he deems such action justifiable. (1955, c. 1372, art. 17, s. 3.)

As to former statute, see *Iredell County Board of Education v. Dickson*, 235 N. C. 359, 70 S. E. (2d) 14 (1952).

**Dismissal of Teacher Not Legally Ap-
pointed.**—*Spruill v. Davenport*, 178 N. C. 364, 100 S. E. 527 (1919).

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.—It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals and teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016.)

Editor's Note. — The 1959 amendment added the second paragraph.

§ 115-147. Power to suspend or dismiss pupils.—A district principal, or a building principal, shall have authority to suspend or dismiss any pupil who wilfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school: Provided, any suspension or dismissal in excess of ten school days and any suspension or dismissal denying a pupil the right to attend school during the last ten school days of the school year shall be subject to the approval of the county or city superintendent. Every suspension or dismissal for cause shall be reported at once to the superintendent and to the attendance officer, who shall investigate

the cause and deal with the offender in accordance with rules governing the attendance of children in school. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 115-148. Duty to make reports to superintendent; making false reports or records.—Every principal or teacher of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals or teachers until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any superintendent, principal, teacher or other school employee of the public schools, who knowingly and wilfully makes or procures another to make any false report or records, requisitions, or pay rolls, respecting daily attendance of pupils in the public schools, pay roll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the State Superintendent of Public Instruction.

When the governing board of any county or city administrative school unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teachers' salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified. (1955, c. 1372, art. 17, s. 6; 1959, c. 1294.)

Editor's Note. — The 1959 amendment added the second and third paragraphs.

§ 115-149. Care of school building.—It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

If any child in school shall carelessly or wilfully damage school property, the teacher or principal shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7.)

§ 115-150. Authority and duty of principal generally.—The principal of a district is the executive school officer of the district, and the principal of a school is the executive officer of that school. The principal shall have authority

to grade and classify pupils and exercise discipline over the pupils of the district or schools. The principal of a district shall make all reports to the county superintendent and the principal of a school shall make reports to the district principal, and in their capacity as principals, they shall give suggestions to teachers for the improvement of instruction. And it shall be the duty of each teacher, including teachers of vocational agriculture, vocational home economics, trades and industries, in a district or in a school to cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons.

It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Insurance Commissioner, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage area as well as all class rooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file a written report once each month during the regular school session with his local school committee, and two copies of this report with the superintendent of his administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the county or city board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Insurance Commissioner, the Superintendent of Public Instruction and the State Board of Education. (1955, c. 1372, art. 17, s. 8; 1957, c. 843; 1959, c. 573, s. 13.)

Editor's Note.—The 1957 amendment added the last four paragraphs so as to place certain responsibility upon the principals of the public schools with regard to fire safety.

The 1959 amendment inserted "sinu-

late" in lieu of "assimilate" at the beginning of the fifth line of the second paragraph and repealed the former last paragraph which pertained to the failure of a principal to perform the duties imposed by this section.

§ 115-150.1. Duty of principal regarding fire hazards.—The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

- (1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.
- (2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wir-

- ing, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.
- (3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.
 - (4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.
 - (5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.
 - (6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G. S. 115-150.2.

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G. S. 115-150.2. It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections. (1957, c. 844; 1959, c. 573, s. 14.)

Editor's Note. — Chapter 573, Session in school facilities, and substituted this Laws 1959, repealed former § 115-150.1, and the two following sections therefor. which related to reduction of fire hazards

§ 115-150.2. Inspection of schools for fire hazards; reports; rules and regulations; removal or correction of hazard.—Every public school building in the State shall be inspected every four months in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 90 days apart:

- (1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in subdivisions (1), (3), (4) and (5) of G. S. 115-150.1 exist, and to insure that all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the person or persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the person or persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.
- (2) The board of county commissioners of each county shall designate the person or persons to make the inspections and reports required by subdivision (1) of this section. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified person or persons, but no person shall make any electrical inspection unless he shall be qualified as required by G. S. 160-122. Nothing in §§ 115-150.1 to 115-150.3 shall be construed as prohibiting two or more counties from designating the

same person or persons to make the inspections and reports required by subdivision (1) of this section. The board of county commissioners shall compensate or provide for the compensation of the person or persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

- (3) It shall be the duty of the State Commissioner of Insurance, the State Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.
- (4) It shall be the duty of each principal to make certain that all fire hazards, called to his attention in the course of the inspections and reports required by subdivision (1) of this section, are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.
- (5) It shall be the duty of each superintendent of schools to make certain that all fire hazards, called to his attention in the course of the inspections and reports required by subdivision (1) of this section and not removed or corrected by the principals as required by subdivision (4) of this section, are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard. (1957, c. 844; 1959, c. 573, s. 14.)

§ 115-150.3. **Liability for failure to perform duties imposed by sections 115-150 to 115-150.2.** — Any person wilfully failing to perform any of the duties imposed by G. S. 115-150, 115-150.1 or 115-150.2, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14.)

§ 115-151. **Salary increments for experience to teachers, principals and superintendents in armed and auxiliary forces.**—The State Board of Education, in fixing the State standard salary schedule of teachers, principals and superintendents as authorized by law, shall provide that teachers, principals and superintendents who entered the armed or auxiliary forces of the United States after September sixteenth, one thousand nine hundred and forty, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the positions of teachers, principals, or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 17, s. 9.)

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-152. **Certificate prerequisite to employment.**—All teachers, supervisors and other professional personnel employed in the public schools of the State, or in schools receiving public funds, shall be required to hold certificates in accordance with the law, and no contract for employment shall be valid until the certificate is secured: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided, further, that no person shall be employed to teach who is under eighteen years of age. (1955, c. 1372, art. 18, s. 1.)

§ 115-153. **Certifying and regulating the grade and salary of teachers.**—The State Board of Education shall have entire control of certifying all applicants for teaching, supervisory, and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. (1955, c. 1372, art. 18, s. 2.)

§ 115-154. **Local approval of certificate required.**—No certificate issued by the board shall be valid until approved and signed by the superintendent of the administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of State-wide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1955, c. 1372, art. 18, s. 3.)

§ 115-155. **Employment of persons without certificate unlawful; salaries not paid.**—It shall be unlawful for any board of education or school committee to employ or to keep in service any teacher, supervisor, or other professional school personnel who does not hold a certificate in compliance with the provisions of law or in accordance with the regulations of the State Board of Education governing emergency substituted personnel.

The county or city superintendent, or other official, is forbidden to approve any voucher for salary for any personnel employed in violation of the provisions of this section and the treasurer of the county or of the city schools is hereby forbidden to pay out of the school funds the salary of any such person. (1955, c. 1372, art. 18, s. 4.)

§ 115-156. **Colleges to aid as to certificates.**—Each and every college or university of the State is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates, in accordance with the rules and regulations of the State Board of Education. (1955, c. 1372, art. 18, s. 5.)

§ 115-157. **Pay of school officials and other employees.**—Teachers and principals shall be paid promptly when their salaries are due, provided they have been properly elected, have executed their contracts, and deposited a copy of the same with their respective boards of education, and have taught a school month of twenty days, or for a less number of days when their employment is terminating. All such teachers and principals employed by any administrative unit or any school district, who are to be paid from local funds, shall be paid promptly as provided by law and as State allotted teachers and principals are paid.

Public school employees paid from State funds shall be paid as follows:

Salary vouchers for the payment of all State allotted teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the State Board of Education on or before October first of each school year. Before such request shall be filed, it shall be approved by the board of education, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than nine months. Classified principals in the public schools of the State shall be employed for a term of ten (10) months and shall be paid on the basis of ten (10) months' service.

The State Board of Education is authorized to prescribe what portion of said extra month shall apply to services rendered before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

The State Board of Education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular State allotted teachers in ten (10) equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and in accordance with federal laws and regulations relating to such funds.

In any administrative unit which shall request the same of the State Board of Education on or before August 1 of each school year, teachers may be paid in nine equal payments on the basis of service for nine school months, such payments to be made on the same fixed date in each calendar month during the school term as determined by the county or city board of education: Provided, that the county or city board of education shall sustain any loss by reason of an overpayment to any teacher or principal. Principals shall be paid during the school term on the same date as the teachers are paid.

All of the foregoing provisions of this section shall be subject to the requirements that if the Old Age and Survivors Insurance Program of the Federal Social Security Act is coordinated with the Teachers and State Employees Retirement System pursuant to enactments of the General Assembly of 1955, then and in that event at least fifty dollars (\$50.00) or other minimum amount required by Federal Social Security Laws, of the compensation of every teacher, principal or other school employee covered by the Teachers and State Employees Retirement System or otherwise eligible for Federal Social Security coverage, shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6.)

Approval of Vouchers. — Mandamus is the proper action to compel a superintendent to approve a teacher's voucher. The claim is not a money demand. If there are any reasons why the vouchers should

not be signed they are matters to be heard by the court, but the signing by the superintendent is a mere ministerial duty. *Ducker v. Venable*, 126 N. C. 447, 35 S. E. 818 (1900).

§ 115-158. Authority of superintendent to issue salary vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly pay roll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly pay roll shall be signed by the principal of the school in

city administrative units, and in county administrative units by the principal and the chairman of the local committee. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education. (1955, c. 1372, art. 18, s. 7.)

§ 115-159. Cashing vouchers and payment of sums due on death of school employees.—In the event of the death of any superintendent, teacher, principal, or other school employee, before cashing any voucher which has been issued for services rendered or to whom payment is due for services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will be authorized to pay out such sums in the following manner: (1) For satisfaction of widow's year's allowance, if such is claimed. (2) For funeral expense and medical and doctor's bills for the last illness of the deceased, and any taxes due the State or local government. If any surplus remains, the clerk of the superior court shall appoint and pay the surplus to an administrator. The clerk shall receive no commission for making such payment to the administrator and the administrator shall receive no commission for receiving such surplus from the clerk. (1955, c. 1372, art. 18, s. 8.)

§ 115-160. Workmen's Compensation Act applicable to school employees.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State operated nine months' school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the nine months' school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workmen's compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees. The county and city administrative units shall be liable for workmen's compensation for school employees, including lunchroom employees, whose salaries or wages are paid by such local units from local or special funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter. (1955, c. 1372, art. 18, s. 9.)

The expression "arising out of and in the course of their employment," as used in this section, carries the same meaning and calls for the same interpretation and application as does the similar expression appearing in the text of the Workmen's

Compensation Act, § 97-2 (f). Sweatt v. Rutherford County Board of Education, 237 N. C. 653, 75 S. E. (2d) 738 (1953).

Murder of high school principal by student held not to arise out of school employment. Sweatt v. Rutherford County Board of Education, 237 N. C. 653, 75 S. E. (2d) 738 (1953).

Maintenance Work Paid for by Municipal Board.—The findings of fact of the Industrial Commission, supported by evidence, were to the effect that claimant employee was employed as janitor of a school for 8 months out of the year, his salary for this work being paid in part by the State School Commission, and was also employed in school maintenance work out-

side of his regular working hours as janitor and during the remaining four months of the year, his compensation for maintenance work being paid exclusively by the municipal board of education, and that he was injured in the course of his employment in maintenance work after regular hours in a school of which he was not custodian. It was held that the findings support the conclusion of law that he was injured during his employment by the municipal board of education and that the municipal board and its carrier are solely liable for compensation for his injury. Casey v. Board of Education, 219 N. C. 739, 14 S. E. (2d) 853 (1941).

ARTICLE 18A.

Payroll Savings Plan for Purchase of United States Bonds.

§ 115-160.1. **Authority of administrative school unit to establish plan.**—The State Board of Education may authorize any county or city administrative school unit within the State to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by the employees of such county or city administrative unit, and to set up the necessary machinery for carrying out the purposes of this article. (1957, c. 751, s. 1.)

§ 115-160.2. **Agreement between employee and board of education.**—Any employee of any county or city administrative school unit within the State may enter into a written agreement with the county or city board of education by which he is employed and which has adopted such payroll savings plan to authorize deductions from his salary of certain designated sums to be invested in United States Savings Bonds of the kind and type specified in such agreement. (1957, c. 751, s. 2.)

§ 115-160.3. **Payroll deductions and investment in United States Savings Bonds.**—Upon execution of such agreement by an employee of any county or city administrative school unit the county or city board of education employing such person is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in which withholding tax and retirement are shown. Such sums shall be deposited monthly with a depository authorized by the United States Treasury Department. The sums so deposited shall be held by the depository until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sums shall be invested in United States Savings Bonds for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practicable. Provided that no coercion shall be exercised to require any person to participate in such plan. (1957, c. 751, s. 3.)

§ 115-160.4. **Cancellation of agreement; refund to employee.**—Such agreement may be cancelled by the employee executing the same by giving written notice to the county or city superintendent of schools who is ex officio secretary to the county or city board of education, not later than the 15th day of the month in which he desires such agreement to be terminated; and the county or city board of education may cancel any agreement herein provided for upon giving ten (10) days' written notice to the affected employee. Upon the termina-

tion of the agreement, the depository is hereby authorized and directed to refund any amount of money held for such employee. (1957, c. 751, s. 4.)

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Census, Admissions and Attendance.

§ 115-161. **Continuous school census.**—The State Board of Education shall adopt such rules and regulations as may be necessary for taking a complete census of the school population and for installing and keeping in the office of the county and city superintendent in each school administrative unit of the State a continuous census of the school population. The cost of taking and keeping the census shall be included in the budget and shall be paid out of the current expense fund. If any parent, guardian, or other person having the custody of a child, refuses to give any properly authorized census taker the necessary information to enable such person to obtain an accurate and correct census, or shall knowingly and wilfully make any false statement relative to the age or the mental or physical condition of any child, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed twenty-five dollars (\$25.00) or imprisoned not to exceed thirty days, in the discretion of the court. (1955, c. 1372, art. 19, s. 1.)

§ 115-162. **Age requirement and time of enrollment.**—Children to be entitled to enrollment in the public schools for the school year 1955-1956, and each year thereafter, must have passed the sixth anniversary of their birth before October first of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October first. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October first. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth. (1955, c. 1372, art. 19, s. 2.)

§ 115-163. **Pupils residing in school district shall have advantages of public schools.**—All pupils residing in a school district or attendance area, and who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by county and city boards of education: Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned: Provided, further, that pupils residing in one administrative unit may be assigned either with or without the payment of tuition to a school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards: Provided, further, that the assignment of pupils living in one administrative unit or district to a school located in another administrative unit or district, either with or without

the payment of tuition, shall have no effect upon the right of the administrative unit or district to which said pupils are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such administrative unit or district: Provided, further, the boards of education of adjacent administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

Unless otherwise assigned by the county or city board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they reside:

1. All pupils of the district or attendance area who have not completed the prescribed course for graduation in the high school.

2. All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal residence in the same.

3. Any pupil or pupils living with either father, mother or guardian who has made his or her permanent home within the district. (1955, c. 1372, art. 19, s. 3.)

State Board No Longer Has Authority to Assign Children from One Unit to Another.—By virtue of the comprehensive re-writing of this chapter by ch. 1372, Sess. Laws of 1955, the State Board no longer has the authority formerly vested in it to

assign children from one administrative unit or district to another for the school term. In re Assignment of School Children, 242 N. C. 500, 87 S. E. (2d) 911 (1955).

§ 115-164. Children at orphanages permitted to attend public schools.—Children living in and cared for and supported by an institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the administrative unit in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of their administrative unit: Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1955, c. 1372, art. 19, s. 4.)

Failure of Purpose of Trust.—A trust fund created by will for the purpose of educating through high school a girl inmate of an orphan asylum to be chosen by the board of trustees from time to time did not fall into the residuary clause for failure of the purpose of the trust on the ground that the State educated orphan

children through high school without charge under the provisions of a statute similar to this section, since the statute made the payment for the education of the children in orphan asylums permissive only. *Humphrey v. Board of Trustees*, 203 N. C. 201, 165 S. E. 547 (1932).

§ 115-165. Children not entitled to attend public schools.—A child afflicted by mental or physical incapacity, or by such nervous disorders as to make it either impossible for such child to profit by instruction given in the public schools or impracticable for the teacher to properly instruct the normal pupils of the school, shall not be permitted to enroll or attend the public schools of the State.

In case such child is presented for enrollment in the public schools, it shall be the duty of the principal of the school to report the case to the county superintendent of public welfare, and it shall be his duty to report all such cases to the State Board of Public Welfare. Whereupon said Board shall make, or cause to be made by qualified psychologists or medical authorities, an examination to ascertain the mental and physical incapacity of said child and report the same to the county or city superintendent of schools concerned. Such examination shall determine whether said child can profit mentally by attending the public schools and whether his physical capacities are such that he can attend school without disturbing the orderly procedure of a normal classroom and the report

shall so state. Upon receipt of said report the county or city superintendent of schools is hereby authorized to exclude said child from the public schools. In all such cases in which a child is excluded from schools, a complete record of the transaction shall be filed in the office of the county or city superintendent and shall be available to the parties concerned. If the parent or guardian of such a child persists in forcing his attendance after such report has determined that he should not attend the public schools, he shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1955, c. 1372, art. 19, s. 5.)

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and sixteen years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned and in which he is enrolled shall be in session; provided, this requirement shall not apply with respect to any child when the board of education of the administrative unit in which the child resides finds that:

- (1) Such child is now assigned against the wishes of his parent or guardian, or person standing in loco parentis to such child, to a public school attended by a child of another race and it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race; and
- (2) It is not reasonable and practicable for such child to attend a private nonsectarian school, as defined in article 35 of this chapter.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness, distance of residence from bus route or school, or other unavoidable cause which does not constitute truancy as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such private schools as have tutors or teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All private schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school or tutor refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a private school or by private tutor shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5.)

Editor's Note.—The 1956 amendment added the proviso to the first paragraph.

For article on North Carolina school legislation, 1956, see 35 N. C. Law Rev. 1.

Sufficiency of Indictment.—For a conviction of failure to keep children in school it is necessary for the indictment to allege, and the State offer evidence tending to show, not only that the parent or guardian of the children within the described age had failed or refused to send

them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time which the public school in the district in which they reside shall be in session. *State v. Johnson*, 188 N. C. 591, 125 S. E. 183 (1924).

Failure to Charge as to Other than District School.—Where the indictment does not sufficiently allege the failure of the

parent or guardian to send the child to another than the public school in the district, as required by statute, an amendment may be allowed to cure the defect. *State v. Johnson*, 188 N. C. 591, 125 S. E. 183 (1924).

Same — Private Schools. — An indictment charging a parent with unlawful and willfully failing to cause his children, between the ages of 8 and 14 years, to attend the public schools of the district of his and the children's residence, as required by the statute, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be

had under the charge set out in the indictment. *State v. Lewis*, 194 N. C. 620, 140 S. E. 434 (1927).

Same—Burden Not on Parent.—Where the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to another than the district school, etc., under the provisions of the statute, and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury placing the burden upon the defendant to so show, is reversible error. *State v. Johnson*, 188 N. C. 591, 125 S. E. 183 (1924).

§ 115-167. State Board of Education to make rules and regulations; method of enforcement.—It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The Board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any city or county that has a higher compulsory attendance feature than that provided herein. (1955, c. 1372, art. 20, s. 2.)

§ 115-168. Attendance officer; reports; prosecutions. — The State Superintendent of Public Instruction shall prepare such rules and procedure and furnish such blanks for teachers and other school officials as may be necessary for reporting each case of truancy or lack of attendance to the attendance officer of the respective administrative units. Such rules shall provide, among other things, for a notification in writing to the person responsible for the nonattendance of any child, that the case is to be reported to the attendance officer of the administrative unit unless the law is complied with immediately. County or city boards of education may employ special attendance officers to be paid from funds provided in the current expense fund budget of such administrative unit and such officers shall have full authority to report and swear to the necessary criminal warrants for violations of this article: Provided, that in any unit where a special attendance officer is employed, the duties of attendance officer or truant officer as provided by law shall, insofar as they relate to such unit, be transferred from the county superintendent of public welfare to the special attendance officer of said unit. (1955, c. 1372, art. 20, s. 3; 1957, c. 600.)

Local Modification.—Graham: 1957, c. 261. "report and swear to the necessary criminal warrants for" for the words "prosecute for."

Editor's Note.—The 1957 amendment substituted in the last sentence the words

§ 115-169. Violation of law; penalty.—Any parent, guardian or other person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be liable to a fine of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00), and upon failure to pay such fine, the

said parent, guardian or other person shall be imprisoned not exceeding thirty days in the county jail. (1955, c. 1372, art. 20, s. 4.)

Local Modification. — Jackson: 1959, c.

94.

§ 115-170. Investigation and prosecution by welfare superintendent or attendance officer.—The county superintendent of public welfare, or school attendance officer, or truant officer provided for by law, shall investigate and prosecute all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the attendance officer shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, s. 5.)

§ 115-171. Investigation as to indigency of child.—If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and sixteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance officer shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the superintendent of public welfare of the county or city in which the case may arise for such welfare officer's consideration and action. (1955, c. 1372, art. 20, s. 6.)

§ 115-172. Deaf and blind children to attend school; age limits; minimum attendance. — Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of six and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as herein provided: Provided, that the board of directors of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a blind or deaf child shall reach the age of eighteen years and still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of twenty-one, unless he becomes self-supporting sooner. (1955, c. 1372, art. 20, s. 7.)

§ 115-173. Parents, etc., failing to send deaf child to school guilty of misdemeanor; proviso.—The parents, guardians, or custodians of any deaf children between the ages of six and eighteen years failing to send such deaf child or children to some school for instruction, as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the ap-

proval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1955, c. 1372, art. 20, s. 8.)

§ 115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians directing that such child be sent to the school whereof they have charge; and (2) that the authorities of the State School for the Blind and the Deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1955, c. 1372, art. 20, s. 9.)

§ 115-175. Superintendent to report defective children.—It shall be the duty of the county and city superintendents to report through proper legal channels, the names and addresses of parents, guardians, or custodians of deaf, mute, blind and feebleminded children to the principal of the institution provided for each. (1955, c. 1372, art. 20, s. 10.)

ARTICLE 21.

Assignment and Enrollment of Pupils.

§ 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.—Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this article, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. A child residing in one administrative unit may be assigned either with or without the payment of tuition to a public school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards. No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this article. (1955, c. 366, s. 1; 1956, Ex. Sess., c. 7, s. 1.)

Editor's Note.—The 1956 amendment rewrote this section, making it applicable to the assignment of pupils and to rules and regulations.

For comment on this article, see 33 N. C. Law Rev. 552. For article on North

Carolina school legislation, 1956, see 35 N. C. Law Rev. 1.

Constitutionality. — The standards set forth in § 115-177 as it stood before the 1956 amendment thereto, which standards were the same as those now set forth in

the next to the last sentence of this section, were not on their face insufficient to sustain the exercise of the administrative power conferred. *Carson v. Warlick*, 238 F. (2d) 724 (1956).

History of Article.—See *In re Application for Reassignment*, 247 N. C. 413, 101 S. E. (2d) 359 (1958).

Authority for Assignment and Enrollment of Pupils Is Vested Solely in Local Boards.—While State officials are given broad general powers over the public school system, specific authority for the assignment and enrollment of pupils in all city and county administrative units throughout the State is vested solely in county and city boards of education. There is no provision giving the State officials any authority or control whatever over local school officials relating to the enrollment and assignment of pupils in the public schools. *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

State officials are not indispensable and necessary parties to an action to compel desegregation of schools in a county. *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

Members of the State Board of Education and the State Superintendent of Public Instruction are neither necessary nor proper parties in actions involving the assignment and enrollment of pupils under this and the following sections. *Covington v. Edwards*, 165 F. Supp. 957 (1958).

§ 115-177. Methods of giving notice in making assignments of pupils.—In exercising the authority conferred by § 115-176, each county or city board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the administrative unit. (1955, c. 366, s. 2; 1956, Ex. Sess., c. 7, s. 2.)

Editor's Note.—The 1956 amendment rewrote this section which formerly related to exercise of authority for efficient administration and instruction, etc.

§ 115-178. Application for reassignment; notice of disapproval; hearing before board.—The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a board of education may, within ten (10) days after notification of the assignment, or the last publication thereof, apply in writing to the board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the board of education shall give notice to the applicant by registered mail, and the applicant may within five (5) days after receipt of such notice apply to the board for a hearing, and shall be

Administrative Remedy Must Be Exhausted.—The administrative remedy provided by this article for persons who feel that they have not been assigned to the schools that they are entitled to attend must be exhausted before the federal courts will give relief. *Carson v. Board of Education*, 227 F. (2d) 789 (1955); *Carson v. Warlick*, 238 F. (2d) 724 (1956); *Holt v. Raleigh City Board of Education*, 164 F. Supp. 853 (1958); *Jeffers v. Whitley*, 165 F. Supp. 951 (1958); *Covington v. Edwards*, 264 F. (2d) 780 (1959).

A contention that even if the Assignment and Enrollment of Pupils Act is constitutional it need not be complied with in the instant case because the provisions of the act were being unconstitutionally applied was completely untenable in view of the fact that there was no allegation that any of the plaintiffs ever sought to comply with the provisions of the act. Not until each of the plaintiffs had applied to the county board of education as individuals, and not as a class, for reassignment, and had failed to be given the relief sought, should the court be asked to interfere in school administration. *Covington v. Edwards*, 165 F. Supp. 957 (1958).

Quoted in *Joyner v. McDowell County Board of Education*, 244 N. C. 164, 92 S. F. (2d) 724 (1956).

Cited in *Holt v. Raleigh City Board of Education*, 265 F. (2d) 95 (1959).

Cited in *Holt v. Raleigh City Board of Education*, 164 F. Supp. 853 (1958); *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

entitled to a prompt and fair hearing on the question of reassignment of such child to a different school. A majority of the board shall be a quorum for the purpose of holding such hearing and passing upon application for reassignment, and the decision of a majority of the members present at the hearing shall be the decision of the board. If, at the hearing, the board shall find that the child is entitled to be reassigned to such school, or if the board shall find that the reassignment of the child to such school will be for the best interests of the child, and will not interfere with the proper administration of the school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the board shall direct that the child be reassigned to and admitted to such school. The board shall render prompt decision upon the hearing, and notice of the decision shall be given to the applicant by registered mail. (1955, c. 366, s. 3; 1956, Ex. Sess., c. 7, s. 3.)

Editor's Note.—The 1956 amendment rewrote this section which formerly related to hearing before board upon denial of application for enrollment.

The combination of investigatory and quasi-judicial powers is established practice generally approved by the courts and subject to judicial review in case of abuse. In the operation of the public schools, such an arrangement is well-nigh essential and the North Carolina statute implies that both functions shall be exercised by the boards of education. *Holt v. Raleigh City Board of Education*, 265 F. (2d) 95 (1959), affirming 164 F. Supp. 853 (1958).

The provisions of this section place the authority in the county boards of education to make the assignment and enrollment of pupils and contain no direction for the participation of the State Board of Education in these matters. A motion to amend the complaint to join these officials as additional defendants was denied in the instant case. *Covington v. Edwards*, 264 F. (2d) 780 (1959).

Right of Parent to Apply for Enrollment of Child in School.—The provisions of this section authorize the parent to apply to the appropriate public school official for the enrollment of his child or children by name in any public school within the county or city administrative unit in which such child or children reside. But such parent is not authorized to apply for admission of any child or children other than his own unless he is the guardian of such child or children or stands in loco parentis to such child or children. *Joyner v. McDowell County Board of Education*, 244 N. C. 164, 92 S. E. (2d) 795 (1956).

Right to Apply for Reassignment Is Limited to Parent, Guardian or Person in Loco Parentis. — The language of this section is clear with respect to the right to apply for a reassignment. That right is limited to the parent, guardian, or per-

son standing in loco parentis to the child seeking reassignment. Notice of the board's decision must be given applicant or his parent. No notice is required to be given to the parents of other children; they are not parties to the hearing; they are not entitled to notice of the board's decision. In re *Application for Reassignment*, 247 N. C. 413, 101 S. E. (2d) 359 (1958).

Separate Suit for Each Child Is Not Required.—The dismissal of a suit by several parents of school children on the ground that they had not exhausted their administrative remedies does not mean that there must be a separate suit for each child on whose behalf it is claimed that an application for reassignment has been improperly denied. There can be no objection to the joining of a number of applicants in the same suit as has been done in other cases. The county board of education, however, is entitled to consider each application on its individual merits, and if this is done without unnecessary delay and with scrupulous observance of individual constitutional rights, there will be no just cause for complaint. *Covington v. Edwards*, 264 F. (2d) 780 (1959).

Failure of Parents and Child to Appear before Board for Interrogation.—A board of education, requested to transfer a child from one school to another, was clearly within its right before making its initial decision in requesting the child and his parents to appear for interrogation, and they on their part were clearly delinquent in refusing to attend and to furnish all relevant information in their possession. They were not justified in deferring their appearance until the "formal hearing" provided by this section for a review of an adverse decision, or on failing, even at that stage, to appear in person and submit to examination by members of the board. Thus they were not entitled to appeal for relief to the federal court, not hav-

ing exhausted the remedies afforded them by the statutes of the State. *Holt v. Raleigh City Board of Education*, 265 F. (2d) 95 (1959), affirming 164 F. Supp. 853 (1958).

Quoted in *Carson v. Warlick*, 238 F. (2d) 724 (1956).

Cited in *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

§ 115-179. Appeal from decision of board.—Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1955, c. 366, s. 4.)

Appeal Must Be Prosecuted in Behalf of Child by Interested Parent.—An appeal to the superior court from the denial of an application made by any parent, guardian or person standing in loco parentis to any child or children for the admission of such child or children to a particular school, must be prosecuted in behalf of the child or children by the interested parent, guardian or person standing in loco parentis to such child or children respectively and not collectively. *Joyner v. McDowell County Board of Education*, 244 N. C. 164, 92 S. E. (2d) 795 (1956); *In re Application for Reassignment*, 247 N. C. 413, 101 S. E. (2d) 359 (1958).

The "person aggrieved" as used in this section means the person who makes application for the particular child for reassignment. *In re Application for Reassignment*, 247 N. C. 413, 101 S. E. (2d) 359 (1958).

Parents of Other Children Attending Schools to Which Reassignments Are Made May Not Appeal.—Where a municipal board of education grants the applications for reassignment of certain pupils, appeal from its decision may be taken as to each child only by the child's parent, guardian, or person standing in loco parentis, and the parents of other children attending the schools to which the reassignments are made are not the parties ag-

grieved by such reassignments within the purview of this section, and have no standing in court to contest the assignments. Moreover, each reassignment must be challenged separately; reassignments cannot be challenged en masse. *In re Application for Reassignment*, 247 N. C. 413, 101 S. E. (2d) 359 (1958).

Application for Mandamus Requiring Integration of Negro Pupils Not Authorized.—An application for mandamus, requiring the immediate integration of all Negro pupils residing in the administrative unit, is neither contemplated nor authorized by this section. *Joyner v. McDowell County Board of Education*, 244 N. C. 164, 92 S. E. (2d) 795 (1956).

Right to Pursue Remedies for Denial of Constitutional Rights in Federal Courts.—The appeals to the courts which this article provides are judicial, not administrative, remedies, and after administrative remedies before the school boards have been exhausted, judicial remedies for denial of constitutional rights may be pursued at once in the federal courts without pursuing State court remedies. *Carson v. Warlick*, 238 F. (2d) 724 (1956); *Holt v. Raleigh City Board of Education*, 164 F. Supp. 853 (1958); *Covington v. Edwards*, 264 F. (2d) 780 (1959).

Cited in *Jeffers v. Whitley*, 165 F. Supp. 951 (1958).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. **Authority of county and city boards of education.** — Each county board of education, and each city board of education is hereby authorized, but is not required, to acquire, own and operate school buses for the transportation of pupils enrolled in the public schools of such county or city administrative unit and of persons employed in the operation of such schools within the limitations set forth in this subchapter. Each such board may operate such buses to and from such of the schools within the county or city administrative unit, and in such number, as the board shall from time to time find practicable and appropriate for the safe, orderly and efficient transportation of such pupils and employees to such schools. (1955, c. 1372, art. 21, s. 1.)

Editor's Note. — Session Laws 1955, c. 1372, art. 21, s. 13, made §§ 115-180 to 115-191 effective from and after July 1, 1955.

§ 115-181. **Authority and duties of State Board of Education.** — 1. The State Board of Education shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any county or city board of education, except as provided in this subchapter.

2. The State Board of Education shall be under no duty to supply transportation to any pupil or employee enrolled or employed in any school. Neither the State nor the State Board of Education shall in any manner be liable for the failure or refusal of any county or city board of education to furnish transportation, by school bus or otherwise, to any pupil or employee of any school, or for any neglect or action of any county or city board of education, or any employee of any such board, in the operation or maintenance of any school bus.

3. The State Board of Education shall, as soon as may be practicable, allocate and assign all school buses and service vehicles now owned by the State to respective county and city boards of education in accordance with the present need of each such board for school bus transportation. Such need shall be determined by the State Board of Education from its records showing the number of State-owned buses and service vehicles presently being operated by such county or city administrative unit. Upon such assignment and allocation of such school buses and service vehicles the State Board of Education shall cause the title to each such bus or service vehicle to be transferred to the county board of education, or to the city board of education to which such bus or service vehicle has been so assigned and allocated.

4. The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing stop light on the front of the bus, an alternating flashing stop light on the rear of the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

5. The State Board of Education shall, when requested so to do by any county or city board of education, but not otherwise, advise such county or city board

with reference to the establishment and amendment of school bus routes, the acquisition and maintenance of school buses, or any other question which may arise in connection with the organization and operation of the school bus transportation system of such county or city board.

6. The State Board of Education shall allocate to the respective county and city boards of education all funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State. All such funds shall be allocated by the State Board of Education in accordance with the number of pupils to be transported, the length of bus routes, road conditions and all other circumstances affecting the cost of the transportation of pupils by school bus to the end that the funds so appropriated may be allocated on a fair and equitable basis, according to the needs of the respective county and city administrative units and so as to provide the most efficient use of such funds. Such allocation shall be made by the State Board of Education at the beginning of each fiscal year, except that the State Board may reserve for future allocation from time to time within such fiscal year as the need therefor shall be found to exist, a reasonable amount not to exceed ten per cent (10%) of the total funds available for transportation in such fiscal year from such appropriation.

7. Upon such allocation by the State Board of Education, all funds so appropriated by the General Assembly shall be paid over to the respective county and city boards of education in accordance with such allocation in equal monthly installments throughout the regular school year: Provided, however, that upon the request of a county or city board of education, the State Board of Education may, in its discretion, pay over to the county or city board all or any part of any or all monthly installments prior to the time when the same would otherwise be payable. The respective county and city boards shall use such funds for the purposes of replacing, maintaining, insuring, and operating public school buses and service vehicles in accordance with the provisions of this subchapter, and for no other purpose, but in the making of expenditures for such purposes shall be subject to no control by the State Board of Education. (1955, c. 1372, art. 21, s. 2.)

§ 115-182. Assignment of school buses to schools. — The superintendent of the schools of each county or city administrative unit which shall elect to operate a school bus transportation system, shall, prior to the commencement of each regular school year and subject to the approval of the county or city board of education, allocate and assign to the respective public schools within the jurisdiction of such county or city administrative unit the school buses which the county or city board shall own and direct to be operated during such school year. From time to time during such school year, subject to the directions of the county or city board of education, the superintendent may revise such allocation and assignment of school buses in accordance with the changing transportation needs and conditions at the respective schools of such county or city administrative unit, and may, pursuant to such revision, assign an additional bus or buses to a school or withdraw a bus or buses from a school in such county or city administrative unit. (1955, c. 1372, art. 21, s. 3.)

§ 115-183. Use and operation of school buses. — Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each county and city administrative unit to supervise the use of all school buses operated by such county or city administrative unit so as to assure and require compliance with this section:

1. A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the schools of the county or city administrative unit. Except as otherwise herein provided, such transportation shall be limited to transporta-

tion to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this subchapter.

2. In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.

3. The board of education of any county or city administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.

4. A county school board or the school board of a city administrative unit, which elects to operate a school bus transportation system, shall not be required to provide transportation for any employee other than the driver of the bus, nor shall such board be required to provide transportation for any pupil living within one and one-half miles of the school in which such pupil is enrolled.

5. The county or city board of education, under rules and regulations to be adopted by such board, may permit the use and operation of school buses for the transportation of pupils and teachers on necessary field trips to and from demonstration projects carried on in connection with courses in agriculture, home economics, and other vocational subjects; for the transportation of pupils and teachers to health clinics; and to concerts given by the North Carolina Symphony Orchestra; provided that under no circumstance shall the round-trip mileage for any one trip exceed 50 miles nor on any such trip shall a county or city-owned bus be taken out of the State of North Carolina. Under rules and regulations to be adopted by the board of education, school buses owned by said board may also be used for the evacuation of pupils and other school employees when such an evacuation is jointly authorized and directed by State and county or city civil defense directors; provided, the State Board of Education shall not be liable for operating costs nor for any compensation claims or tort claims incurred as a result of such an evacuation; provided further when buses are used for such civil defense purposes, the local civil defense agency in the area in which such evacuation tests are conducted shall be liable for operating costs and shall provide liability insurance for the full protection of the pupils and all school employees taking part in such evacuation tests and for all other compensation claims or tort claims incurred as a result of such evacuation. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103.)

Cross Reference. — As to maximum speed school buses allowed to travel, see § 20-218. **Editor's Note.**—The 1957 amendment rewrote subsection 5.

§ 115-184. Assignment of pupils to school buses.—1. The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the county or city administrative unit embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the principal, except by the express direction of the principal.

2. In the event that the superintendent of the schools of any county or city administrative unit shall assign a school bus to be used in the transportation of pupils to two or more schools, the superintendent shall designate the number of pupils to be transported to and from each such school by such bus, and the principals of the respective schools shall assign pupils to such buses in accordance with such designation.

3. Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation to and from such school by school bus for the regularly organized school day. The principal thereupon shall assign such pupil to a school bus serving the bus route upon which such pupil lives, if any, and if such pupil is entitled to ride upon such bus in accordance with the provisions of this subchapter and the regulations of the State Board of Education herein provided for. Such assignment shall be made by the principal so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the principal of the school as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

4. The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply to the principal of such school for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the county or city board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that such pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

5. Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to be transported to and from such school upon the school bus designated in such application, and in such case such child shall be assigned to such school bus by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court

in the same manner as other appeals are taken from judgments of such court in civil actions.

6. No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the principal, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus. (1955, c. 1372, art. 21, s. 5.)

§ 115-185. School bus drivers; monitors. — 1. Each county or city school board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. Such drivers shall possess all qualifications prescribed by the regulations of the State Board of Education herein provided for, but the selection and employment of each driver shall be made by the county or city board of education, and the driver shall be the employee of such county or city administrative unit. Each county or city board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education.

2. The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

3. The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the principal to ride thereon.

4. The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the county or city board of education for the safety of pupils and employees upon school buses. (1955, c. 1372, art. 21, s. 6.)

Cross Reference.—As to standard qualifications of school bus drivers, see § 20-218.

§ 115-186. School bus routes.—1. The principal of the school to which a school bus has been assigned shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the schools of the county or city administrative unit a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent shall examine such plan and may, in his discretion, obtain the advice of the State Board of Education with reference thereto. The superintendent shall make such changes in the proposed bus routes

as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the buses shall be operated upon the route so established and not otherwise, except as provided in this subchapter. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the county or city administrative unit.

2. Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on State-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one-half miles or more from the school to which such pupil is assigned.

3. All bus routes when established pursuant to this section shall be filed in the office of the board of education of the county or city administrative unit, and all changes made therein shall be filed in the office of such board within ten days after such change shall become effective.

4. If any school bus route established or changed as hereinabove provided is unsatisfactory to the district school committee, the committee may request the board of education of the county or city administrative unit to make such change in such route as the committee desires. In that event, the board of education shall hear the request of the district school committee and shall make such change, if any, in such route as to the board shall seem advisable so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto.

5. No provision of this subchapter shall be construed to place upon the State, or upon any county or city, any duty to supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15.)

Editor's Note. — The 1959 amendment "discharging pupils" in the first sentence inserted "including stops for receiving and of subsection 1."

§ 115-187. Inspection of school buses. — 1. The superintendent of schools in each county, and in each city administrative unit, shall cause each school bus owned or operated by such county or city administrative unit to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed promptly in the office of the superintendent of the schools of such county or city administrative unit, and a copy thereof shall be forwarded to the principal of the school to which such bus is assigned.

2. It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the schools of the county or city administrative unit. It shall be the duty of the superintendent of the schools of the county or city administrative unit to cause any and all such defects to be corrected promptly.

3. If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the schools of the county or city administrative unit, to be so defective, that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus

assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective. (1955, c. 1372, art. 21, s. 8.)

§ 115-188. Purchase and maintenance of school buses, materials and supplies.—1. To the extent that the funds shall be made available to it for such purpose, a county board of education or a city board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such county or city administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of this subchapter and by the regulations of the State Board of Education issued pursuant thereto.

2. The tax levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

3. Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective county and city boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective county and city boards of education in accordance with such allocation.

4. The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such county or city administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this subchapter in the same manner as any other public school bus.

5. It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the county board of education or by the board of education of any city administrative unit in such county. It shall be the duty of the tax levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

6. In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the county or city administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such county or city administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such county or city administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such county or city administrative unit for such purpose.

7. All school buses or service vehicles purchased by or for the account of any county or city board of education, except school buses or service vehicles purchased by such board from another county or city board of education of this State, shall be purchased through the Division of Purchase and Contract. (1955, c. 1372, art. 21, s. 9.)

§ 115-189. **Aid in lieu of transportation.**—1. When, by reason of road conditions or otherwise, any county or city board of education, which shall elect to operate a school bus transportation system, shall find it impracticable to furnish to a pupil transportation by school bus to the school in which such pupil is enrolled, or to which such pupil is assigned, the board may assign such pupil to such other school within such county or city administrative unit as the board shall deem advisable, unless the parent or guardian of such pupil or the person standing in loco parentis to such pupil, shall notify the principal of the school, in which such pupil is enrolled or to which such pupil is assigned, of the desire of such pupil to continue to attend such school without the benefit of transportation by school bus.

2. In the event that any county or city board of education, which shall operate a system of school bus transportation, shall find it impracticable to furnish to a pupil such transportation to the school in which such pupil is enrolled or to which such pupil is assigned, and if, as a result thereof, such pupil shall be required to obtain board and lodging at a place other than the residence of such pupil in order to attend a school, such board may, in its discretion, provide for the payment to the parent or guardian of such pupil of a sum not to exceed twenty-five dollars (\$25.00) per month for each school month that such pupil shall so obtain board and lodging at a place other than the residence of the pupil for the purpose of attending a school. (1955, c. 1372, art. 21, s. 10.)

§ 115-190. **Contracts for transportation.**—Any county or city board of education may, in lieu of the operation by it of public school buses, enter into a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such county or city administrative unit for the same purposes for which such county or city administrative unit is authorized by this subchapter to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in this subchapter and in the regulations promulgated pursuant to this subchapter by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by such rules and regulations of the State Board of Education. In the event that any county or city board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11.)

§ 115-190.1. **Transportation continued for area annexed to municipality.**—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality. (1957, c. 1375.)

§ 115-191. **Use of school buses by State guard or national guard.**—When requested to do so by the Governor, the board of education of any county or city administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State guard or the national guard for the purpose of transporting members of the State guard or members of the national guard to and from authorized places of encampment, or to and from places to which members of the State guard or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling

invasions or dealing with any other emergency. Public school buses so furnished by any county or city administrative unit to the North Carolina State guard or the national guard shall be operated by members or employees of the State or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State guard or the national guard. (1955, c. 1372, art. 21, s. 12.)

§ 115-192. **Payment of awards to school bus drivers pursuant to the Workmen's Compensation Act.**—In the event that the Industrial Commission shall make an award pursuant to the Workmen's Compensation Act against any county or city board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the county or city board of education shall draw a requisition or requisitions upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workmen's Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education, nor shall the county or city board of education, the county or city administrative unit, nor the said tax levying authorities be required to provide or carry workmen's compensation insurance for such purpose. (1955, c. 1292.)

ARTICLE 23.

Certain Injuries to School Children Compensable.

§ 115-193. **State Board of Education authorized to pay claims.** — The State Board of Education is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. The Board is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor or administrator of any pupil who may be injured or whose death results from injuries received while such pupil is boarding, riding on, or alighting from a school bus owned and operated by any county or city administrative unit, and transporting pupils to or from the public schools of the State, or sustained as a result of the operation of a school bus on the grounds of the school in which such pupil is enrolled, medical, hospital, surgical, and funeral expenses incurred on account of such injuries or death of such pupil in an amount not to exceed six hundred dollars (\$600.00). This section shall not apply to injuries sustained as a result of the operation of any activity bus as distinguished from a regular school bus. (1955, c. 1372, art. 22, s. 1.)

§ 115-194. **Approval of claims by State Board of Education final.**— The State Board of Education is hereby authorized and empowered, under such

rules and regulations as it may promulgate, to approve any claim authorized herein, and when such claim is so approved, such action shall be final: Provided, that the total benefits for hospitalization, medical treatment, and funeral expenses shall in no case exceed six hundred dollars (\$600.00) for any pupil so injured. (1955, c. 1372, art. 22, s. 2.)

§ 115-195. **Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.** — The claims authorized herein shall be paid by the said State Board of Education, regardless of whether the injury received by said pupil shall have been due to the negligence of the driver of the said school bus: Provided, that whenever there is recovery on account of said accident by the father, mother, guardian, or administrator of such pupil against any person, firm or corporation, the amount expended by the State Board of Education hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1955, c. 1372, art. 22, s. 3.)

§ 115-196. **Disease and injuries incurred while not riding on bus not compensable.**—Nothing in this article shall be construed to mean that the State shall be liable for sickness, or disease, or for personal injuries sustained otherwise than by reason of the operation of such bus. (1955, c. 1372, art. 22, s. 4.)

§ 115-197. **Claims must be filed within one year.**—The right to compensation as authorized herein shall be forever barred unless a claim be filed with the State Board of Education within one year after the accident, and if death results from the accident, unless a claim be filed with the said Board within one year thereafter. (1955, c. 1372, art. 22, s. 5.)

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-198. **Standard course of study for each grade.** — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of alcoholism and narcotism.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1.)

§ 115-199. **Adult education.**—When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the State

Superintendent of Public Instruction, course in adult education: Provided, that county and city boards of education, in their discretion, may institute and support such programs from local funds. (1955, c. 1372, art. 23, s. 2.)

§ 115-200. **Instruction for handicapped persons.** — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of special courses of instruction for handicapped, crippled, and other classes of individuals requiring special types of instruction. In carrying out the provisions of this section, the State Superintendent may appoint such personnel as may be needed:

1. To aid county and city boards of education in the organization of classes for the handicapped.

2. To recommend plans for the establishment of day classes in schools, home instruction and other methods of special education for handicapped persons, and outline the curriculum to be pursued.

3. To provide the recommendation of competent medical and psychological authorities as to the eligibility of handicapped persons to take said courses.

4. To arrange where necessary for a handicapped child or adult person to attend school in an administrative unit or district other than the one in which he resides.

5. To cooperate with the State Department of Public Welfare, the State Board of Health, the State schools for the blind and deaf, the State sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped persons.

Any child or adult who has been determined to be physically or mentally handicapped shall be eligible for such special instruction as may be appropriate to his needs and which is available in the area of his residence. Classes of special education may be established and organized in any administrative unit or district which has one or more handicapped individuals when the approval of the State Superintendent of Public Instruction and the State Board of Education has been given. With the same approval, itinerant teachers may be employed to give special instruction.

The State Board of Education is authorized to provide from funds available for public schools a program of special education outlined by the State Department of Public Instruction and approved by the State Board of Education. The State Board is authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the program of special education. (1955, c. 1372, art. 23, s. 3.)

§ 115-201. **Instruction in driver training and safety education.** — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors approved by the State Department of Public Instruction. (1953, c. 1196; 1955, c. 1372, art. 23, s. 4; 1959, c. 573, s. 16.)

Cross Reference.—See § 115-202 and note. which provided for transfer of certain funds from the Highway Fund to the

Editor's Note. — The 1959 amendment struck out a former second paragraph State Department of Public Instruction.

§ 115-202. **Boards of education authorized to provide courses in operation of motor vehicles.**—(1) Course of Training and Instruction Authorized in Public High Schools.—The State Board of Education and county and city boards of education in this State are hereby authorized to provide as a part of the curriculum of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such course of training

available to high school students who are found and designated to be eligible for such course of training and instruction as hereinafter provided.

(2) Inclusion of Expense in Budget.—The county and city boards of education of every administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain a course of training and instructing eligible students in such schools in the operation of motor vehicles.

(3) Appropriations. — The boards of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate and raise money by taxation and otherwise are hereby authorized to appropriate funds necessary to pay the expenses necessary to install and maintain in any public high school under their supervision a course of training and instruction for eligible students in such schools in the operation of motor vehicles, whether or not the county board of education or administrative unit shall have included the cost of the same in its budget request when submitted for approval.

(4) How Moneys Appropriated May Be Provided. — The board of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate money and to levy taxes and raise money are hereby authorized to provide the moneys appropriated pursuant to this section or pursuant to any other general, special or public-local act providing for such course of instruction and training in any public high school, by taxation, or by sale or rental of any real or personal property owned by such county or other taxing unit, or by use of any surplus funds on hand or acquired from any source; and the special approval of the General Assembly is hereby given for the levying of taxes for such purpose and for providing funds for such purpose by the other means herein mentioned.

(5) Content of Course; What Students Eligible. — The words "a course of training and instruction for eligible students in the operation of motor vehicles" as applied to this section shall be construed to mean such course of instruction in the operation of motor vehicles as shall be prescribed or approved by the State Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the students eligible for same, under the supervision of a qualified instructor. Only such students of the completed age of 14 years and 6 months, and as shall be designated by the principal of the school upon recommendation of two teachers, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the State Department of Public Instruction.

(6) Acts Ratified and Confirmed.—The acts of all boards of county commissioners and the governing bodies of all municipalities, the acts of all county and city boards of education, and the acts of the State Board of Education heretofore done in connection with providing courses of training and instruction in the operation of motor vehicles in this State, including the appropriation and expenditure of funds for such purpose, are hereby ratified and confirmed. (1955, c. 817.)

Editor's Note.—This section, which became effective upon ratification, May 4, 1955, and § 115-201, which was ratified May 26, 1955, do not seem to be in conflict.

§ 115-203. Instruction in music education; supervisor and area supervisors.—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of music education in the public schools of the State, and in the various communities in which said public schools are located. The Department of Public Instruction is hereby authorized to employ a supervisor of music education and six area music

supervisors in its program of promotion of music education. It shall be the duty of the supervisors to train leaders from the teachers, to hold conferences throughout the State with groups of teachers and demonstrate proper methods of teaching music, and to organize and direct leadership in music programs in the schools and in the communities of the State. (1955, c. 1372, art. 23, s. 5.)

§ 115-204. **Instruction in physical education and health education.**—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a comprehensive program of physical education and of health education including scientific instruction in the subjects of alcoholism and narcotism. It shall be the duty of teachers and principals in connection with this program to screen and observe all pupils in order to detect signs and symptoms of deviation from normal, and to record and report the results of their findings in accordance with the established policies and procedures and upon blanks furnished for this purpose. The State Superintendent of Public Instruction, with the State Board of Health cooperating, shall make rules and regulations regarding screening and observation by teachers and for medical and psychiatric examination of pupils attending the public schools. Correction of chronic remediable defects for underprivileged children may be paid out of school health funds appropriated by the General Assembly to the State Board of Education for allocation to school administrative units in accordance with policies agreed upon by the State Superintendent of Public Instruction and the State Board of Health, and as otherwise provided by law. The State Board of Health shall provide free dental treatment for as many underprivileged school children as possible each year. (1955, c. 1372, art. 23, s. 6.)

§ 115-205. **Observance of special days.**—The State Superintendent of Public Instruction is hereby authorized and directed to provide suitable material for the appropriate observance in all the public schools of the State of all special days which are celebrated from year to year. All literature necessary for the proper observance of the days specified in this section shall be prepared by the Superintendent of Public Instruction and printed at the expense of the State. The Superintendent of Public Instruction may fix a later or an earlier date for the observance of any special day, the observance of which is required for a specific date, if it shall appear to him to be more convenient; and he may combine the programs so as to require the observance of any two or more of the special days at the same time.

The special days appropriate for observance in North Carolina are:

1. North Carolina Day on October the twelfth.
2. Temperance or Law and Order Day on the fourth Friday in January.
3. Arbor Day on the Friday following the fifteenth day of March.
4. The birthdays of George Washington, Robert Edward Lee, and Thomas Jonathan (Stonewall) Jackson.
5. Veterans Day, Memorial Day, and such other days as may be deemed of educational and patriotic value to the children and citizens of the State. (1955, c. 1372, art. 23, s. 7.)

Cross Reference.—As to observance of Superintendent of Public Instruction is hereby empowered to designate a day to be observed in the public schools of North Carolina as the 'Sir Walter Raleigh Day'".

Sir Walter Raleigh Day.—Session Laws 1953, c. 1267, s. 4, provides: "The State

ARTICLE 25.

Selection and Adoption of Textbooks.

§ 115-206. **Textbook needs are determined by course of study.**—When the State Board of Education shall have adopted, upon the recommenda-

tion of the State Superintendent of Public Instruction, a standard course of study for each grade in the elementary school and in the high school setting forth what subjects shall be taught in each grade and outlining the basal and supplementary books on each subject to be used in each grade, the Board shall proceed to select and adopt such textbooks. Textbooks adopted in accordance with the provisions of this article shall be used by the public schools of the State. Such supplementary books as may be adopted shall neither displace nor be used to the exclusion of basal books. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1.)

Editor's Note. — The 1959 amendment deleted the word "all" formerly appearing after "by" in line seven.

§ 115-207. State Board of Education to select and adopt textbooks. —The Board is hereby authorized to select and adopt for the exclusive use in the public schools of North Carolina, textbooks, publications, and instructional materials needed for instructional purposes, in each grade and on each subject matter in which instruction is required by law. It shall adopt for a period of not less than five years, two basal primers for the first grade, two basal readers for each of the first three grades, one basal reader for grades four to eight inclusive, and one basal book or series of books on all other subjects required to be taught in the first eight grades, and one basal book for all subjects taught in the high school: Provided, the Board may, in its discretion and within funds available, adopt two basal readers for grades four to eight inclusive: Provided, that not more than three basal books may be adopted on the subject of North Carolina history: Provided, further, the State Board of Education may enter into contract with a publisher for a period less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2.)

Editor's Note. — The 1959 amendment inserted the first proviso.

§ 115-208. Appointment of Textbook Commission; members and chairman; compensation.—The Governor, upon the recommendation of the State Superintendent, shall appoint a Textbook Commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Seven of the members shall be outstanding teachers or principals in the elementary grades; five shall be outstanding teachers or principals in the high school grades: Provided, that one of the members may be a county or city superintendent. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be paid a per diem and expenses as approved by the Board. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the Commissioners heretofore appointed. (1955, c. 1372, art. 24, s. 3.)

§ 115-209. Commission to evaluate books offered for adoption.—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption.

Special consideration shall be given in the evaluation report as to the suitability of the book to the grade for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

All evaluation reports shall be signed by the member making the report and

filed alphabetically with the Board not later than a day certain as fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4.)

§ 115-210. **Selection of textbooks by Board.**—At the next meeting of the Board following the filing of the reports, the Textbook Commission shall meet with the Board and jointly examine the reports. The Board shall then select from the books evaluated such books which the Board believes will meet the teaching requirements of the North Carolina public schools in the grade or grades for which they are offered. The Board shall then request sealed bids from the publishers of all books so selected.

The Board shall make all needful rules and regulations with reference to asking for bids, notifying publishers as to calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5.)

§ 115-211. **Adoption of textbooks and contracts with publishers.**—The sealed bids of the publishers shall be opened at the next regular meeting of the Board in the presence of the Board. The Board may then adopt the books required by the course of study and enter into a contract with the publisher for such adopted books. The Board may refuse to adopt any of the books offered at the prices bid and call for new bids: Provided, that when bids are accepted by the Board and a contract entered into, the contract may require, in the discretion of the Board, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6.)

§ 115-212. **Continuance and discontinuance of contracts with publishers; procedure for change of textbooks.**—At the expiration of existing or future contracts, the Board may, upon approval of the publisher, continue the contract for any particular book or books indefinitely, that is, for a period not less than one nor more than five years. The Superintendent may at any time recommend to the Board that a given book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption.

In the event a change of any textbook is required by vote of the Board, the publisher shall be given ninety (90) days' notice prior to the first day of May, at the expiration of which time the Board is authorized to adopt a new book or books on said subject. The publisher desiring to terminate his contract which has been extended beyond the original contract period shall give notice to the Board ninety (90) days prior to the first day of May. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7.)

§ 115-213. **Advice of Attorney General as to form and legality of contracts.**—All contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General as to form and legality.

In the event that any publisher shall fail to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract, the Attorney General shall bring suit against such publisher when requested by the Board for such an amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by failure to keep said contract. (1955, c. 1372, art. 24, s. 8.)

§ 115-214. **Publishers to register all agents or employees.** — Publishers submitting books for adoption shall register in the office of the State Superintendent of Public Instruction all agents or other employees of any kind authorized to represent said company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9.)

§ 115-215. **Sale of books at lower price elsewhere reduces price to State.**—Every contract made by the Board with the publisher of any school text-

book on the adopted list in this State shall be deemed to have written therein a condition providing that in the event said publisher during the life of his contract with this State shall contract with another state, or with any county, city, town, or other municipality, or shall place said textbook on sale anywhere in the United States for a less price than that in his contract with the State of North Carolina, said publishers shall immediately furnish said textbooks to this State at a price not to exceed that for which the book is furnished, sold, or placed on sale in any other state, or in any other county, city, town, or municipality. (1955, c. 1372, art. 24, s. 10.)

ARTICLE 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§ 115-216. **Powers and duties of State Board of Education.** — The children in the public schools of the State may be provided uniformly with free basal textbooks within the appropriation of the General Assembly for that purpose, and with supplementary textbooks and instructional materials at a minimum annual rental, the State Board of Education is hereby authorized and directed to administer a fund and to establish rules and regulations necessary to:

1. Acquire by contract or purchase such textbooks and instructional supplies which are or may be on the adopted list of the State of North Carolina, and to purchase materials, supplies, and equipment which the Board may find necessary to meet the needs of the public school system of the State and to carry out the provisions of this article.

2. Provide a system of distribution of said textbooks and supplies to the children in the public schools of the State, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the State; to use warehouse facilities for the distribution of all the supplies, materials, and equipment authorized to be purchased in subsection 1 hereof.

3. Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades, including the eighth grade of the elementary public schools of North Carolina as may be determined by the Board. The title to said books shall be vested in the State: Provided, that the Board may furnish basal elementary textbooks on a rental basis in any or all elementary grades when it is deemed necessary.

4. Provide books for high school children in the public high schools of North Carolina on a rental basis. Said annual rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks: Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the Board finds it advisable to take such action.

5. Provide supplementary readers and other supplementary books for the elementary children in the public elementary schools of North Carolina on a rental basis. Said annual rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks: Provided, that the Board shall not charge a rental fee for books, supplies, and materials used in the public schools in excess of the actual cost to the State, including the handling and administration of such rentals.

6. Provide and distribute all blanks, forms, and reports necessary to keep a careful record of all the books, including their use, state of repair and such other information as the Board may require.

7. Buy and sell library books to be placed in the public schools of this State from a list to be selected by the State Superintendent of Public Instruction with the approval of the Board and to be placed in such schools as may be designated by the Board: Provided, that such library books shall be purchased in accordance with rules and regulations duly promulgated by the Board.

8. Provide for the use of said textbooks without charge to the indigent children of the State.

9. Cause an annual audit to be made of all transactions of the Board in administering said book funds, which audit shall show separately all items of cost for furnishing free basal textbooks and all other items of cost and all rentals collected on rental books. (1955, c. 1372, art. 25, s. 1.)

§ 115-217. Proper care of books; right to purchase.—In the operation and management of both the free basal textbook system and the rental supplementary textbook system, plans shall be carried out whereby the same books, as far as possible, are assigned to the same school from year to year to the end that all children may be taught the proper care of books and that the cost of books for every school may be the more accurately determined. Those schools which reduce the cost of books by proper care may be given the advantage in additional new books to the amount of the saving: Provided, that nothing in this article shall be construed to prevent the purchase of textbooks needed for any child in the public schools of the State from said Board by any parent, guardian, or person in loco parentis. (1955, c. 1372, art. 25, s. 2.)

§ 115-218. Legal custodians of books furnished by State.—County boards of education of county administrative unit and city boards of education of city administrative unit are hereby designated the legal custodians of all books furnished by the State, either for free use or on a rental basis. It shall be the duty of the said boards of education to provide adequate and safe storage facilities for the proper care of said books. (1955, c. 1372, art. 25, s. 3.)

§ 115-219. Fumigation and disinfection of books.—The State Superintendent of Public Instruction, in conjunction with the State Board of Health, shall adopt rules and regulations governing the use of fumigation and disposal of textbooks from quarantined homes and for the regular disinfection of all textbooks used in the public schools of the State: Provided, that said rules shall be attached to any rules and regulations that the State Board of Education may promulgate. (1955, c. 1372, art. 25, s. 4.)

§ 115-220. County and city units may withdraw from State system.—Whenever any county or city administrative unit has paid over to the State Board of Education, in rentals, a sum equal to the price fixed by said Board for the sale of rental textbooks, said county or city administrative unit may, at its option, with the approval of the Board, withdraw from the textbook rental system set up under rules and regulations adopted by the Board, and upon such withdrawal shall become the absolute owner of all such textbooks for which the purchase price has been paid in full to the said Board. (1955, c. 1372, art. 25, s. 5.)

§ 115-221. Rentals paid to State treasury; for use of only those paying rentals.—All sums of money collected as rentals under the provisions of this article on State owned books shall be paid monthly as collected into the State treasury, to be entered as a separate item known as the "State Textbook Rental Fund," and shall be disbursed only by order of the State Board of Education. When all advances made from the general fund of the State for setting up said textbook rental system have been paid from rentals collected, any surplus funds shall be used only to reduce the annual rentals charged and to bear the expense of operating the State textbook rental system: Provided, that, in the discretion of the Board, such surplus funds and other revenues of the textbook rental system may be used only for providing additional textbooks, library books, and other instructional materials for the use of the pupils who pay the rental fees. (1955, c. 1372, art. 25, s. 6.)

§ 115-222. **Free book system separate from rental system.** — The system of providing free basal textbooks for both elementary and high schools, when provided, shall be separate from the rental textbooks and supplementary book system, and shall depend upon appropriations from the general fund of the State for both the cost of the books and for operating and administering the system. (1955, c. 1372, art. 25, s. 7.)

§ 115-223. **Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.**—It shall be the duty of the superintendent of each administrative unit as an official agent of the State Board of Education to administer the provisions of this article and the rules and regulations of the Board insofar as said article and said rules and regulations may apply to said unit. The superintendent of every administrative unit shall have authority to require the cooperation of principals and teachers to the end that the children may receive the best possible service, and that all the books and moneys may be properly accounted for. In the event any principal or teacher shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary vouchers of said principal or teacher until the duties imposed hereby have been performed.

In the event any superintendent shall fail to comply with the provisions of this section, it shall be the duty of the State Board of Education and the State Superintendent of Public Instruction to withhold salary vouchers of said superintendent and the State Treasurer shall not pay same until the duties imposed hereby have been performed, and it shall be the duty of the State Superintendent as secretary of the State Board of Education to notify the State Board of Education and the State Treasurer in the event any superintendent shall fail to comply with the provisions of this section, and no payment shall be made until notice has been received from the State Superintendent as secretary of the State Board of Education that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8.)

§ 115-224. **County and city boards authorized to operate local systems.**—Any county or city board of education now operating a textbook rental system, or any such board that may hereafter withdraw from the State system under the provisions of G. S. 115-220 to operate its own system, shall be permitted to continue, or to operate, such local rental system without regulation from the State Board of Education except as provided in G. S. 115-225.

County and city boards of education are hereby authorized and empowered to make all necessary rules and regulations concerning the operation of local rental systems to provide the children of their administrative units with the advantages of an adequate supply of basal and supplementary textbooks, library books, and appropriate instructional materials. For these purposes, funds appropriated in the current expense and in the capital outlay budgets of such units may be used. (1955, c. 1372, art. 25, s. 9.)

§ 115-225. **Rental fees charged by administrative units operating local system.**—County and city boards of education shall charge rental fees in accordance with schedules submitted to and approved by the State Board of Education. The receipt given pupils upon the payment of any book rentals shall show separately, the fee collected for basal textbooks, the fee collected for supplementary textbooks, the fee collected for library books, and the fee collected for instructional supplies. (1955, c. 1372, art. 25, s. 10.)

§ 115-226. **Boards must keep complete records and audit same; unlawful to use book funds for other purposes.**—It shall be the duty of such county and city boards of education as may establish a book fund and a rental system for their local units to keep an accurate and complete record of all receipts and disbursements made from such fund, and to cause such records and accounts

thereof to be audited in July of each and every year and to file a copy of said audit with all the authorities required by law in the case of the annual audit of county and city boards of education.

It shall be unlawful for any county or city board of education to use any part of the funds so provided for any purpose, even temporarily, other than the purposes for which said fund is established. (1955, c. 1372, art. 25, s. 11.)

§ 115-227. **Boards may purchase books from State; patrons from boards.**—County and city boards of education are hereby authorized to purchase from the State Board of Education, basal and supplementary textbooks, library books, and instructional supplies for use in a local rental system. Any patron of the public schools may purchase textbooks from his county or city board of education at cost. (1955, c. 1372, art. 25, s. 12.)

§ 115-228. **How local rental funds handled and paid out.**—All school book rental fees collected by county and city boards of education shall be deposited as collected with the county or city treasurer, and shall be paid out only on vouchers signed by the chairman and secretary of such board. (1955, c. 1372, art. 25, s. 13.)

ARTICLE 27.

Vocational Education.

§ 115-229. **Acceptance of benefits of Federal Vocational Education Act.**—The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Congress of the United States entitled "An act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects, and to appropriate money and regulate its expenditures" as provided by the Smith-Hughes Act and amendments thereto: Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 26, s. 1.)

§ 115-230. **Powers and duties of Board.**—The State Board of Education shall have all necessary authority to cooperate with the United States Office of Education in the administration of the Federal Vocational Educational Act, to administer any legislation pursuant thereto enacted by the State of North Carolina, and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education in agricultural subjects, trade and industrial subjects, and home economics subjects. The Board shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina, and to provide for the preparation of teachers in such subjects. It shall have full authority to fix the compensation, subject to the approval of the Personnel Department, of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the results of such investigations, and to issue other publications as seem necessary to the Board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to cooperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for teachers, directors, and

supervisors of such subjects; to cooperate in the maintenance of classes supported and controlled by public institutions for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers; to cooperate with the United States Office of Education in the operation and conduct of vocational schools known and designated as industrial education centers and to administer the funds and property provided by the federal government and by the State of North Carolina for the operation of such schools. The instruction in such industrial education centers shall be available to both adults and select high school students who have completed those courses that are prerequisite to the specific instruction desired. Assignments to an industrial education center shall be made under the provisions of article 21 of this chapter. (1955, c. 1372, art. 26, s. 2; 1959, c. 915, s. 2.)

Editor's Note. — The 1959 amendment struck out the words "Federal Board of Vocational Education" appearing in lines two and three of this section and inserted in lieu thereof the following: "United States Office of Education." It also added the part of the section following "vocational teachers" in line twenty-six.

§ 115-231. State Superintendent to enforce article.—The State Superintendent of Public Instruction shall serve as executive officer of the State Board of Education, and shall designate, by and with the advice and consent of the State Board of Education, such assistants as may be necessary to properly carry out the provisions of this article. The State Superintendent shall also carry into effect such rules and regulations as the Board may adopt, and shall prepare such reports concerning the condition of vocational education in the State as the Board may require. (1955, c. 1372, art. 26, s. 3.)

§ 115-232. State appropriation for vocational education.—The State of North Carolina appropriates out of the General Fund a sum of money for each fiscal year at least equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury under the provisions of the Smith-Hughes Act and amendments thereto: Provided, that only such portion of the above State appropriation shall be used as may be necessary to carry on the work outlined in this article to meet the federal requirements or to meet requirements approved by the State Board of Education. (1955, c. 1372, art. 26, s. 4.)

§ 115-233. State Treasurer authorized to receive and disburse vocational education funds.—The State Treasurer is hereby designated and appointed custodian of all moneys received by the State from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursements thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the State of North Carolina for the purpose of carrying out the provisions of this article upon the order of the State Board of Education. (1955, c. 1372, art. 26, s. 5.)

§ 115-234. Cooperation of county and city authorities with State Board.—County and city boards of education may cooperate with the State Board of Education in the establishment of vocational schools or classes giving instruction in agricultural subjects, or trade and industrial subjects, or in home economics subjects and distributive education, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that vocational teachers shall be employed in the same manner as are other public school teachers. (1955, c. 1372, art. 26, s. 6.)

§ 115-235. **High schools offering vocational agriculture authorized to acquire lands for forest study.**—1. County and city boards of education are hereby authorized and empowered to acquire by gift, purchase or lease for not less than twenty years, a parcel of woodland or open land of not more than twenty acres suitable for forest planting or other vocational training.

2. Each deed for such land shall be made to "The County Board of Education" for schools that are in the county administrative unit, and to "The City Board of Education" for city schools undertaking forest study or other vocational training, and the title to such land shall be examined and approved by the county attorney.

3. Any school forest thus acquired shall be placed under the management of the department of vocational agriculture of the school, to be handled in accordance with plans approved by some available publicly employed forester. (1955, c. 1372, art. 26, s. 7.)

ARTICLE 28.

Textile Training School.

§ 115-236. **Creation of board of trustees; members and terms of office; no compensation.**—The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of six members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The re-enactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1.)

§ 115-237. **Powers of board.**—The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that the said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2.)

§ 115-238. **Board vested with powers and authority of former boards.**—The board of trustees acting under authority of this article is vested with all the powers and authority of the board created under authority of Chapter 360 of the Public Laws of 1941, and the board created under authority of Chapter 806 of the Session Laws of 1945. (1955, c. 1372, art. 27, s. 3.)

§ 115-239. **Persons eligible to attend institution; subjects taught.**—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the State of North Carolina: Provided, that out-of-state students, not to exceed ten per cent (10%) of the total enrollment,

may be enrolled when vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4.)

ARTICLE 29.

Vocational Training in Building Trades.

§ 115-240. **Use of funds for purchase of building sites, materials, and for acquiring skilled services.**—Local school administrative units are authorized to use supplementary tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trades classes. Such school administrative units are authorized to use such funds to pay any fees necessary in securing and recording deeds to such property and to purchase all materials needed to complete the construction of buildings by vocational building trades classes: Provided, however, that the cost of materials for any one project shall not exceed seven thousand dollars (\$7,000.00) and not more than one project may be undertaken within one school year.

Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1955, c. 1372, art. 28, s. 1.)

§ 115-241. **Sale of buildings constructed by building trades classes; disposition of proceeds.**—When any such building is completed, the governing body of the local school administrative unit, upon finding that such building is not needed for public school purposes, shall sell the same at public auction in the same manner and by the same procedure as is provided in subsection 1 of G. S. 115-126. The proceeds from the sale of such projects may be kept in a revolving fund by said unit to be used in succeeding years to finance similar building projects: Provided, that the board of education of the administrative unit may allocate from the profits from such projects funds to purchase equipment needed by the building trades classes. In case this type of activity is abandoned, the moneys accumulated shall be paid into the school fund of the county or city administrative unit from which the original appropriation was made. (1955, c. 1372, art. 28, s. 2.)

§ 115-242. **Advisory committee on construction of projects.**—The board of education of the administrative unit in which the proposed project of construction is to be undertaken shall appoint an advisory committee composed of five persons residing within the administrative unit and no project of a nature described in this article shall be undertaken without the approval of a majority of the advisory committee. (1955, c. 1372, art. 28, s. 3.)

ARTICLE 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-243. **Acceptance of federal aid.**—The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Congress of the United States to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment, approved as Public Law 565, August third, one thousand nine hundred fifty-four. Provided, however, that the State Board of Education is not authorized to accept

any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 29, s. 1.)

§ 115-244. Authority to cooperate and plan program of rehabilitation.—The State Board of Education shall have all necessary authority to cooperate with the Federal Office of Vocational Rehabilitation in the administration of the act of Congress providing for the vocational rehabilitation of persons injured in industry or otherwise; to administer any legislation pursuant thereto enacted by the State of North Carolina; and to administer the funds provided by the federal government and the State of North Carolina. The Board shall have full authority to formulate plans for the promotion of vocational rehabilitation, and it shall have full authority, subject to the approval of the Personnel Department, to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the results of such investigations and to issue other publications as seem necessary to the Board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects.

The State Board of Education, in order to carry out the provisions of this article, shall secure the cooperation of federal, State, and local health agencies in getting a complete report of any persons under treatment in hospitals, clinics, dispensaries, health officers and private physicians, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are, or will be, unable to support themselves. (1955, c. 1372, art. 29, s. 2.)

ARTICLE 31.

Business, Trade and Correspondence Schools.

§ 115-245. Business, trade and correspondence schools defined; schools included.—(a) Business, trade, and correspondence schools shall be defined as follows: Any person, partnership, association of persons, or any corporation, or operators of schools within the State of North Carolina, which teach publicly, for compensation, any or all subjects usually taught in such schools: Provided, that any person or individual, who undertakes to give instruction to five or fewer students in a business or trade school, shall not be construed to be the operator of such a school, but shall be considered as operating a coaching service.

(b) A business school is one which teaches any or several of the subjects usually taught in a business or commercial school or which may be needed to train youths or adults for office work, accounting, general clerical, telegraphy, communications, distribution, or other business or government positions.

(c) Trade schools are those concerned with teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations, or related occupations.

(d) A correspondence school is one which teaches or instructs in any subject area through the medium of correspondence between the pupil and the school, usually through printed or typewritten matter sent by the school and written responses by the pupil.

(e) It is the purpose of this article to include all private schools operated for profit in one or the other of the above categories: Provided, that any school for

which there is another legally existing licensing board in this State is exempt from the provisions of this article. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000.)

Editor's Note.—The 1957 amendment rewrote this article.

§ 115-246. Must secure license before operating.—Any party or parties mentioned in § 115-245 of this article desiring to establish and operate a business school, a trade school, a correspondence school, or a branch of any such school within the State of North Carolina for the purpose of teaching such courses as are usually taught in such schools, before commencing business, must secure a license from the State Board of Education of the State of North Carolina authorizing said party or parties to open and conduct such school or branches thereof. (1955, c. 1372, art. 30, s. 3; 1957, c. 1000.)

§ 115-247. Application for license; investigation; issuance or denial of license; fees; notification of changes; transfer of license.—Application for a license to open and conduct such a school, or branch school, shall be made to the State Board of Education on blanks to be furnished by said Board, and such application shall be properly verified and shall contain such of the following information as may apply to the particular school, or branch school, for which a license is sought:

- (1) The title or name of the school or classes, together with the name and address of the ownership and of the controlling officers thereof;
- (2) The general field of instruction;
- (3) The place or places where such instruction will be given;
- (4) A specific listing of the equipment available for instruction in each field;
- (5) The qualifications of instructors and supervisors;
- (6) Financial resources available to equip and to maintain the school or classes;
- (7) And such additional information as the Board may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto.

Each application for a license shall be accompanied by an application fee of not less than twenty-five dollars (\$25.00) and not more than fifty dollars (\$50.00). The amount of said fee shall be in the discretion of said Board and the fee shall be fixed by said Board to cover travel and other expenses of its representatives in investigating the application and any complaints against such schools. All such fees shall be paid before the license is issued and annually thereafter on the first day of July so long as said school shall continue to operate.

If, after due investigation and consideration on the part of said Board, it is shown to the satisfaction of said Board that said applicant is both professionally and financially qualified to conduct said school, that the operators thereof possess good moral character, and that provisions for the school meet standards and regulations established by said Board, then the Board shall approve the application and issue a license to said applicant. If the Board is not satisfied with the professional, financial, and moral qualifications of the applicant or that the school meets standards and regulations established by the Board, it shall disapprove the application and deny a license to said applicant.

After a license is issued to any school by the State Board of Education on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000.)

§ 115-248. **Execution of bond required; filing and recording.**—Before the State Board of Education shall issue such license, the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars (\$1,000.00), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through its officers and agents, with any student who desires to enter such school or branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Education to open and conduct a business school, trade school, or a correspondence school, to comply with its contracts to give the instructions contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the clerk of superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.

The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000.00) shall apply to all business, trade, or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Education shall not issue any license to any person, firm, or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of superior court has been filed with said Board of Education. Operators' bonds of one thousand dollars (\$1,000.00) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership, or corporation. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000.)

§ 115-249. **Rights of action upon bond in event of breach; revocation of license; Board generally to supervise schools; regulations and standards.**—In any and all cases where the party receiving the license from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent, or guardian entering into the contract shall have a cause of action against the principal and sureties on the bond as herein provided for the full amount of payments made to such person, with six per cent (6%) interest from the date of payment of said amount. For a violation of its contract with a student, or for other good cause, the State Board of Education is authorized to revoke the license issued to the offending school. Through periodic reports required of licensed schools or branch schools and by inspections made by members of the State Board of Education or its authorized representatives, the State Board of Education shall have general supervision over business, trade, and correspondence schools in the State, the object of said supervision being to protect the public welfare by having the licensed business, trade, or correspondence schools maintain proper school quarters, equipment, and teaching staff and to have the school carry out its advertised promises and contracts made with its students and patrons.

To this end, the State Board of Education is authorized to issue such regulations and standards and to employ such personnel as are necessary to insure a satisfactory program of instruction and ethical conduct on the part of operators of such schools. (1955, c. 1372, art. 30, s. 6; 1957, c. 1000.)

§ 115-250. **Operating school without license made misdemeanor.**—Any person, or each member of any association of persons, or each officer of any corporation who opens and conducts a business school, a trade school, or a cor-

respondence school, or branch school, as defined in this article without first having obtained the license herein required, and without first having executed the bond required, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or thirty days imprisonment, or both, at the discretion of the court, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000.)

§ 115-251. **Institutions exempted.**—The provisions of this article shall not apply to any established university, professional, or liberal arts college, public or private high school approved by the State Department of Public Instruction, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this article, provided that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but the provisions of this article shall apply to all business schools, trade schools, correspondence schools, or branch schools, as defined in this article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards. (1955, c. 1372, art. 30, s. 8; 1957, c. 1000.)

§ 115-252. **Application of article to nonresidents, etc.**—All persons, partnerships, associations of persons, which are nonresidents of North Carolina or corporations organized and chartered under the laws of any other state, must comply with the provisions of this article before such can open and conduct a business, trade, correspondence, or branch school in the State of North Carolina.

All corporations chartered and organized under the laws of any state other than the State of North Carolina and all persons, partnerships and associations of persons not residents of this State operating business, trade or correspondence schools in this State, shall comply with the provisions of this article to the extent of seeing to it that all agents representing such school in the solicitation of business in this State shall be licensed under the provisions of G. S. 115-253 and shall have executed the bond required by G. S. 115-248 and G. S. 115-249. (1955, c. 1372, art. 30, s. 9; 1957, c. 1000; 1959, c. 573, s. 17.)

Editor's Note. — The 1959 amendment added the second paragraph.

§ 115-253. **Solicitors.**—All persons soliciting students within the State of North Carolina for any business, trade, or correspondence school, as defined in this article, and located within or without the State of North Carolina shall be required to secure on July first of each year an annual license from the State Board of Education, such license to cost five dollars (\$5.00). When application is made for such license by a solicitor, he shall submit to said Board for its approval a copy of each type of contract offered prospective students and used by his said school, together with such advertising material and other representations as are made by said school to its students or prospective students, and such instructional material as requested by the Board to enable it to evaluate the instructional program, as well as the sales methods. If the Board approves the instructional program and the solicitor, it shall issue to the solicitor a license card permitting him to solicit students for his school, but such license shall be issued only on an annual basis, expiring June 30 of each year, and must be renewed annually to entitle such solicitor to solicit students thereafter: Provided, that before a license is issued to the solicitor of an out-of-state business, trade or correspondence school, said solicitor shall execute the bond required for resident schools under the provisions of G. S. 115-248 and G. S. 115-249. Every school employing such solicitors shall be responsible for the acts, representations and

contracts made by its solicitors. Any person soliciting students for any such school without first having secured a license from the State Board of Education and without having executed the bond required by this article, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00) or imprisonment for not more than thirty (30) days, or by both such fine and imprisonment, in the discretion of the court. (1955, c. 1372, art. 30, s. 10; 1957, c. 1000; 1959, c. 573, s. 18.)

Editor's Note. — The 1959 amendment rewrote all of this section beginning with the proviso.

§ 115-254. Contracts with unlicensed solicitors and schools made null and void.—All contracts entered into by business, trade, or correspondence schools, or branch schools, as defined in this article, or solicitors of such schools, and students or prospective students, and all promissory notes, or other evidence of indebtedness taken in lieu of cash payments by such schools or solicitors, shall be null and void unless such schools and solicitors are duly licensed as required by this article. (1957, c. 1000.)

ARTICLE 32.

Non-Public Schools.

§ 115-255. Responsibility of State Board of Education to supervise non-public schools.—The State Board of Education, while providing a general and uniform system of education in the public schools of the State, shall always protect the right of every parent to have his children attend a non-public school by regulating and supervising all non-public schools serving children of secondary school age, or younger, to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship. The Board shall not, in its regulation of such non-public schools, interfere with any religious instruction which may be given in any private, denominational, or parochial school, but such non-public school shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools and such instruction, except courses in foreign languages, shall be given in the English language. (1955, c. 1372, art. 31, s. 1.)

§ 115-256. Teachers must have certificates for grades they teach; instruction given must substantially equal that given in public schools.—All non-public schools in the State and all teachers employed or who give instruction therein, shall be subject to and governed by the provisions of law for the operation of the public schools insofar as they apply to the qualifications and certification of teachers and the promotion of pupils; and the instruction given in such schools shall be graded in the same way and shall have courses of study for each grade conducted therein substantially the same as those given in the public schools where children would attend in the absence of such non-public school.

No person shall be employed to teach in a non-public school who has not obtained a teacher's certificate entitling such teacher corresponding courses or classes in public schools. (1955, c. 1372, art. 31, s. 2.)

§ 115-257. Operators must report certain information.—The supervisory officer or teacher of all non-public schools shall report to the superintendent of the administrative unit in which such school is located within two weeks of the opening of such school, and within two weeks of the enrollment therein, the names of all pupils attending, their ages, parents' or guardians' names, and places of residence. Likewise, such officer or teacher shall report to such superintendent

the withdrawal of any pupil within two weeks of such withdrawal. The supervisory officer or teacher of non-public schools shall make such reports as may be required of him by the State Board of Education, or such additional reports as are requested by the superintendent of the administrative unit in which such school is located; and he shall furnish to any court from time to time any information and reports requested by any judge thereof relating to the attendance, conduct and standing of any pupil enrolled in such school if said pupil is at the time awaiting examination or trial by the court or is under the supervision of the court. (1955, c. 1372, art. 31, s. 3.)

ARTICLE 33.

State Board of Education to License Certain Institutions and Regulate Degrees.

§ 115-258. **Right to confer degrees restricted.**—No educational institution created or established after April 15, 1923, by any person, firm, or corporation in this State shall have power or authority to confer degrees upon any person except as herein provided. (1955, c. 1372, art. 32, s. 1.)

§ 115-259. **Powers to grant license to confer degrees.** — The State Board of Education is authorized to issue its license to confer degrees in such form as it may prescribe to an educational institution established after April 15, 1923 by any person, firm, or corporation in this State; but no educational institution established in the State subsequent to said date shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, or any other recognized field of learning or knowledge, and unless its baccalaureate degree is conferred only upon students who have completed a four-year college course, preceded by the usual four-year high school course, or their equivalent. (1955, c. 1372, art. 32, s. 2.)

§ 115-260. **Inspection of institution; revocation of license.**—All institutions licensed under this article shall file such information with the State Superintendent of Public Instruction as the State Board of Education may direct, and said Board shall have full authority to evaluate any institution applying for a license to confer degrees under this article. And if any one of them shall fail to maintain the required standard the State Board of Education shall revoke the license to confer degrees, subject to a right of review of this decision by a judge of the superior court upon action instituted by the educational institution whose license had been revoked. (1955, c. 1372, art. 32, s. 3.)

ARTICLE 34.

Local Option.

§ 115-261. **Statement of legislative policy and purposes.**—The General Assembly of North Carolina recognizes and hereby affirms that knowledge, morality, and adherence to fundamental principles of individual freedom and responsibility are necessary to good government and the happiness of mankind; and further affirms that schools and the means of education ought forever to be encouraged. The value and importance of our public schools are known and acknowledged by all our people. It is further recognized that our public schools are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible except in conformity with community attitudes. Our people in each community need to have a full and meaningful choice as to whether a public school, which may have some enforced mixing of the races, shall continue to be maintained and supported in that community. It is the purpose of this article to provide orderly procedures, consistent

with law, for the effective expression of such choice. In so doing, it is the hope of the General Assembly of North Carolina that all peoples within our State shall respect deeply-felt convictions, and that our public school system shall be continually strengthened, improved, and sustained by the support of all our citizens. (1956, Ex. Sess., c. 4.)

Editor's Note. — For article on North Carolina school legislation, 1956, see 35 N. C. Law Rev. 1.

§ 115-262. Definitions of words and phrases.—The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively prescribed to them in this section, except in those instances where the context clearly indicates a different meaning:

- (1) Board of Education.—The board of education for any county or city school administrative unit.
- (2) Local Option Unit.—Any county or city school administrative unit, or the combination of two or more administrative units in whole or in part, or any convenient and reasonable territorial subdivision within an administrative unit which includes within its boundaries one or more public schools.
- (3) Types of Public Schools.—For purposes of this article the different types of public schools are as follows:
 - a. An elementary school, that is, a school which embraces part or all of the eight elementary grades, including the elementary portion of a union school.
 - b. A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education, including the high school portion of a union school.
 - c. A union school, that is, a school which embraces a part or all of the elementary and high school grades.
 - d. A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.
 - e. A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades. (1956, Ex. Sess., c. 4.)

§ 115-263. Boards of education may suspend operation of schools pursuant to article; local option units.—The board of education of any administrative unit may, pursuant to the provisions of this article, suspend the operation of one or more or all of the public schools under its jurisdiction. For purposes of this article, each county and city school administrative unit as defined in § 4, article 1 of this chapter shall constitute a local option unit; provided, however the board of education of any administrative unit may in lieu thereof, and from time to time, subdivide the administrative unit into two or more local option units; and provided further, two or more administrative units, in whole or in part, may by agreement of each respective board of education constitute a local option unit and in such case all action with respect to such local option unit shall be taken by a majority of the members of each board of education concerned. One or more public schools shall be included within the territorial boundaries of each local option unit established by the board of education; provided, that two or more types of schools may within the discretion of the board of education be included in such local option unit. (1956, Ex. Sess., c. 4.)

§ 115-264. Two or more local option units within same administrative unit.—Two or more different and distinct local option units having the same or overlapping territorial boundaries may be established within an adminis-

trative unit by the board of education of the administrative unit. A specific public school shall be included in only one local option unit at any given time, but the elementary division of a union school or junior high school may be in one local option unit and the high school division of the same union school or junior high school may be in a different local option unit at the same time. (1956, Ex. Sess., c. 4.)

§ 115-265. Call for election on closing schools; suspension pursuant to election; right to education expense grant.—Any board of education may at any time, by resolution of a majority of the members, call for an election on the question of closing the public schools within a local option unit which is under that board's jurisdiction; provided, that an election shall be called by the board when a petition signed by at least fifteen per cent (15%) of the registered voters residing within the local option unit is presented to the board requesting such an election. When a majority of the votes cast in such election are in favor of suspending the operation of the schools in such local option unit, the board of education shall suspend the operation of such public schools. Such suspension shall be accomplished in an orderly manner and the board of education shall take all steps necessary to preserve and protect school property during and after such closing. Any child living within a local option unit who could attend a public school in such local option unit except for the fact that operation of such school has been suspended under provisions of this article shall not be entitled as a matter of right to attend any other public school, but in lieu thereof shall be entitled to an education expense grant pursuant to the provisions of article 35 of this chapter. (1956, Ex. Sess., c. 4.)

§ 115-266. Call for election on reopening schools; reopening pursuant to election.—Any board of education may at any time, by resolution of a majority of the members, call for an election on the question of reopening the public schools within a local option unit which is under that board's jurisdiction; provided, that an election shall be called by the board when a petition signed by at least fifteen per cent (15%) of the registered voters residing within the local option unit is presented to the board requesting such an election. When a majority of the votes cast in such election shall be in favor of reopening the public schools in that local option unit, the board of education shall immediately proceed to take all steps necessary to accomplish such reopening at the earliest practicable date. (1956, Ex. Sess., c. 4.)

§ 115-267. Second elections within same school year.—When, for the same school year, there has been an election on the question of suspending the operation of the public schools of a local option unit, and a petition requesting another election on the same question is presented to the board of education, the board of education is not required to call a second election on that question, but may do so in its discretion. When, for the same school year, there has been an election on the question of reopening the public schools of a local option unit, and a petition requesting another election on the same question is presented to the board of education, the board of education is not required to call a second election on that question, but may do so in its discretion. (1956, Ex. Sess., c. 4.)

§ 115-268. Copy of resolution calling for election to be furnished board of elections; notice of election.—When by resolution of a majority of its members a board of education has called any election authorized or required by this article, a certified copy of such resolution shall thereupon be furnished to the county board of elections, or in the case of a local option unit which is located in more than one county to the board of elections of each county concerned, with each board having the authority and responsibility to call and conduct the election in its respective county. Within five (5) days after receipt of such resolution, the county board of elections shall give the first formal notice of such elec-

tion. Notice of call of an election shall be given by the county board of elections at least once a week for four (4) successive weeks in some newspaper published or generally circulated in the territory, but when no newspaper is published or generally circulated in the territory so as to meet this requirement, it shall be sufficient to post notice of the election call at the courthouse of the county in which the election is to be held and at each public school involved in the election, for a period of at least thirty (30) days before the election. Notice of the election call shall contain the date on which the election is to be held, and shall contain adequate and full information as to which specific school or schools are involved in the election, as well as a clear designation of the area within which the qualified voters are entitled to vote in such election. (1956, Ex. Sess., c. 4.)

§ 115-269. **Conduct of elections.**—In any election held under this article, the county board of elections shall designate the polling place or places, appoint the registrars and judges of election, canvass and determine the results of said election when the returns have been filed with them by the officers holding the election, and record such determination on their records. Except as otherwise provided in this article, such election shall be held in accordance with the laws governing general elections. (1956, Ex. Sess., c. 4.)

§ 115-270. **Registration of voters for purposes of elections under article.**—A new registration of the qualified voters of the territory concerned in an election held under this article may be ordered in the discretion of the county board of elections. In addition, the county board of elections, in its discretion, may order a separate registration of the qualified voters within the territory, with separate books of registration to be established and maintained for purposes of elections under this article; and in such event, registration for any election other than one provided for in this article shall not constitute registration for an election under this article, and registration for an election under this article shall not constitute registration for any election not provided for in this article. Notice of registration for an election under this article shall be deemed to be sufficiently given by publication once in some newspaper published or generally circulated in the territory, at least twenty (20) days before the close of the registration books. The published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which the books will be open on Saturdays. Registration shall close on the second Saturday before the election, and the Saturday before the election shall be challenge day. The expense of holding and conducting any election held under this article shall be borne by the board of education of the administrative unit in which the election is held. When the results of any such election have been officially determined and recorded in the minutes of the county board of elections, the validity of such election or of the registration for such election shall not be open to question except in an action or proceeding commenced within thirty (30) days after the determination of the results of such election. (1956, Ex. Sess., c. 4.)

§ 115-271. **Form of ballots; use of voting machines.**—In an election under this article on the question of suspending the operation of a public school or schools, the ballots to be used in such election shall have printed thereon the words "For suspending the operation of [naming the specific public schools]" and "Against suspending the operation of [naming the specific public schools]"; provided, however, that if the local option unit concerned shall include all the public schools within an administrative unit, the board of elections may in lieu of the wording of the ballots prescribed above have printed thereon the words "For suspending the operation of all the public schools in [naming the administrative unit]" and "Against suspending the operation of all the public schools in [naming the administrative

unit].” In an election on the question of reopening a public school or schools which have previously been closed, the ballots to be used in such election shall contain the same language as indicated above, except the word “resuming” shall be used in lieu of the word “suspending”. Nothing in this article shall be construed to prohibit the use of voting machines in accordance with the laws of this State. (1956, Ex. Sess., c. 4.)

§ 115-272. **Continuation of contracts of principals, teachers, etc., when schools suspended.**—When the operation of any public school is suspended pursuant to this article, any principal, teacher or supervisor then under contract and affected by such suspension shall continue to receive all salaries and benefits provided under such contract for the term of the contract. When any such principal, teacher or supervisor has secured suitable and adequate employment prior to the expiration of the contract term, such contract shall thereupon be terminated and all salaries and benefits provided thereunder shall cease. The suspension of any school pursuant to this article shall not affect the current contract of the superintendent of any county or city administrative unit. (1956, Ex. Sess., c. 4.)

§ 115-273. **Obligations with respect to indebtedness not affected.**—No action taken pursuant to the provisions of this article shall affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created. (1956, Ex. Sess., c. 4.)

ARTICLE 35.

Education Expense Grants.

§ 115-274. **Statement of legislative policy and purposes.**—The General Assembly of North Carolina recognizes and hereby affirms that knowledge, morality, and adherence to fundamental principles of individual freedom and responsibility are necessary to good government and the happiness of mankind; and further affirms that schools and the means of education ought forever to be encouraged. The value and importance of our public schools are known and acknowledged by our people. It is further recognized that our public schools are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible except in conformity with community attitudes. Our people need to be assured that no child will be forced to attend a school with children of another race in order to get an education. It is the purpose of the State of North Carolina to make available, under the conditions and qualifications set out in this article, education expense grants for the private education of any child of any race residing in this State. In so doing, it is the hope of the General Assembly of North Carolina that all peoples within our State shall respect deeply-felt convictions, and that our public school system shall be continually strengthened and improved, and sustained by the support of all our citizens. (1956, Ex. Sess., c. 3.)

Editor's Note. — For article on North Carolina school legislation, 1956, see 35 N. C. Law Rev. 1.

§ 115-275. **Who may apply for State grants; when available; nonsectarian school defined.**—Every child residing in this State for whom no public school is available, or who is assigned to a public school attended by a child of another race against the wishes of his parent or guardian or the person standing in loco parentis to such child, is entitled to apply for an education expense grant from State funds appropriated for that purpose. Such grants shall be available only for education in a private nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, shall,

in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race. For purposes of this article, a nonsectarian school is defined as a school whose operation is not controlled directly or indirectly by any church or sectarian body or by any individual or individuals acting on behalf of a church or sectarian body. (1956, Ex. Sess., c. 3.)

§ 115-276. Amount of State grants.—It shall be the policy of the State to make an education expense grant available to each eligible child, as provided under this article, which is equal to the per-day, per-student amount of State funds expended on public schools throughout the State during the preceding school year, but in no event, shall a grant for any child exceed the amount actually expended for the private education of such child. The State Board of Education shall determine the maximum amount of the grant to be made available to each child, and in so doing, shall take into account the total expenditures for all current expenses and for debt service on State school bonds made from State funds for the preceding school year. (1956, Ex. Sess., c. 3.)

§ 115-277. Applications to local boards for grants; standard forms; signing.—Application for an education expense grant shall be made to the board of education of the administrative unit within which the child resides. Such application shall be on standard forms prescribed by the State Board of Education for that purpose and shall be signed under oath or affirmation by the parent or guardian of or the person standing in loco parentis to the child for whom application is made. (1956, Ex. Sess., c. 3.)

§ 115-278. When applications to be approved.—Application for an education expense grant shall be approved if the board of education to whom application is made finds that:

- (1) The child for whom application is made resides within the administrative unit; and
- (2) There is no public school available for such child, or such child is now assigned against the wishes of his parent or guardian or of the person standing in loco parentis to such child to a public school attended by a child of another race and it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race; and
- (3) Such child is enrolled in or has been accepted for enrollment in a private nonsectarian school, recognized and approved under article 32 of this chapter. (1956, Ex. Sess., c. 3.)

§ 115-279. Applications to state number of school days; restricted to 180 days; subsequent applications.—Each application for an education expense grant shall specify the number of school days for which the grant is requested, but in no event shall any one application be for more than one school year or the equivalent of one hundred and eighty (180) school days. If the conditions of § 115-278 continue to be met, application may be filed on behalf of a child, who has received benefits under a previous application, for another school year or part thereof. (1956, Ex. Sess., c. 3.)

§ 115-280. Notice of approval of application for State grant; commitment restricted to 180 days; continuance of payments.—Upon approving the application for an education expense grant from State funds, the board of education shall give notice in writing to the parent or guardian or person standing in loco parentis to the child concerned of an education grant commitment for a specified number of school days and for a specified amount for each school day, but no one commitment shall exceed one hundred and eighty (180) school days. So long as the requirements set out in paragraphs (1) and

(3) of § 115-278 are met during the period of the education grant commitment, the board, unless requested otherwise by the parent or guardian or person standing in loco parentis, shall continue payments under such commitment notwithstanding the fact that a change of conditions since approval of the application may make it reasonable and practicable to assign such child to a public school not attended by a child of another race. (1956, Ex. Sess., c. 3.)

§ 115-281. Notice of disapproval of application; hearing; notice of disapproval after hearing; petition to superior court; notice and procedure; appeal to Supreme Court.—Upon disapproval of an application for an education expense grant, whether payable from State or local funds, the board of education shall give notice to the applicant by registered mail, and any applicant may within ten (10) days after receipt of such notice apply to such board for a hearing, and shall be given a prompt and fair hearing on the question of entitlement to an education expense grant. The board shall render prompt decision upon such hearing, and if the board shall affirm its previous action of disapproval of the application, notice shall be given to the applicant by registered mail, and any applicant aggrieved by the action of the board may within ten (10) days after receipt of such notice file a petition in the superior court of the county in which the board sits for a hearing in the matter on all questions of fact and of law. Notice of the petition shall be properly served upon the board of education. The board shall have fifteen (15) days after receipt of notice of the petition within which to prepare and furnish to the petitioner or his attorney a certified transcript of the record in the case for filing in the superior court, which record shall include a copy of the application and any official orders and rulings of the board in the case. Additional time for preparation of the record may be granted to the board, for good cause, upon motion before the clerk of the superior court. The petition in the superior court may be heard by the resident judge of the district or by the judge presiding at a term of court in that district, and such judge shall have authority to take testimony and examine into the facts of the case, and to determine all questions of fact and of law, and enter judgment thereon. From the judgment of the superior court an appeal may be taken by the petitioner or the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1956, Ex. Sess., c. 3.)

§ 115-282. Checks in payment of grants; certificates by schools attended; when child deemed in attendance.—Payments of education expense grants shall be made by check upon receipt of satisfactory evidence that the child for whom payment is made actually attended a private nonsectarian school, recognized and approved under article 32 of this chapter. The school attended shall furnish, upon forms prescribed by the State Board of Education, a sworn certificate signed by the director or other appropriate official of the school, showing the number of school days actually attended by the child for whom payment is made. A child is deemed to be in attendance, within the meaning of this section, although temporarily absent due to illness or other good cause, so long as such child is enrolled in the school as a bona fide student. Checks in payment of education expense grants shall be made payable jointly to the parent or guardian of or the person standing in loco parentis to the child and the school which the child attended, and shall be mailed to the parent or guardian or person standing in loco parentis for endorsement; provided, that if the school attended shall indicate in its certificate that the tuition and expenses for such child have already been paid the check shall be made payable to the parent or guardian or person standing in loco parentis alone. (1956, Ex. Sess., c. 3.)

§ 115-283. Payment periods; standard forms for applications, commitments, certificates, etc.; general supervision and administra-

tion of funds.—Payments of education expense grants shall be made by each board of education monthly, bimonthly or quarterly in accordance with uniform regulations adopted and promulgated by the State Board of Education. The State Board of Education is authorized and directed to prescribe standard forms for application for grants, for notice of education grant commitment, for certificates of attendance, and such other forms as may be necessary or desirable in the administration of the provisions of this article. The State Board of Education shall have general supervision and administration of the funds provided by the General Assembly for education expense grants, and it is intended that such funds shall be managed and allotted by the Controller of the State Board of Education, under direction of the Board, pursuant to the relevant provisions of chapter 115 of the General Statutes governing administration of fiscal affairs of the Board. (1956, Ex. Sess., c. 3.)

§ 115-284. Payment of grants from State funds; fiscal procedures.—Payments of individual education expense grants from State funds shall be made only by warrants drawn on the State Treasurer, signed by the chairman and the secretary of the county or city board of education. The fiscal procedures prescribed in other articles of this chapter, unless in conflict with some specific provision in this article, shall apply to the handling and management of State funds appropriated for education expense grants. (1956, Ex. Sess., c. 3.)

§ 115-285. Payments restricted to approved schools; lists; no control or supervision of schools vested in State.—No education expense grant shall be paid for any child except for attendance at a private nonsectarian school found to be in compliance with the provisions of article 32 of this chapter. It shall be the duty of the State Board of Education to maintain a current list of all such approved schools and to furnish such information from time to time to county and city boards of education. Payment of education expense grants for or on behalf of any child attending such a school shall not vest in the State of North Carolina, the State Board of Education or any agency or political subdivision of the State any supervision or control whatever over such nonpublic schools or any responsibility whatever for their conduct and operation. (1956, Ex. Sess., c. 3.)

§ 115-286. Appropriations for local grants; maximum grant from State and local funds.—The appropriate tax levying authorities for any administrative unit may, upon recommendation of the board of education of such unit, appropriate amounts from any local tax or nontax funds for a local education expense grant. In no event, shall the combined total of grants for any one child, from both State and local funds, exceed the amount of actual expenses incurred in the private education of such child. (1956, Ex. Sess., c. 3.)

§ 115-287. When application for local grant to be filed; eligibility for State grant prerequisite.—Application for a local education expense grant shall be filed with the board of education of the administrative unit when local funds have been appropriated or allotted for such purpose. No child shall be entitled to a local education expense grant who is not at the same time eligible, under the provisions of this article, for a grant from State funds. (1956, Ex. Sess., c. 3.)

§ 115-288. Applications for local grants to state number of school days; restricted to 180 days; subsequent applications.—Each application for a local education expense grant shall specify the number of school days for which the grant is requested, but in no event shall any one application be granted for more than one school year or the equivalent of one hundred and eighty (180) school days. If the child who has received benefits under a previous application continues to be otherwise eligible, an application for a local education

expense grant for another school year or part thereof may be filed in his behalf. (1956, Ex. Sess., c. 3.)

§ 115-289. Checks in payment of local grants; certificates by schools attended; when child deemed in attendance.—Payments of local education expense grants shall be made by check upon receipt of satisfactory evidence that the child for whom payment is made actually attended a private nonsectarian school recognized and approved under article 32 of this chapter. The school attended shall furnish, in such form as may be prescribed by the local board of education, a sworn certificate signed by the director or other appropriate official of the school, showing the number of school days actually attended by the child for whom payment is made. A child is deemed to be in attendance, within the meaning of this section, although temporarily absent due to illness or other good cause, so long as such child is enrolled in such school as a bona fide student. Checks in payment of local education expense grants shall be made payable jointly to the parent or guardian of or the person standing in loco parentis to the child and the school which the child attended, and shall be mailed to the parent or guardian or person standing in loco parentis for endorsement; provided, that if the school attended shall indicate in its certificate that the tuition and expenses for such child have already been paid the check shall be made payable to the parent or guardian or person standing in loco parentis. (1956, Ex. Sess., c. 3.)

§ 115-290. Payment periods for local grants; administration procedures.—Payments of local education expense grants shall be made by each board of education monthly, bimonthly or quarterly in accordance with rules and regulations adopted by each local board. In administering local grant payments, each board shall, so far as practicable, follow the procedures prescribed by the State Board of Education for the payment of education expense grants from State funds. (1956, Ex. Sess., c. 3.)

§ 115-291. Procedures for management, supervision and disbursement of local funds.—All local funds for education expense grants, from whatever source provided, shall be managed, supervised and disbursed in accordance with the procedures set out in other articles of this chapter, pertaining to administration of local school funds, except where such procedures are in conflict with some provision of this article. (1956, Ex. Sess., c. 3.)

§ 115-292. Payment of local grants restricted to approved schools.—No local education expense grant shall be paid for or on behalf of any child except for attendance at a private nonsectarian school found to be in compliance with the provisions of article 32 of this chapter. (1956, Ex. Sess., c. 3.)

§ 115-293. Making false affidavit, etc.—Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this article to be sworn or affirmed to shall be guilty of perjury, and upon conviction shall be punishable by a fine and imprisonment as other persons committing perjury are punishable. (1956, Ex. Sess., c. 3.)

§ 115-294. Parents, etc., accepting payments when not entitled thereto.—It shall be unlawful for any parent or guardian or the person standing in loco parentis to a child to accept any payment authorized by this article knowing that the child for whose benefit the payment is received did not actually attend, or was not actually a bona fide student at, a private nonsectarian school during the period for which payment is received. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five (5) years or by a fine

of not more than five thousand dollars (\$5,000.00) or by both such fine and imprisonment. (1956, Ex. Sess., c. 3.)

§ 115-295. **School officials, etc., receiving payments when school not entitled thereto.**—It shall be unlawful for any official or employee of any school, acting wilfully or corruptly, to receive any payment of a grant authorized by this article, knowing that said school is not entitled to such payment. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five (5) years or by a fine of not more than five thousand dollars (\$5,000.00) or by both such fine and imprisonment. (1956, Ex. Sess., c. 3.)

ARTICLE 36.

Training of Mentally Retarded Children.

§ 115-296. **State Superintendent of Public Instruction to organize and administer program of training; rules; eligibility for training.**—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of training for the trainable mentally retarded children residing within the State. The State Superintendent of Public Instruction shall formulate reasonable rules prescribing the general or specific nature of the program and the procedures for its operation and maintenance. He shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. Residence within the school administrative unit shall not be a factor in establishing a child's eligibility to attend such a training center. (1957, c. 1369, s. 1.)

§ 115-297. **Local boards may establish programs or centers; joint operation; expenditure of State and local funds; gifts.**—County and city boards of education are hereby authorized and empowered to establish training programs or centers for training such trainable mentally retarded children. Boards of education in adjacent administrative units may by written agreement recorded in their minutes jointly operate such a program or center. In addition to such other funds as may be available for this purpose, county or city boards of education establishing such programs or centers are authorized to expend therefor any State or local funds apportioned to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs or centers and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to enable the establishment, maintenance and operation of training programs or centers established pursuant to this article and the tax levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1957, c. 1369, s. 2.)

§ 115-298. **Allocation of sufficient funds to administer program.**—From the appropriations provided for the purpose of this article, the State Board of Education shall allocate and transfer to the State Department of Public Instruction an amount sufficient to provide personnel to determine eligibility for and generally to administer and supervise the program established under the provisions of this article. (1957, c. 1369, s. 3.)

§ 115-299. **Allocation of State-aid funds to local boards.**—The State Board of Education, upon the finding in any school administrative unit of need for the program, together with official and public interest and evidence of a financial ability and willingness to aid in maintaining a satisfactory program, shall allocate and transfer to the county or city board of education in whose administrative unit the training center is located such State-aid funds as shall be

determined under the provisions of this article and under the rules of the State Superintendent of Public Instruction to be available for the operation and maintenance of said program or center. State funds shall be allocated uniformly to boards of education on a per capita basis, not to exceed three hundred dollars (\$300.00) per fiscal year, for each eligible child enrolled in the program. (1957, c. 1369, s. 4.)

Chapter 116.

Educational Institutions of the State.

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The University of North Carolina.

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- 116-47. Short title.
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[Repealed.]

- 116-63 to 116-104. [Repealed.]

Article 10.

State School for the Blind and the Deaf in Raleigh.

- 116-105. Incorporation, name and management.

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North Carolina School for the Deaf at Morganton.

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Revenue Bonds for Student Housing.

- 116-175. Definitions.
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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Constitutional provisions.

Stated in *Frasier v. Board of Trustees*, 134 F. Supp. 589 (1955).

§ 116-2. Consolidated University of North Carolina.

Stated in *Frasier v. Board of Trustees*, 134 F. Supp. 589 (1955).

§ 116-10. Rules and regulations.

Resolution on Admission of Negroes.—Resolution of board of trustees of the University of North Carolina declaring the policy of the board that applications of Negroes to the undergraduate schools of the University be not accepted violated

the equal protection clause of the 14th Amendment to the U. S. Constitution. *Frasier v. Board of Trustees*, 134 F. Supp. 589 (1955), aff'd in 350 U. S. 979, 76 S. Ct. 467, 100 L. Ed. 848 (1956).

§ 116-20. Escheats to University.

Cited in *Cutler v. Winfield*, 241 N. C. 555, 85 S. E. (2d) 913 (1955).

§ 116-21. Unclaimed real and personal property escheats to the University of North Carolina.—Whenever the owner of any real or personal

property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, kindred or spouse to inherit said property under the laws of this State, such real and personal property shall escheat to the University of North Carolina. The University of North Carolina shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated to the University of North Carolina, and the real property may be sold according to the provisions of G. S. 116-20. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the escheats fund of the University of North Carolina where said funds, together with all other escheated funds, shall be held without liability for profit, or interest subject to any just claims therefor. (1957, c. 1105, s. 1.)

Editor's Note.—The 1957 act repealed the former section, which related to evidence sufficient to make out a prima facie case of escheat, and substituted the above section in lieu thereof.

§ 116-22. Unclaimed personalty on settlements of decedents' estates without heirs shall be paid over or delivered to the University of North Carolina.—All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c. t. a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs or spouse to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid, or delivered, by such administrator or executor to the University of North Carolina as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the University of North Carolina is authorized, on and after June 6, 1957, to demand, sue for, recover, and collect such unclaimed monies or other personal estate of whatever kind from any administrator, or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the University of North Carolina shall hold the same without liability for profit or interest, subject to any just claims therefor. (1957, c. 1105, s. 2.)

Editor's Note.—The 1957 amendment repealed the former section and substituted the above section in lieu thereof.

§ 116-22.1. Sections 116-21 and 116-22 apply to administrator for estate of person missing for seven years.—The provisions of G. S. 116-21 and 116-22 shall likewise apply to an administrator for the estate of a person who has been missing for seven years, and who has been appointed administrator under G. S. 28-2.1, when the superior court shall find in an action brought by the University of North Carolina under G. S. 116-21 or 116-22 that such missing person left no lawful heirs or lawful claimants to the property of such missing person, and that such property has escheated to the University of North Carolina. (1957, c. 1105, s. 2½.)

§ 116-23. **Other unclaimed personalty to University.**—Personal property of every kind, except as is otherwise provided by this chapter, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for three years after the same shall become due and payable, shall be deemed derelict property, and shall be paid or delivered to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Code, ss. 2628, 2629; Rev., s. 4284; C. S., s. 5786; 1947, c. 614, s. 2; 1957, c. 1049.)

Editor's Note.—

The 1957 amendment inserted in line two the words “except as is otherwise

provided by this chapter,” changed “five years” to “three years” and inserted the words “or delivered” in line seven.

§ 116-23.1. **Unclaimed funds held or owing by life insurance companies.**—(1) **Definitions.**—The term “unclaimed funds” as used in this section shall mean and include all monies held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for seven years or more after such monies became due and payable under any life or endowment insurance policy, or monies payable under annuity contracts or all dividends payable to holders of policies. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be “due and payable” within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Monies shall be deemed to be “due and payable” within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations. (1957, c. 1050.)

Editor's Note.—The 1957 amendment added to the first sentence of subsection (1) the words “or monies payable under annuity contracts or all dividends payable

to holders of policies.” As only this subsection was changed the rest of the section is not set out.

§ 116-25. **Other escheats.**—Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation within the State are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the University of North Carolina immediately upon the expiration of two years from the end of the calendar year in which the same becomes due, provided, that this paragraph shall not apply to any person, firm or corporation employing less than twenty-five persons.

Rebates and returns of overcharges and unclaimed meter deposits due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the Utilities Commission, shall be paid to the University of North Carolina.

All monies in the hands of clerks of the superior court, the State Treasurer, or any other officer or agency of the State or county, or any other depository whatsoever, as proceeds of the liquidation of State banks by receivers appointed in the superior court prior to the Liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies in the hands of the Treasurer of the State, represented by State warrants in favor of any person, firm, or corporation, whatsoever, which have been

unclaimed for a period of five years, shall be turned over to the University of North Carolina.

Unpaid and unclaimed dividends or other distributions due to any person or persons from any association organized under subchapter IV or subchapter V of chapter 54 of the General Statutes are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the University of North Carolina immediately upon the expiration of five years from the time the same became due, provided that this paragraph shall not apply to a cooperative marketing association engaged only in the marketing of a single agricultural product for the producers thereof. This paragraph shall not apply to any stabilization program on any farm commodities when such program is maintained separate for the benefit of the producer thereof.

All monies, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

Any funds derived from the liquidation of any national bank organized and operated in this State, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the Comptroller of the Currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the Comptroller of the Currency and deposited with the Treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this State, which for a period of ten years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the University of North Carolina by the Comptroller of the Currency, or by such agent as may have the funds in charge, to be held in protective custody by the University of North Carolina until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the University of North Carolina, the Comptroller of the Currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the University of North Carolina shall cause to be posted, and keep posted for thirty days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the Comptroller of the Currency or liquidating agent of such insolvent national bank shall furnish such information to the University of North Carolina when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund, is due, the University of North Carolina shall pay such part in full to such person, but without any liability for interest or profits thereon.

All sums due any person or persons by reason of placing bets on any horse or dog races at any race track in this State where the placing of such bets is legal, and which have remained unclaimed and unpaid for sixty days, are hereby declared to be escheats, and the same shall be paid over to the University of North Carolina, and upon demand by the University of North Carolina information with respect thereto shall be furnished by the operators of any such race tracks.

(1939, c. 22; 1947, c. 614, s. 1; 1947, c. 621, s. 2; 1953, c. 1202, ss. 1, 2; 1953, c. 1205; 1957, c. 1051.)

Editor's Note.—

The first 1953 amendment, effective May 1, 1953, substituted "two years from the end of the calendar year in which the same becomes due" for "one year from the time the same became due" near the end of the first paragraph, made the second paragraph applicable to "unclaimed meter deposits", and added the last paragraph. The second 1953 amendment, effective January

1, 1954, inserted the fifth paragraph.

The 1957 amendment deleted from the first paragraph the words "engaged in construction work in North Carolina for services rendered in such construction work" formerly appearing immediately after the word "corporation" in line two. It also added the proviso at the end of the paragraph.

§ 116-26. Application of receipts.

The payment of any funds described in this chapter, or the transfer of any personal property described in this chapter, to the University of North Carolina shall relieve any person, firm, association or corporation, or any State or federal official or agency of further liability therefor. (1874-5, c. 236, s. 2; Code, s. 2630; Rev., s. 4285; C. S., s. 5787; 1947, c. 614, s. 4; 1953, c. 1202, s. 3.)

Editor's Note.—

The 1953 amendment, effective May 1, 1953, added the above paragraph at the

end of this section. As the rest of the section was not affected by the amendment it is not set out.

Part 4. Miscellaneous Provisions.

§ 116-43. License for exhibiting any form of amusements and entertainments to be approved by president of University.—No person, firm or corporation shall apply for or obtain from the governing body, or the representative of such governing body, of any county or incorporated city or town any license or permit to exhibit within the town of Chapel Hill or within five miles thereof any theatrical, sleight of hand, equestrian performance, or any dramatic recitation, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade or performance in music, singing or dancing, without first securing a written permission for said performance from the president of the University of North Carolina. A copy of the president's permission shall be filed with the governing body, or the representative of such governing body, of any county or incorporated city or town at the time said license or permit is applied for in all cases covered by this section. (1824, c. 1252, P. R.; R. S., c. 116, s. 3; R. C., c. 113, s. 6; Code, s. 2645; Rev., s. 4279; C. S., s. 5803; 1931, c. 41; 1953, c. 675, s. 13.)

Editor's Note.—

The 1953 amendment substituted "of" for "or" before the words "any county" in

line three. It also substituted "of" at the end of line ten for the word "or".

ARTICLE 2.

Western Carolina College, East Carolina College, Appalachian State Teachers College, Pembroke State College, Agricultural and Technical College of North Carolina, North Carolina College of Durham, Elizabeth City State Teachers College, Fayetteville State Teachers College, Winston-Salem Teachers College.

§ 116-45. Primary purpose of named institutions.—The primary purpose of the several institutions hereinafter named shall be as follows:

- (1) The primary purpose of Western Carolina College, East Carolina College, and Appalachian State Teachers College shall be the preparation of young men and women as teachers, supervisors, and administrators for the public schools of North Carolina, including the preparation of such persons for the master's degree. Said institutions may also offer undergraduate instruction in the liberal arts and sciences, and such

other programs as are deemed necessary to meet the needs of its constituency and of the State and as shall be approved by the North Carolina Board of Higher Education, consistent with appropriations made therefor.

- (2) The primary purpose of Pembroke State College shall be the undergraduate education of the Lumbee Indians and other persons who may be admitted under uniform regulations of the board of trustees. The educational program of the institution shall be subject to the approval of the North Carolina Board of Higher Education, consistent with the appropriations made therefor.
- (3) The primary purpose of North Carolina College at Durham shall be undergraduate instruction in the liberal arts and sciences, the training of teachers, supervisors, and administrators for the public schools of the State, and such graduate and professional instruction as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.
- (4) The primary purpose of the Agricultural and Technical College of North Carolina shall be to teach the agricultural and technical arts and sciences and such branches of learning as relate thereto; the training of teachers, supervisors, and administrators for the public schools of the State, including the preparation of such teachers, supervisors and administrators for the master's degree. Such other programs of a professional or occupational nature may be offered as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.
- (5) The primary purpose of Elizabeth City State Teachers College, Fayetteville State Teachers College, and Winston-Salem Teachers College shall be the undergraduate preparation of young men and women for teaching in the public schools of the State. Such other programs may be offered as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor. (1957, c. 1142.)

Editor's Note.—Session Laws 1957, c. 1142 repealed former articles 2 through 9, containing §§ 116-45 through 116-104, and substituted this new article 2 in lieu thereof. Section 2 of said chapter provides: "Nothing herein contained shall be taken as repealing or altering any section of G. S. 116-154 through G. S. 116-

167; and in the event of any conflict between the provisions of this act and G. S. 116-154 through G. S. 116-167, inclusive, the latter shall control."

As to law enforcement officers for duty on campus of Western Carolina College, see Session Laws 1959, c. 42.

§ 116-46. Provisions common to all named institutions.—The following provisions shall be common to all the institutions hereinbefore named:

- (1) Members of Board of Trustees; Number, Terms and Appointment.
 - a. The board of trustees of the institution shall consist of twelve persons appointed for terms of eight years each, beginning July 1 of an odd-numbered year, the terms to be staggered so that three vacancies occur every two years.
 - b. Members of the present board of trustees of each of said institutions shall serve out their respective terms and until the next succeeding July 1. At the expiration of their present terms, as thus extended, new appointments to the board of trustees of each of said institutions shall be made so as to provide a board of trustees of twelve members appointed for terms of eight years each, the terms to be staggered so that three vacancies shall occur every two years.

- c. In the case of the Agricultural and Technical College of North Carolina, which has at present more than twelve trustees, vacancies as they occur shall not be filled until the board of trustees shall be reduced to the required number of twelve members as herein provided.
 - d. The Governor shall make all appointments to each of said boards of trustees, subject to the confirmation of the General Assembly in joint session assembled.
- (2) Removal of Trustees; When Position Deemed Vacant.
- a. Members of each board of trustees shall be subject to removal for cause by the Governor and Council of State.
 - b. Whenever a trustee shall fail to be present for two successive regular meetings of the board of trustees, without just cause as determined by the board, his position as trustee shall be deemed vacant, and said vacancy shall be filled as herein provided.
- (3) Meetings of Board.—It shall be the duty of each of said boards of trustees to hold not less than two regular meetings a year as fixed by the trustees, at which the board shall consider recommendations of the president of the institution, and transact such other business as may properly come before it. The board of trustees may also hold special meetings from time to time upon the call of the chairman of the board.
- (4) Election of Chairman and Vice-Chairman; Committees of Board; Quorum; Majority Vote.—At the first meeting after June 30 of each year, the board of trustees shall elect one of their own members as chairman and one as vice-chairman, and designate such committees of the board, and endow them with such powers, as may be deemed proper and wise for the management of the affairs of the institution. The chairman shall appoint the committees so designated. A quorum of the board of trustees for the transaction of business shall consist of a majority of the members of the board. All actions of the board of trustees shall be taken by a majority vote, a quorum being present.
- (5) Board a Body Corporate and Agency of State; Title to Property; Management of Institution.
- a. The board of trustees of each of said institutions is hereby constituted a body corporate and an agency of the State of North Carolina under the name and style of "The Board of Trustees of" (in which shall be inserted the name of the institution) and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges as are ordinarily exercised by corporations of like character and as are necessary for the proper administration of the affairs of said institution.
 - b. The board of trustees of each of said institutions and its successors in office shall hold in trust for the State of North Carolina title to all property now held, or which shall be later acquired by said board.
 - c. The board of trustees of each of said institutions shall be responsible for the management of all the affairs of the institution, subject to the applicable laws of the State of North Carolina, and shall have the duty to provide for the handling and expenditure of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the institution; it shall provide for the erection of all buildings, the making of all needed im-

provements, the maintenance of the physical plant of said institution, and may do all things deemed useful and wise for the good of the institution. Institutions operating electric power plants and distribution systems as of June 6, 1957 are authorized to continue such operation and, after furnishing light and power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation of such power plants and distribution systems shall be paid into the endowment fund of the institution authorized under G. S. 116-46 (7).

- d. It shall be the duty of each of said boards of trustees to elect a president of the institution and to fix his salary within the schedule provided by law, and to fix his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office, and within the schedule provided by law, their salaries. The board of trustees shall also establish bylaws for the management of the institution's affairs, and rules and regulations for the general management of the institution, and the discipline of the students.
- e. The board of trustees of each of said institutions, upon the recommendation of the faculty, is hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions, subject to the authority of the North Carolina Board of Higher Education to determine and approve the kinds of degrees to be conferred by the institution.
- f. Each of said institutions now operating a campus laboratory or demonstration school may continue to do so under the now existing plan of operation, consistent with the appropriations made therefor.

(6) Duties of President of Institution.

- a. It shall be the duty of the president of each of said institutions to attend all meetings of the board of trustees, to be responsible for the keeping of a full and complete record of such meetings, and to act as custodian of all records, deeds, contracts, and the like. It shall be the duty of the president to keep the board of trustees fully informed of the operations of the institution and its needs.
- b. Whenever the term of office of any member of the board of trustees of such institutions is about to expire, or should a vacancy occur for any cause, the president, with the approval of the chairman of the board of trustees, shall immediately notify the Governor, to the end that he may make an appointment to fill such vacancy.
- c. The president shall be the administrative and executive head of the institution, and shall not be a member of the board of trustees. He shall prepare annually for the board of trustees a detailed report of the operations of the institution for the preceding year and cause one copy thereof to be filed with the official records of the board of trustees and one copy to be filed with the North Carolina Board of Higher Education.
- d. The president of the institution shall recommend courses of study, subject to the approval of the board of trustees, and further subject to the authority of the North Carolina Board

of Higher Education to determine the major functions and activities of State supported institutions of higher education.

(7) Endowment Fund.

- a. Each of said boards of trustees is hereby authorized to establish a permanent endowment fund.
- b. Such board of trustees shall appoint an investment committee, to be known as "The Board of Trustees of the Endowment Fund of the College," (in which shall be inserted the name of the institution) which board of trustees of the endowment fund is hereby created as an agency of the board of trustees of the college to do the specific things hereinafter enumerated. The board of trustees of the endowment fund shall consist of five members, including the chairman of the board of trustees, the president of the college, and three other persons, not necessarily members of the board of trustees of the college, to be chosen by the board of trustees of said college.
- c. The chairman of the board of trustees of the college shall be the chairman of the board of trustees of the endowment fund.
- d. The trustees of said endowment fund may receive gifts, donations, and bequests, may in their discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. Said trustees may retain in such permanent endowment fund any other moneys or securities of any kind that may come to them from the board of trustees of the college or that may come to the trustees of the endowment fund, excepting always the moneys received from State appropriations, and from tuition, fees, and the like, collected from students and used for the general operation of the college. The trustees of the endowment fund shall have power to sell any property, real or personal, of the fund, at either public or private sale.
- e. The trustees of the endowment fund shall be responsible for the prudent investment of the fund, in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.
- f. The principal of said endowment fund shall be kept intact and only the income therefrom may be expended. The trustees of the endowment fund shall determine what is income and what is principal.
- g. It is not the intent that the income from such endowment fund shall take the place of State appropriations or any part thereof but that it shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. All expenditures of moneys from the endowment fund shall in all cases be approved by the board of trustees of the institution and expended under the board's direction. Funds from the endowment fund shall not be expended for a purpose which will impose a financial burden on the State of North Carolina without first securing the approval of the North Carolina Board of Higher Education and the Advisory Budget Commission.
- h. The board of trustees of the institution shall establish standards for such scholarships as may be awarded from proceeds of

said endowment fund and may change or alter such standards from time to time.

- i. Nothing in this section shall be construed to prevent the trustees of the endowment fund from receiving gifts, donations and bequests and from using the same for such lawful purposes as the donor or donors designate, subject always to the approval of the board of trustees of the institution, and subject, further, to the approval of the North Carolina Board of Higher Education and the Advisory Budget Commission if the expenditure of funds would impose a financial burden on the State of North Carolina. (1957, c. 1142.)

ARTICLE 3.

Community Colleges.

§ 116-47. **Short title.**—This article shall be known as “The Community College Act”. (1957, c. 1098, s. 1.)

§ 116-48. **Purpose.**—The purpose of this article is to provide a plan of organization and operation for community colleges, to serve as a legislative charter for such colleges, and to authorize the levy of taxes and issuance locally of bonds for the support thereof. (1957, c. 1098, s. 2.)

§ 116-49. **Definitions.**—As used herein:

- (1) The term “community college” is defined to be an educational institution
 - a. Dedicated primarily to the particular needs of a community or an area,
 - b. Offering the freshman and sophomore courses of a college of arts and sciences and/or the first or first and second year courses of a two-year technical institute of college grade, and
 - c. Organized and operating under the provisions of this article.

In addition to the courses above referred to, such college may also offer a variety of occupational, vocational, avocational and recreational training programs. Such college may consist of one or more units operating within the boundaries of one county.

- (2) The term “Board of Higher Education” refers to the North Carolina Board of Higher Education. (1957, c. 1098, s. 3.)

§ 116-50. **Boards of trustees to govern colleges; composition; appointment, terms and qualifications of members; vacancies; election of officers.**—(a) Each community college shall be governed by a board of trustees consisting of twelve (12) members, appointed as follows:

Two (2) members by the governing board of the municipality in which the community college is located; provided, that, if the college is not located within the corporate limits of a municipality, then such appointment shall be by the governing board of the largest municipality, according to population, in the county in which the college is located.

Two (2) members by the board of commissioners of the county in which the community college is located.

Two (2) members by the board of education of the administrative school unit of the municipality in which, or partially in which, the community college is located; provided, that if the college is not located within the corporate limits of a municipality, then such appointment shall be by the board of education of the administrative school unit of the largest municipality, according to population, in the county in which the college is located, if there be such an administrative unit.

Two (2) members by the board of education of the county in which the com-

munity college is located; provided, however, that it shall appoint four (4) members if there is but one board of education for the county in which the college is located.

Four (4) members by the Governor of North Carolina. Trustees appointed by the governing board of a city or by a city board of education shall be residents of such municipality. Those appointed by a board of county commissioners, or by a county board of education shall be residents of the county (including the municipality) in which the college is located. Those appointed by the Governor shall be residents of the county (including the municipality) in which the college is located, or of a county contiguous thereto.

(b) Trustees shall be appointed for terms of six (6) years, except that of the first board of trustees of each college appointed pursuant to this article, each of the four (4) members appointed by the city and/or county boards of education shall be appointed for a six (6) year term, each of the four (4) members appointed by the governing board of the municipality and/or the board of commissioners of the county shall be appointed for a four (4) year term, and each of the four (4) members appointed by the Governor shall be appointed for a two (2) year term, plus such additional months as to each appointee as shall be necessary in order for their respective terms to expire on June 30th. After the first appointment of the first board of trustees of each college under this article, all terms of all trustees shall commence on July 1. The authority appointing a particular member shall, in the event a vacancy occurs through the loss of such member as a trustee, appoint a member to fill the vacancy for the unexpired term.

(c) The trustees shall elect annually from among their number a chairman and a vice-chairman. They shall also elect a secretary and a treasurer who may, but need not be, trustees. One person may be elected to serve as both secretary and treasurer. The officers so elected shall each serve for one year or until their successors in office shall be duly elected. The meeting for the election of such officers shall be held not earlier than July 1 and not later than September 1 of each year. (1957, c. 1098, s. 4.)

§ 116-51. Official title of board of trustees; name of college; powers generally.—The board of trustees of each community college shall be known as “The Trustees of

filling in the name of the college; and such designation (“The Trustees of

- shall constitute the official corporate name of the college. Such board shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the college, and for carrying out the provisions and purposes of this article. (1957, c. 1098, s. 5.)
- § 116-52. Enumerated powers of board.**—The trustees of each community college shall have authority, in the exercise of which they shall be subject to the provisions of article 16, chapter 116 of the General Statutes:
- (1) To employ a president, dean or other chief administrative officer of the college upon such terms and conditions as the trustees shall fix and determine.
 - (2) To employ, or to delegate to the chief administrative officer the authority to employ subject to the approval of the trustees, all such other officers, teachers, instructors and employees as may be necessary for the operation of the college and to prescribe their titles and duties.
 - (3) To prescribe the curricula which shall be offered, and the certificates or degrees which shall be awarded upon satisfactory completion of any given course of study.
 - (4) To do all things necessary or proper to comply with any conditions

which may be prescribed by the State of North Carolina or the United States of America in order to be eligible to receive monies or other assistance appropriated or designated for the benefit of such institutions.

- (5) To fix tuition, fees, and other charges for students attending or applying for attendance at the college.
- (6) To prescribe and require the use of entrance examinations.
- (7) To provide for an adequate system of accounting for all funds and property received, held, managed, expended or used by the college, and to require persons directly responsible for the handling of such funds to be adequately bonded.
- (8) To purchase any land, easement or right of way which the trustees determine to be necessary for the proper operation of the college and, if the trustees of the college are unable to agree with the owners thereof for the purchase of such land, right of way or easement, to condemn same in the same manner and under the same procedure as is provided in Chapter 40 (Eminent Domain), Article 2 (Condemnation Proceedings), of the General Statutes of North Carolina. The determination of the trustees of the land necessary for such purpose shall be conclusive.
- (9) To receive and accept private donations for such purposes and upon such terms as the donor may prescribe and which are consistent with the provisions of this article.
- (10) To utilize, pursuant to agreement with any local administrative school unit, any service, property or facilities of any such unit, and, in their discretion, to employ personnel jointly with any such unit on a co-operative, cost sharing basis.
- (11) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations and bylaws for the government and operation of the college under this article and for the discipline of students. (1957, c. 1098, s. 6.)

§ 116-53. Appropriations by State.—(a) Appropriations by the State of North Carolina as grants-in-aid to community colleges for operating expenses shall be paid on the basis of a specified sum per student quarter-hour of instruction delivered in a limited curriculum consisting of courses at the freshman and sophomore levels in liberal arts and sciences and in the first and second year offerings of technical institutes of college grade prescribed by the Board of Higher Education. The total annual amounts of these grants-in-aid to each college shall not, except when the Appropriation Act specifically provides otherwise, exceed the total of local public or private funds (exclusive of student fees and charges) made available annually to such college for operating expenses. Certification on forms prescribed by the Board of Higher Education shall be made to said Board and upon approval by said Board payments shall be made by the State disbursing officer to each community college in amounts not in excess of appropriations therefor.

(b) Appropriations by the State of North Carolina for capital or permanent improvements for community colleges shall, except when the Appropriation Act specifically provides otherwise, be on an equal matching fund basis, the monies raised by a particular community college from public or private sources being matched by an equal amount of State funds, up to but not in excess of appropriations therefor. The sole purposes for which such appropriations may be expended shall be to acquire real property and to construct and equip classrooms, laboratories, administration offices, utility plants, libraries, cafeterias, and audi-

torium facilities, in such order of priority as the Board of Higher Education and the Advisory Budget Commission shall determine. Such appropriations shall not be expended for any other purpose, it being expressly intended that the construction of all other facilities and procurement of all other equipment shall be the sole obligation and responsibility of the community college.

Preliminary studies and cost estimates for the construction of all buildings or other capital improvements and proposals for the purchase of all original equipment to be installed or used therein, involving the expenditure of State funds, shall be first submitted to and approved by the Board of Higher Education and the State Budget Bureau.

After approval by the Board of Higher Education and the Budget Bureau, payments shall be made by the State disbursing officer to the community college, within authorized appropriations, according to procedures established by the Budget Bureau. (1957, c. 1098, s. 7.)

§ 116-54. Local appropriations or bond issues to supplement State appropriations.—When the State of North Carolina has made appropriations for the purpose of financing the cost of capital or permanent improvements for the benefit and use of one or more community colleges on such terms as shall require funds from other sources to supplement that part of said appropriations allocated to a particular community college and the amount of such funds available therefor is insufficient, the board of trustees of said community college may request the board of commissioners of the county in which said community college is situated to provide such funds. Upon receipt of such request said board of commissioners shall, within a reasonable time thereafter, proceed with providing sufficient funds either by appropriation in a manner consistent with the provisions of the County Fiscal Control Act or by issuance of bonds voted in an election called by said board of commissioners, or by both, as said board of commissioners may deem expedient. Any such bonds shall be issued pursuant to the County Finance Act, as amended, and shall be subject to the provisions of the Local Government Act. The board of commissioners shall not be required to call an election for the issuance of bonds for the benefit of a community college within two (2) years after the date of the last preceding election for such purpose. The request to the board of commissioners shall specify the amount of funds required to be provided in order to match State appropriation: Provided, the board of trustees may at the same time request an amount in addition to the amount required to match State appropriation either for the same or for different purposes for which such State appropriation is made and may at any time request the board of commissioners may proceed to provide funds to meet such requests for funds not required to match State appropriation by county appropriation or bond issue as hereinabove provided or may modify such request and proceed or may deny such request. Bonds may be authorized for such amount required to match State appropriation and for such additional amount by a single bond order or by separate bond orders in the discretion of the board of commissioners. (1957, c. 1098, s. 8.)

§ 116-55. Disposition of proceeds of local bond issue.—The proceeds of the sale of bonds issued by a county for a community college, after deducting therefrom the cost of preparing, issuing and marketing said bonds and the amount of any accrued interest and premium contained therein, may be turned over to the board of trustees of such community college, in which event no member of the board of commissioners of the county nor any county officer shall be liable for a penalty under the provisions of G. S. 153-107 with respect to the application of such proceeds. (1957, c. 1098, s. 9.)

§ 116-56. County taxes for maintenance of college; election on question of levying.—Notwithstanding any constitutional limitation or ~~limita-~~

tion provided by any general or special law, taxes may be levied by the board of commissioners of a county for the purpose of financing the cost of operation, equipment and maintenance of any community college situated within the boundaries of the county, and the special approval of the General Assembly is hereby given for the annual levying of taxes for such special purposes: Provided, that the levy of such special taxes shall be approved by the vote of a majority of the qualified voters of such county who shall vote on the question of levying such taxes in an election held for such purpose. The board of trustees may request the board of commissioners of the county to call an election, as hereinafter provided, upon the question of levying such taxes and shall specify in such request the maximum rate or amount of such taxes. Upon receipt of such request the board of commissioners of the county shall, within a reasonable time thereafter, submit the question of the authorization to levy such taxes at an election. The question of levying such taxes may be submitted at the same time as the question of issuance of bonds referred to in § 116-54 is submitted, or such question may be submitted at a separate election. A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Community College maintenance tax (briefly stating any other pertinent information)", and "Against Community College maintenance tax, (briefly stating any other pertinent information)", with a square in front of each proposition, in one of which squares the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this article. Such election may be held at the same time and in the same manner as elections held under article 9, chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with G. S. 153-69 and sections following, or said election may be held at any time fixed by the board of commissioners of the county.

On or before the 1st day of May of each year the board of trustees shall notify the board of commissioners of the county of the amount of such taxes to be levied in such year and it shall be the duty of the board of commissioners of the county to levy such taxes accordingly. Such taxes shall be levied and collected in the same manner as other taxes of the county are levied and collected, and the collections thereof shall be turned over to the board of trustees by the end of each month. (1957, c. 1098, s. 10.)

§ 116-57. Election by college to come under article; procedure; provisions as to certain colleges.—Any college now or hereafter eligible, or desiring to become eligible, to receive the benefit of any direct appropriations of the State of North Carolina as a community college, and which desires to take advantage of such appropriations, must first elect to come under the provisions of this article. Such election shall be duly made by the governing board of the college and by such other group or body as may be necessary under the provisions of any charter or bylaws applicable to the college in question.

The resolutions of election to come under the provisions of this article shall include appropriate resolutions:

- (1) Electing to come under the provisions of this article and to have this article, as written and as subsequently amended, serve as the charter of said college in lieu of any existing charter or other authority under which the existing college is operated;
- (2) Designating the name by which the community college shall be known;
- (3) Providing for the transfer and conveyance of all assets owned or used by the existing college to the community college (authority is hereby given to any board of education, board of county commissioners or governing board of any municipality owning funds and properties so used, to transfer and convey same to a community college in the county, without consideration, upon authorization of an annual tax levy for the maintenance of such college);

- (4) Petitioning the State of North Carolina to approve it as a community college, and
- (5) Providing that all such resolutions of election are adopted subject to approval of such institution by the State of North Carolina as a community college and subject to the authorization of an annual tax levy by a vote of the people of the county in which the college is located.

The petition of the college for approval, accompanied by a copy of all resolutions of election to come under the provisions of this article, duly certified by the president or chairman of the governing board of the college and attested by the secretary, shall be submitted to the Board of Higher Education for approval. Written approval of the petition by the Board of Higher Education and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to an authorization of an annual tax levy as aforesaid.

The petition for approval as a community college of any existing college which, prior to June 5, 1957, has received appropriations from State funds and is receiving public support from any county and/or municipal tax or nontax revenues may be approved, and may operate as a community college under this article, without an authorization of an annual tax levy by a vote of the people of the county in which the college is located.

For good cause shown, the Board of Higher Education and the Advisory Budget Commission may approve the petition of the petitioning college without requiring the transfer of all funds and properties used by it to the community college, provided that the petitioner shall comply with such conditions as said Board and Commission may impose to assure the provision of adequate facilities for the community college. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which the college is located shall, within a reasonable time after receiving a request from the governing board of the college therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance thereof. Such election shall be called and held in accordance with the provisions of § 116-56.

If the governing board of the existing college shall submit to the Board of Higher Education, within eighteen months after the approval of the college by the State of North Carolina as aforesaid, a certificate of the result of such election showing approval of levying of taxes for the maintenance of the college as a community college, the Board of Higher Education shall, upon receipt thereof, file the resolutions of election, together with written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said college shall be a community college under this article; the existing governing board shall continue to act pending appointment of the first board of trustees under this article; said existing board shall take all such action as shall be necessary and proper to transfer the funds and properties owned or used by the former institution to the new community college and to dissolve or otherwise terminate the former corporation, if such there be. From and after the organization of the new community college this article shall serve as its charter.

Asheville-Biltmore College, Charlotte College (including Carver College). and Wilmington College (including Williston unit) may, by filing with the Board of Higher Education a petition for approval as a community college, receive during the fiscal year July 1, 1957 through June 30, 1958 any appropriations from State funds for operating expenses for community colleges in the manner provided in § 116-53, (a). Such funds may be paid, with the approval of the Board of Higher Education, to the college or to the county or city administrative school unit operating such college. The petitioner shall, prior to June 30, 1958, comply with all of the applicable provisions of this article for qualification as a com-

munity college. If the Board of Higher Education shall find that the petitioner is not proceeding with reasonable diligence to comply with the provisions of this article, it is hereby authorized to withhold from such college State appropriations. (1957, c. 1098, s. 11.)

§ 116-58. Establishment of community college.—In any county not having a college supported by local public funds which would be eligible for establishment as a community college under this article, the county board of education may petition the State of North Carolina for authority to establish a community college under this article in said county. The petition shall be submitted to the Board of Higher Education and shall contain such information concerning the proposed location and plans for the financing and operation of the college as the Board of Higher Education may require. Written approval of the petition by the Board of Higher Education and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to the authorization of an annual tax levy for the operation, equipment and maintenance of the proposed college by a vote of the people of the county in which the college is to be located. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which it is proposed that the college shall be located shall, within a reasonable time after receiving a request from the petitioning county board of education therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance of such college. The election shall be called and held in accordance with the provisions of § 116-56.

If, within eighteen months after the approval of the petition by the State of North Carolina as aforesaid, the petitioning county board of education shall submit to the Board of Higher Education a certificate of the result of such election showing approval of the levying of taxes for the maintenance of the proposed community college, the Board of Higher Education shall file the petition, together with the written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said proposed college shall be deemed chartered as a community college under this article; provided, however, that unless and until appropriations shall be made by the State of North Carolina for the benefit of said college the trustees who would otherwise be appointed by the Governor of North Carolina, under § 116-50, (a), shall be appointed by the petitioning county board of education and their successors in office and shall all be residents of the county in which the college is located.

Approval of the petition by the State of North Carolina as aforesaid shall become null and void at the end of eighteen months from the date of such approval if the election hereinabove provided for authorizing the levying of taxes for the maintenance of the community college shall not have been held and voted upon favorably within that time. (1957, c. 1098, s. 12.)

§ 116-59. Board of Higher Education authorized to establish minimum standards.—The Board of Higher Education shall have authority to prescribe minimum standards with respect to student enrollment or prospective enrollment in academic courses, facilities, and other pertinent matters for approval as a community college under this article. (1957, c. 1098, s. 13.)

§ 116-60. Payment of expenses of special election under article.—The cost of any special election held under authority of this article shall be paid out of the general fund of the county or, in the discretion of the board of commissioners of the county and with the concurrence of the board of education of the county, out of the school current expense fund of the county, and the au-

thority to appropriate from said school current expense fund for such cost is hereby given. (1957, c. 1098, s. 14.)

§ 116-61. **Discontinuance as a community college.**—A community college may, by appropriate resolutions of its trustees and of the board of commissioners of the county in which it is located elect to discontinue its existence and operation as a community college under this article as of the end of any regular school year; provided, however, that any community college which shall have accepted funds from the State of North Carolina for capital or permanent improvements shall, upon its discontinuance as a community college under this article, pay to the State of North Carolina a sum equal to all appropriations made by the State to said college for capital or permanent improvements, less 2½% per annum from the date of payment of each such appropriation by the State to the date of such discontinuance as a community college; provided, further, that such payment may, for good cause, be waived in part or in toto by the Governor and the Advisory Budget Commission, acting jointly. If such payment, not being waived, is not made within ninety days after the discontinuance of the college as a community college under this article, such failure to pay shall work an automatic forfeiture of all the assets and property of the college to the State of North Carolina. (1957, c. 1098, s. 15.)

§ 116-62. **Construction and effect of article.**—This article is in addition to and shall not be construed as superseding or repealing any prior act of the General Assembly establishing or authorizing the establishment of any college or the levy of taxes or the appropriation of local public funds for the support of any college. (1957, c. 1098, s. 17.)

ARTICLES 4-9.

[*Repealed.*]

§§ 116-63 to 116-104: Repealed by Session Laws 1957, c. 1142.

ARTICLE 10.

State School for the Blind and the Deaf in Raleigh.

§ 116-105. **Incorporation, name and management.**—The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of the State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution from the "State School for the Blind and the Deaf" to some other name that will completely eliminate the words "blind" and "deaf" from the name of said institution. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434.)

Editor's Note.—The 1957 amendment added the proviso.

§ 116-109. **Admission of pupils; how admission obtained.**—The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for colored all colored deaf-mutes and blind children, residents of this State, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that pupils may be admitted to said institution who are not within the age limits above set forth, in cases in which the board of directors find that the admission of such pupils will be beneficial to

them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out of State facilities for any student who, because of peculiar conditions of race or disability, cannot be properly educated at the School in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14.)

Editor's Note.—

The 1953 amendment inserted "of" be-

fore the words "sums of money" in line thirteen.

ARTICLE 11.

North Carolina School for the Deaf at Morganton.

§ 116-120. **Incorporation, name and location.**—There shall be maintained a school for the white deaf children of the State which shall be a corporation under the corporate name of the North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina School for the Deaf shall be classed and defined as an educational institution: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution to some other name that will completely eliminate the word "deaf" from the name of said institution. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433.)

Editor's Note.—The 1957 amendment added the proviso.

ARTICLE 12.

Caswell School.§ 116-126. **Incorporation and general corporate powers.**

Change of Name.—Session Laws 1959, c. 1028, s. 5, which changed the name of "Caswell Training School" to "Caswell School", provides: Wherever in the Gen-

eral Statutes the words "Caswell Training School" appear, the same shall be stricken out and the words "Caswell School" inserted in lieu thereof.

ARTICLE 14.

General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. **State-supported institutions required to charge tuition fees.**

Cited in *Barker v. Iowa Mut. Ins. Co.*, 241 N. C. 397, 85 S. E. (2d) 305 (1955).

§ 116-144. **Higher fees from nonresidents may be charged.**

Cited in *Barker v. Iowa Mut. Ins. Co.*, 241 N. C. 397, 85 S. E. (2d) 305 (1955).

ARTICLE 15.

Educational Advantages for Children of World War Veterans.§ 116-149. **Definitions.**

(b) As used in this article, "eligible child" means:

(1) A child of a veteran who was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces, or

(2) A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth.

(3) A child meeting either of the requirements set forth in subsections (1) and (2) above, and who was legally adopted by the veteran prior to or during such military service in which such veteran served and/or became disabled or died. (1951, c. 1160, s. 1; 1955, c. 469.)

Editor's Note.—The 1955 amendment subsection (a) was not affected by the added paragraph (3) to subsection (b). As amendment it is not set out.

§ 116-151. Classes of eligible children entitled to scholarships.

(1) Class I: Any eligible child whose father was killed in action or died from wounds or other causes while a member of the armed forces during either period of military service described in § 116-149, or whose father has died as a direct result of injuries, wounds, or other illness contracted during said period of service, or any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) service-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability.

(3) Class III: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) nonservice-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability; provided, that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than ten children in any one school year, and, provided further, that if more than ten children of this class apply for such benefits in any one school year, the North Carolina Veterans Commission shall designate the ten children who shall receive such benefits. (1951, c. 1160, s. 1; 1955, c. 1192.)

Editor's Note.—The 1955 amendment rest of the section was not changed it is rewrote paragraphs (1) and (3). As the not set out.

§ 116-153. Scholarships for children of veterans of World War I dying in veterans hospitals.—Any child of a veteran of World War I who has died or dies in a hospital maintained by the Veterans Administration or after his discharge from such institution as incurable following an illness or disablement for at least five (5) years preceding his death and who leaves no real estate above the homestead exemption and no more than one thousand dollars (\$1,000.00) in personal property, shall be awarded the scholarships described in G. S. 116-150 provided such child was born in North Carolina, is or was a resident of North Carolina upon the death of such veteran, is less than twenty (20) years of age at the time of application for such scholarship, presents reasonable proof for the need of such scholarship, and is a resident of North Carolina at the time of application for such scholarship. Proof of compliance with the requirements of this section and of the need for such scholarship shall be presented to the board of trustees of the institution such child desires to attend. Scholarships provided under this section shall be limited to a standard four (4) year undergraduate course. Provided, however, that benefits hereunder shall be limited to not more than five (5) children in any one school year; provided further, that if more than five (5) children apply for such benefits in any one school year, the North Carolina Veterans Commission shall designate the five (5) children who shall receive such benefits. (1953, c. 1336.)

ARTICLE 16.

State Board of Higher Education.

§ 116-154. Creation and purpose.—There is hereby created the North Carolina Board of Higher Education. The purpose of the Board shall be, through the exercise of the powers and performance of the duties set forth in this article,

to plan and promote the development of a sound, vigorous, progressive, and coordinated system of higher education in the State of North Carolina. In pursuit of this objective the Board will seek the cooperation of all the institutions of higher education and of other educational agencies in planning a system of higher education that will serve all the higher educational needs of the State and that will encourage a high standard of excellence in all institutions composing the system, each operating under the direction of its own board of trustees in the performance of the functions assigned to it. (1955, c. 1186, s. 1; 1959, c. 326, s. 1.)

Editor's Note.—Session Laws 1957, c. 1142, inserting §§ 116-45 and 116-46 provides: "Nothing herein contained shall be taken as repealing or altering any section of G. S. 116-154 through G. S. 116-167; and in the event of any conflict between the provisions of this act and G.

S. 116-154 through G. S. 116-167, inclusive, the latter shall control."

The 1959 amendment inserted the words "plan and" in line four and deleted the words "and operation" formerly following "development" in line four. It also added the last sentence.

§ 116-155. **Definitions.**—As used herein:

"Board" refers to the North Carolina Board of Higher Education.

"Higher education" refers to all educational and instructional curricula and services beyond the twelfth grade or its equivalent.

"Institutions of higher education" and "such institutions" refer to all institutions of higher education now existing or hereafter established supported wholly or in part by direct appropriations of the North Carolina General Assembly. (1955, c. 1186, s. 2.)

§ 116-156. **Membership; appointment, term and qualifications; vacancies.**—The Board shall consist of nine citizens of North Carolina, one of whom shall be a member of the State Board of Education but none of whom shall be officers or employees of the State nor officers, employees or trustees of such institutions. Members shall be appointed by the Governor for terms of eight years, except that of the first Board appointed, two members shall serve for two years, two shall serve for four years, and two shall serve for six years and three shall serve for eight years. Terms of all members of the first Board shall commence July 1, 1955.

All regular appointments, except appointments to the first Board, shall be subject to confirmation by the House of Representatives and the Senate in joint session assembled. The Governor shall forward all such appointments, except those of the first Board, to the General Assembly before the fortieth legislative day of each regular session. The Governor shall, without such confirmation, appoint members to fill vacancies for unexpired terms.

Appointees to the Board shall be selected for their interest in and ability to contribute to the fulfilment of the purpose of the Board. All members of the Board shall be deemed members at large charged with the responsibility of serving the best interests of the whole State. No member shall act as the representative of any particular region or of any particular institution of higher education. (1955, c. 1186, s. 3.)

§ 116-157. **Chairman, vice-chairman and secretary.**—The Board shall elect annually from among its members a chairman, vice-chairman, and a secretary. (1955, c. 1186, s. 4.)

§ 116-158. **Powers and duties generally.**—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of article 1, chapter 143 of the General Statutes except as herein otherwise provided:

(a) The Board shall allot the major functions and activities of each of such institutions, all such functions and activities remaining as they now are until

changed with the approval or by action of the Board. In discharging this duty, the Board shall consider the purpose for which an institution was established, the provisions of its charter, its existing functions and activities, the need for the function or activity in question in that particular institution, and the extent to which such need is already being met by other institutions. Further, the Board shall take into consideration the need to promote educational methods and standards for the training of persons for the teaching profession to the end that the entire field of public education will be best served.

(b) The Board shall determine the types of degrees which may be granted by each of such institutions.

(c) The Board shall inspect each such institution at least once biennially, and shall make or cause to be made such other inspections as it shall deem necessary.

(d) The Board shall prescribe uniform statistical reporting practices and policies to be followed by such institutions where it finds such uniformity will promote the purpose of the Board.

(e) All institutions included in the State System of Higher Education shall conform to the educational functions and activities assigned to them respectively: Provided, that the Board shall not require any institution to abandon or discontinue any existing educational functions or activities, if, after notice and hearing, the institution is not in agreement with the decision of the Board, until such decision is first recommended to and approved by the General Assembly.

(f) The Board shall review and appraise the biennial budget requests of all institutions and shall make its recommendations with respect to such requests to the Director of the Budget and the Advisory Budget Commission.

Upon request of the Board each institution shall furnish the Board with a copy of its biennial budget requests and related statements, information, date and estimates specified in G. S. 143-6 at a time designated by the Board so that the Board may review and appraise such requests prior to the hearings before the Advisory Budget Commission provided in G. S. 143-10. The Board's recommended budget expenditures transmitted to the Director of the Budget and the Advisory Budget Commission shall be accompanied by supporting data relied upon by the Board and the Board shall advise the Commission as to whether the budget requests made by each institution are consistent with the primary purposes of the institution and with the functions allocated to the institution by statute or by the Board, and if an institution's requests are deemed inconsistent, the institution shall be so advised.

(g) The Board, in the event of a reduction of appropriations by the Director of the Budget in order to prevent an overdraft or deficit under the provisions of G. S. 143-25, shall, upon the request of the Director of the Budget, after consulting the president of each institution recommend a revised budget for each such institution.

(h) Any requests of an institution for transfers and changes as between objects and items in the approved budget of such institution and involving the establishment of new educational functions or activities shall first be submitted to the Board of Higher Education for approval before being presented to the Director of the Budget.

(i) The Board shall possess such powers as are necessary and proper for the exercise of the foregoing specific powers, including the power to make and enforce such rules and regulations as may be necessary for effectuating the provisions of this article. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7.)

Editor's Note. — The 1959 amendment changed subsection (a) by substituting "allot" for "determine" in line one and substituting "action" for "order" in line three. The amendment also inserted in line one of subsection (d) the words "statistical reporting", and rewrote subsections (e), (f), (g) and (h).

§ 116-159. Board's decisions subject to approval by Director of the Budget; limited by appropriations.—In the exercise of the powers conferred on the Board, it is intended that its decisions on fiscal matters concerning such institutions shall be subject to the approval of the Director of the Budget, and its decisions of an educational nature shall be made by the Board within the limits of appropriated funds and fiscal availability. (1955, c. 1186, s. 6.)

§ 116-160. Hearings concerning proposed action. — Before final action is taken by the Board in the exercise of powers conferred by subsections (a), (b), (d), (e) and (f) of § 116-158, the presidents and such persons as they may designate shall be granted an opportunity to be heard by the Board concerning the proposed action. (1955, c. 1186, s. 7; 1959, c. 326, s. 8.)

Editor's Note. — The 1959 amendment added the reference to subsection (f) of § 116-158 and substituted the words "such persons as they may designate" for the words "chancellors of such institutions to be affected, together with such other persons as they may desire."

§ 116-161. Certain powers of Board of Education vested in Board of Higher Education.—All powers and functions of the State Board of Education concerning higher education and institutions of higher education, except for necessary collaboration with institutions of higher education in the training and certification of public school teachers and principals, shall be vested herewith in the North Carolina Board of Higher Education. (1955, c. 1186, s. 8.)

§ 116-162. Biennial reports.—The Board shall prepare and publish biennially a report to the Governor, the General Assembly, and such institutions setting forth the progress, needs and recommendations of the Board. (1955, c. 1186, s. 9.)

§ 116-163. Office space; Director of Higher Education; other employees; review of decisions of Director.—In order to effectuate the provisions of this article, the Board shall be furnished suitable quarters in Raleigh and shall, subject to the approval of the Governor, appoint a full-time Director of Higher Education. The salary of the Director of Higher Education shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director of Higher Education shall have training and experience in the field of higher education and shall be well qualified to serve as the Director of a State System of Higher Education as contemplated by this article. The Director of Higher Education shall be responsible to the Board and shall perform such duties and exercise such powers as shall be prescribed by the Board. The Board shall, within the limits of funds provided by law, appoint such other employees as shall be sufficient to carry out the provisions of this article, such employees being subject to the provisions of article 2, chapter 143 of the General Statutes. Any institution aggrieved by any action or decision of the Director of Higher Education shall, upon request, be afforded an opportunity to be heard by the Board with respect thereto. (1955, c. 1186, s. 10; 1957, c. 541, s. 21.)

Editor's Note. — Prior to the 1957 amendment the salary of the Director was fixed by the Board with the approval of the Governor.

§ 116-164. Compensation and expenses of members.—Members of the Board shall receive no compensation for their services other than such per diem allowances and such allowance for travel expenses as shall be provided in each biennial Appropriation Act for such members. (1955, c. 1186, s. 11.)

§ 116-165. Necessary expenditures to be provided for in budget.—The necessary expenditures of the Board shall be provided for in a budget subject to the terms of article 1, chapter 143 of the General Statutes. (1955, c. 1186, s. 12.)

§ 116-166. **Recommendations concerning employment of persons by institutions prohibited.**—No member or employee of the Board shall make any recommendation concerning the prospective employment of any person by any of such institutions. (1955, c. 1186, s. 13.)

§ 116-167. **Control over institutions by boards of trustees.**—The various boards of trustees of the institutions of higher education shall continue to exercise such control over the institutions as is provided by law, subject only to the North Carolina Board of Higher Education within the limits of its jurisdiction as herein specified. It is not intended that the trustees of such institutions shall be divested of any powers or initiative now existing with reference to the internal affairs of such institutions, except to the extent that same are affected by the Board's exercise of the powers and performance of the duties specified in this article. (1955, c. 1186, s. 14.)

ARTICLE 17.

College Revolving Fund.

§ 116-168. **Establishment, purpose and nature of Fund; loans.**—There is hereby established a revolving fund to be known as the "College Revolving Fund". The College Revolving Fund shall be separate and distinct from other funds of the State, and shall be used only for the purpose of constructing, reconstructing, renovating, adding to and equipping dormitories and other self-liquidating buildings and facilities at institutions of higher education owned and operated by the State of North Carolina.

The College Revolving Fund shall consist of such moneys as shall from time to time be appropriated to or for it by the General Assembly of North Carolina out of the general fund or other funds of the State, of such moneys, securities or other property as may be donated, bequeathed or devised to it from any other sources, of all moneys received in payment of principal and interest on loans made from said fund, and of all other income derived from and accretions to said fund.

Funds accruing to the College Revolving Fund and all notes evidencing loans therefrom shall be deposited with the State Treasurer.

The Advisory Budget Commission, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may, in accordance with priorities of need as determined by the North Carolina Board of Higher Education, make loans from the College Revolving Fund, for the aforesaid purposes, to institutions of higher education owned and operated by the State of North Carolina; provided, however, that no such loan shall be made for any project which shall not have been previously approved by the General Assembly.

Warrants for the payment of money from the College Revolving Fund shall be issued upon the joint order of the chairman of the Advisory Budget Commission and the Board of Higher Education. (1957, c. 1252, s. 1.)

§ 116-169. **Terms of loans.**—Loans from the College Revolving Fund shall be made upon such terms and conditions as shall be determined by the Advisory Budget Commission, provided, however, that the term of such loans shall not exceed fifty (50) years and interest charged thereon shall not exceed four per cent (4%) per annum. All such loans shall be evidenced by a promissory note or notes of the institution to which the loan is made, duly executed in the name of the institution by the chairman of the board of trustees, and attested by its secretary, pursuant to resolution duly adopted by the board of trustees of the institution. No institution to which any such loan is made shall mortgage or otherwise encumber any building or other facility constructed in whole or in part with the proceeds of such loans or encumber any of the revenue derived from such building or facility. (1957, c. 1252, s. 2.)

§ 116-170. **How loans secured and paid.**—Room rentals for dormitories, and rents, fees, or charges to be made in connection with the use of other facilities or buildings constructed with loans from the College Revolving Fund shall be fixed, and if necessary changed from time to time, pursuant to agreement between the borrowing institution and the Advisory Budget Commission at such amount or amounts as will provide for the operation and maintenance of the building or other facility and equipment and will insure the liquidation of the loan according to its terms; provided, however, that if agreement cannot be reached, the Advisory Budget Commission shall have authority to fix all such rents, fees and charges. Payments on such loans shall be made by the borrowing institution to the State Treasurer, who shall deposit same in the College Revolving Fund. The borrowing institution shall have the privilege of prepaying such loans and interest accrued thereon without penalty. (1957, c. 1252, s. 3.)

ARTICLE 18.

Scholarship Loan Fund for Prospective Teachers.

§ 116-171. **Establishment of Fund.**—There is hereby established a revolving loan fund which shall be known as the "Scholarship Loan Fund for Prospective Teachers." (1957, c. 1237.)

§ 116-172. **Appropriations paid into Fund; how administered.**—Such funds as may be appropriated by the General Assembly to said fund or to the State Board of Education for the purpose of a student loan fund for teacher education shall be paid into the Scholarship Loan Fund for Prospective Teachers and administered by the State Board of Education and the State Superintendent of Public Instruction as follows:

During the first year of the 1957-1959 biennium, to provide for prospective teachers not to exceed 300 regular scholarship loans in the amount of not more than three hundred fifty dollars (\$350.00) each, and for the second year of the biennium to provide for such persons not to exceed 600 regular scholarship loans in the amount of not more than three hundred fifty dollars (\$350.00) each, and for each summer of said biennium to provide for prospective teachers and for teachers taking undergraduate courses not to exceed 200 summer school scholarship loans in the amount of not more than seventy-five dollars (\$75.00) each; provided, however, the State Board of Education in its discretion may, within the funds available, vary the number and proportion of regular and summer scholarship loans to be established in any one year.

During years after the first biennium in which this Fund shall be established, loans of the type and amounts provided for during the first biennium shall be made in such numbers and amounts and proportions as the State Board of Education in its discretion may prescribe within the funds available from appropriations or otherwise. (1957, s. 1237.)

§ 116-173. **Duration of Fund; loans repaid and interest received added to Fund and administered for same purposes.**—The Scholarship Loan Fund for Prospective Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina and such amounts of loans as shall be repaid from time to time under the provisions of this article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said Loan Fund and shall be administered for the same purposes and under the same provisions as are set forth herein to the end that such funds may be utilized in addition to such further amounts as may be appropriated from time to time by the General Assembly to said Loan Fund. (1957, c. 1237.)

§ 116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations.—The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

- (1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than three hundred fifty dollars (\$350.00) per academic school year and any such person or any person who is teaching in the public schools of the State and is interested in taking further undergraduate courses shall be eligible to apply for a summer school scholarship loan in the amount of not more than seventy-five dollars (\$75.00). Recipients of scholarship loans may attend any North Carolina college or university, public or private, which offers teacher training or work leading to teacher training and which is approved by the State Board of Education; except that scholarship loans may not be used in obtaining credit through correspondence or extension courses.
- (2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of 4% per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a teacher's certificate based upon the bachelor's degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of paragraph (3) of this section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.
- (3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a teacher's certificate based upon the bachelor's degree, but he shall not be so eligible for more than four years nor after qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.
- (4) Except under emergency conditions acceptable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a teacher's certificate, based upon the bachelor's degree, or, in case of persons already teaching in

the public schools, at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within 7 years after the completion of the use of each such scholarship loan.

- (5) For each full school year taught in a North Carolina public school the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan to that time plus a credit of three hundred fifty dollars (\$350.00) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public schools a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof which has not been cancelled by the State Board of Education by reason of teaching service rendered.
- (6) If any recipient of a scholarship loan who is fulfilling his obligation under paragraph (4) of this section dies within the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically cancelled.

If any recipient of a scholarship loan fails to fulfill his obligations under paragraph (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

- (7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: Aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships. (1957, c. 1237.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. **Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

- (1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, East Carolina College, Elizabeth City State Teachers College, Fayetteville State Teachers College, North Carolina College at Durham, Pembroke State College, Western Carolina College, and Winston-Salem Teachers College.
- (2) The word "cost" as applied to a project shall include the cost of acquisition or construction, the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such acquisition or construction, administrative expense and such other expenses, including reasonable provision for initial operating expenses, as may be necessary or incident to the financing herein authorized. Any obligation or expense

incurred by the board prior to the issuance of bonds under the provisions of this article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

- (3) The word "institution" shall mean each of the following institutions comprising the University of North Carolina: The University of North Carolina (at Chapel Hill), North Carolina State College of Agriculture and Engineering of the University of North Carolina, and the Woman's College of the University of North Carolina; Agricultural and Technical College of North Carolina, Appalachian State Teachers College, East Carolina College, Elizabeth City State Teachers College, Fayetteville State Teachers College, North Carolina College at Durham, Pembroke State College, Western Carolina College, and Winston-Salem Teachers College.
- (4) The word "project" shall mean and shall include any one or more buildings for student housing of any size or type approved by the board of trustees, the Board of Higher Education, and the Advisory Budget Commission, and any enlargements or improvements thereof or additions thereto, so approved for the housing of students at either institution, together with the necessary land and equipment. The approval of a project by the Board of Higher Education and the Advisory Budget Commission shall specify a time within which construction contracts shall be awarded. (1957, c. 1131, s. 1.)

§ 116-176. **Issuance of bonds.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty years from their date or dates, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such

manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this article.

Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1957, c. 1131, s. 2.)

§ 116-177. Revenues for payment of bonds; rules for use of facilities.—So long as any bonds issued under this article shall be outstanding the board shall fix, and may revise from time to time, rentals for the facilities to be furnished by any project financed under this article or for the right to use any such facilities or to receive any such services. Such rentals shall be fixed and revised so that the revenues received by the board from any project or projects, together with any other available funds, will be sufficient at all times

- (1) To pay the cost of maintaining, repairing and operating such project or projects, including reserves for such purposes, and
- (2) To pay when added to increased rentals from existing facilities the principal of and the interest on the bonds for the payment of which such revenues are pledged and to provide reserves therefor.

The board shall increase the rentals for the facilities furnished by any existing dormitories at any institution to provide, to the extent necessary, additional funds to liquidate in full any revenue bonds issued under this article.

The board is further authorized to make and enforce and to contract to make and enforce parietal rules that shall insure the maximum use of any project or existing facilities. (1957, c. 1131, s. 3.)

§ 116-178. Trust agreement.—In the discretion of the board and subject to the approval of the Advisory Budget Commission, each or any issue of revenue bonds may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge to the extent necessary the revenues to be received from any project or projects at any institution and from any similar existing facilities described in § 116-175 (4) at the

same institution, in excess of amounts now charged to each occupant of such project, but shall not convey or mortgage any such project or existing facilities, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the acquisition or construction of such project or projects and in relation to the maintenance, repair, operation and insurance of such project or projects and such existing facilities, the fixing and revising of rentals and other charges; and, the custody, safeguarding and application of all moneys, and for the employment of consulting engineers or architects in connection with such acquisition, construction or operation. Notwithstanding the provisions of any other law the board may carry insurance on any such project or projects in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the board may deem reasonable and proper for the security of the bondholders.

The board may provide for the payment of the proceeds of the sale of the bonds and the revenues of any project or existing facilities or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the board shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. (1957, c. 1131, s. 4.)

§ 116-179. Sale of bonds; functions performed by executive committee.—The board may authorize its executive committee to sell any bonds which the board has, with the approval of the Advisory Budget Commission, authorized to be issued under this article in such manner and under such limitations or conditions as the board shall prescribe and to perform such other functions under this article as the board shall determine. (1957, c. 1131, s. 5.)

§ 116-180. Moneys received deemed trust funds.—All moneys received pursuant to the authority of this article shall be deemed to be trust funds, to be held and applied solely as provided in this article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide. (1957, c. 1131, s. 6.)

§ 116-181. Remedies.—Any holder of revenue bonds issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, may, either at law or in equity, by suit, action, man-

damus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this article or by such resolution or trust agreement to be performed by the board or by any officer thereof, including the fixing, charging and collecting of fees, rentals and other charges. (1957, c. 1131, s. 7.)

§ 116-182. **Refunding bonds.**—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds issued by the board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of

- (1) Refunding any revenue bonds or revenue refunding bonds issued by the board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of acquiring or constructing any additional project or projects at the same institution.

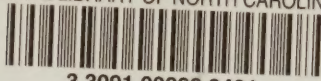
The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the board with respect to the same, shall be governed by the foregoing provisions of this article insofar as the same may be applicable. (1957, c. 1131, s. 8.)

§ 116-183. **Acceptance of grants; exemption from taxation.**—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under the provisions of this article and the income therefrom shall at all times be free from taxation within the State. (1957, c. 1131, s. 9.)

§ 116-184. **Article cumulative.**—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1957, c. 1131, s. 10.)

§ 116-185. **Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1957, c. 1131, s. 11.)

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STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

August 1, 1959

I, Malcolm B. Seawell, Attorney General of North Carolina, do hereby certify that the foregoing 1959 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

MALCOLM B. SEAWELL,
Attorney General of North Carolina

