

THE GENERAL STATUTES OF NORTH CAROLINA

1957 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 3B

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Preface

This Cumulative Supplement to recompiled volume 3B contains the general laws of a permanent nature enacted at the 1953, 1955, 1956 and 1957 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 and 1957 Sessions of the General Assembly affecting Chapters 117 through 150 of the General Statutes.

Annotations.

Sources of the annotations:

North Carolina Reports volumes 233 (p. 313)-246 (p. 546).

Federal Reporter 2nd Series volumes 186 (p. 745)-244.

Federal Supplement volumes 95 (p. 249)-151.

United States Reports volumes 340 (p. 367)-353.

Supreme Court Reporter volumes 71 (p. 474)-77.

North Carolina Law Review volumes 29 (p. 227)-31 (p. 523).

The General Statutes of North Carolina 1957 Cumulative Supplement

VOLUME 3B

Chapter 117. Electrification.

ARTICLE 1.

Rural Electrification Authority.

§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.

Stated in *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

ARTICLE 2.

Electric Membership Corporations.

§ 117-6. Title of article.

Purpose of Article.—The North Carolina legislation with respect to electric membership corporations, was enacted to implement the act of Congress creating

the Rural Electrification Administration. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 117-10. Formation authorized.

Quoted in *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 117-27. Article complete in itself and controlling.

Cited in *Grimesland v. Washington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

Chapter 118.

Firemen's Relief Fund.

Article 3.

North Carolina Firemen's Pension Fund.

Sec.

118-18. Fund established; trustees given corporate powers.

118-19. Fire insurance companies to make annual return of premiums collected.

118-20. Payments by fire insurance companies based on premiums; payment by Insurance Commissioner to State Treasurer.

Sec.

118-21. Returns of business done; investigation of fraudulent, etc., returns and collection of amount due.

118-22. Penalty for failure to report or pay over moneys, or for making false returns.

118-23. "Eligible firemen" defined; certification of volunteers meeting qualifications.

118-24. Application for membership in fund; monthly payments by members; payments credited to separate accounts of members.

- Sec.
- 118-25. Creation and membership of board of trustees.
- 118-26. Secretary.
- 118-27. Powers and duties of board of trustees.
- 118-28. State Treasurer to be custodian of fund; payments from fund; investments; purchase, sale, transfer, etc., of securities.
- 118-29. Monthly pensions upon retirement.
- 118-30. Payments in lump sums.
- 118-31. Pro rata reduction of benefits when fund insufficient to pay in full.
- 118-32. Provisions subject to future legislative change.

- Sec.
- 118-33. Determination of creditable service; information furnished by applicants for membership.
- 118-34. Computation of length of service; credit for prior service; transfer from one department to another.
- 118-35. Effect of member being six months delinquent in making monthly payments.
- 118-36. Exemption of pensions from attachment, etc., nonassignable.
- 118-37. Farmers mutual fire insurance associations excepted.

ARTICLE 1.

Fund Derived from Fire Insurance Companies.

§ 118-1. Fire insurance companies to report premiums collected.

Editor's Note.—Session Laws 1957, c. 102, s. 9, provides that this chapter is repealed as to the city of Albemarle insofar as inconsistent with the provisions of the act.

§ 118-7. Disbursement of funds by trustees.

Local Modification. — City of Greensboro: 1953, c. 931.

§ 118-9. Municipal clerk to certify list of fire companies; effect of failure.—The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the Commissioner of Insurance his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the Commissioner of Insurance may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the Commissioner of Insurance on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall forfeit the payment next due to be paid to said board of trustees, and the Commissioner of Insurance shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, that the Commissioner of Insurance is authorized and empowered to pay over to the local board of trustees of the firemen's relief fund for the benefit of the fire department of any city, town, village or other municipal corporation having an organized fire department, which has otherwise complied with the provisions of this chapter, the proper allocation or share of the funds derived under the provisions of this chapter for the year of 1953, and which funds up to this time have been withheld because the clerk of such city, town, village or other municipal corporation having an organized fire department failed to file the certificate required by this section or failed to file same on or before October 31, 1953; the certificates filed subsequent to October 31, 1953, shall be deemed to have been filed in substantial compliance with this section, and as to those organized fire departments which have not yet filed any certificate for 1953, the Commissioner of Insurance may pay to such department its proper share of the funds derived under this chapter upon the filing of such certificate for said year; all other requirements of this chapter

must have been complied with and this proviso applies only to the funds of the year 1953. (1907, c. 831, s. 8; C. S., s. 6071; 1925, c. 41; 1925, c. 309, s. 1; 1955, c. 228.)

Editor's Note.—The 1955 amendment added the proviso.

§ 118-10. Fire departments to be members of State Firemen's Association and send delegate to meeting.

Attendance of Delegate at Colored State Firemen's Association Compliance with Section.—Session Laws 1955, c. 498, provides: "In all cases in which a municipality has a colored volunteer fire department with or without a fire chief of the white race, the attendance of an accredited delegate from said fire department at the regular annual meeting of the Colored State Firemen's Association shall be

deemed a compliance with G. S. 118-10, and, in this respect, shall be sufficient compliance with said section to entitle such municipality to receive, for the use and benefit of the local board of trustees of the Firemen's Local Relief Fund, its proportionate part of the funds disbursed under the provisions of chapter 118 of the General Statutes, if otherwise eligible."

ARTICLE 3.

North Carolina Firemen's Pension Fund.

§ 118-18. Fund established; trustees given corporate powers. — For the purpose of this article there is hereby created in this State a fund to be known and designated the "North Carolina Firemen's Pension Fund" and it shall be administered as set forth in this article. Said North Carolina Firemen's Pension Fund is established to provide pension allowances and other benefits for eligible firemen in the State who elect to become members as herein-after provided. The board of trustees hereby created to administer said fund shall have the power and privileges of a corporation and by its name all of its business shall be transacted. (1957, c. 1420, s. 1.)

Editor's Note.—The effective date of Session Laws 1957, c. 1420, codified as this article, was originally June 12, 1957. The effective date was changed to August 15, 1957, by Session Laws 1957, c. 1392, which was ratified on the same day as chapter 1420.

§ 118-19. Fire insurance companies to make annual return of premiums collected.—Every fire insurance company, corporation or association doing business in North Carolina shall return to the Insurance Commissioner of the State of North Carolina a just and true account of all premiums collected and received from all fire insurance business done in North Carolina during the year ending December thirty-first, or such portion thereof as they may have transacted such business. Such companies, corporations or associations shall make said returns within 60 days from and after the thirty-first day of December of each year. (1957, c. 1420, s. 1.)

§ 118-20. Payments by fire insurance companies based on premiums; payment by Insurance Commissioner to State Treasurer.—Every fire insurance company, corporation or association as aforesaid shall, within 75 days from December thirty-first of each year, deliver and pay over to the State Insurance Commissioner the sum of one dollar (\$1.00) out of and from every one hundred dollars (\$100.00), and at that rate, upon the amount of all premiums written on fire and lightning policies covering property in North Carolina located in areas where fire protection is available during the year ending December thirty-first in each year, or such portion of each year as said company, corporation or association shall have done business, provided, that, the

premium on fire and lightning policies covering property in North Carolina issued by said fire insurance company, corporation or association shall be increased by the amount of said payment. All money so paid shall be paid over by the Insurance Commissioner to the State Treasurer as custodian of the North Carolina Firemen's Pension Fund. (1957, c. 1420, s. 1.)

§ 118-21. Returns of business done; investigation of fraudulent, etc., returns and collection of amount due.—Every such company, corporation or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated in North Carolina; and in case of any fraud, misrepresentation or mistake of any returns, as provided herein, shall be apparent, it shall be the duty of the Insurance Commissioner to investigate such returns and collect the amount which he shall find to be due. (1957, c. 1420, s. 1.)

§ 118-22. Penalty for failure to report or pay over moneys, or for making false returns.—Every fire insurance company, corporation or association aforesaid which shall knowingly or wilfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars (\$300.00) into said fund to be recovered in a civil action in the name of said Insurance Commissioner. (1957, c. 1420, s. 1.)

§ 118-23. "Eligible firemen" defined; certification of volunteers meeting qualifications.—"Eligible firemen" shall mean all firemen who are employed by the State of North Carolina or any political subdivision thereof or who belong to a fire department which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000.00), or more, and which is recognized by the Southeastern Underwriters Association as not less than a class "8" or rural class "A" department, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least thirty-six hours of all drills and meetings in each calendar year. As applied to volunteer firemen, "eligible firemen" shall mean those persons meeting the foregoing qualifications and who in the aggregate number are further determined by their departments as not exceeding twenty-five (25) volunteer firemen plus one (1) additional volunteer fireman per one hundred (100) population in the area served by their said respective departments. Each department shall annually determine and certify to the board of trustees the names of those volunteers meeting the foregoing eligibility qualifications. (1957, c. 1420, s. 1.)

§ 118-24. Application for membership in fund; monthly payments by members; payments credited to separate accounts of members.—Those firemen who are now eligible may make application through the board of trustees hereinafter created for membership in said fund within 24 months from August 15, 1957. All persons who subsequently become firemen may make application for membership in such fund within 12 months from the date of becoming eligible firemen. Each eligible fireman becoming a member of the fund shall pay the secretary of the board of trustees the sum of five dollars (\$5.00) per month; provided, all eligible firemen electing to become members and serving as such on August 15, 1957, shall pay the sum of five dollars (\$5.00) per month from said effective date; and further provided, firemen not now eligible but becoming so within five years of August 15, 1957, shall be permitted to become members and receive service time credits upon condition that they pay into said fund the sum of five dollars (\$5.00) per month from August 15, 1957. The said monthly payments shall be credited to the separate account of the member paying same and shall be kept separate and apart by the custodian and

available for payment to said member on account of his withdrawal from membership or to be used with respect to pension payments upon his said retirement. (1957, c. 1420, s. 1.)

§ 118-25. Creation and membership of board of trustees.—There is hereby created a board to be known as the “Board of Trustees of the North Carolina Firemen’s Pension Fund”. Said board shall consist of five members, namely:

- (1) The Governor, or some person designated by him.
- (2) The State Insurance Commissioner.
- (3) The Secretary of the North Carolina Firemen’s Association.
- (4) The remaining two members shall be elected by the North Carolina State Firemen’s Association at its next regular convention following August 15, 1957. One member so elected shall serve a term of four years and one member so elected shall serve a term of two years. Each of their successors shall serve terms of four years each, and shall be elected at regular conventions of said association; provided, that to organize said board prior to the meeting of the first regular convention of said association following August 15, 1957, the executive board of the North Carolina State Firemen’s Association shall name two members to serve upon said board of trustees until their successors are elected and qualified as above provided. Board members shall serve without pay, except that all members shall be reimbursed for all necessary expenses that they may incur through service on the board of trustees. (1957, c. 1420, s. 1.)

§ 118-26. Secretary.—There is hereby created an office to be known as Secretary of the North Carolina Firemen’s Pension Fund. He shall be named by the board and shall serve at its pleasure. The board shall fix his salary, provided it shall not exceed eight thousand dollars (\$8,000.00) annually. The secretary shall be bonded in such amount as may be determined by the board, and he shall promptly transmit to the State Treasurer all moneys collected by him as set forth in § 118-24. (1957, c. 1420, s. 1.)

§ 118-27. Powers and duties of board of trustees.—The board of trustees shall have the power and duty to provide for the payment of all administrative expenses out of the fund here created, to employ necessary clerical assistance, to determine all applications for pensions, to provide for the payment of pensions hereunder, to make all necessary rules and regulations not inconsistent with law for the government of said fund, to prescribe rules and regulations of eligibility of persons to receive hereunder, to expend funds in accordance with the provisions of this article, and generally to exercise all other powers necessary for the administration of the fund created by this article. (1957, c. 1420, s. 1.)

§ 118-28. State Treasurer to be custodian of fund; payments from fund; investments; purchase, sale, transfer, etc., of securities.—The State Treasurer shall be the custodian of the North Carolina Firemen’s Pension Fund. All payments from said fund shall be made by him only upon vouchers signed by two persons designated by the board of trustees. He shall have full power to invest and reinvest the funds comprising said fund, subject to all terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon the investments of State sinking funds; and subject to like terms, conditions, limitations and restrictions, said State Treasurer shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of said fund shall have been invested, as well as the proceeds of said investments and any other moneys belonging to said fund. (1957, c. 1420, s. 1.)

§ 118-29. **Monthly pensions upon retirement.**—Any member who has served 30 years as a fireman in the State of North Carolina and who is otherwise eligible as provided in § 118-23 hereof, and who has attained the age of 55 years shall be entitled to be paid from the fund herein created a monthly pension. Said monthly pension shall be in the amount of fifty dollars (\$50.00) per month, provided that those members retiring after attaining the age of 55 and before attaining the age of 60 may elect to receive a reduced amount to account for longer expectancy, said amount of monthly pension available at various retirement ages to be as follows:

Retirement Age	Amount	Retirement Age	Amount
55	\$36.00	58	\$44.00
56	38.00	59	47.00
57	41.00	60	50.00

Members shall pay five dollars (\$5.00) per month as required by § 118-24 until retirement from active service or until they shall have made said monthly payments for a period of 30 years, whichever first occurs; provided, any member retiring after 30 years of service, but before reaching the age of 55 years, shall continue to pay the monthly payments required by § 118-24 in order to continue his membership in the fund until he shall reach the age of 55 or until he shall have paid said monthly payments into the fund for 30 years, whichever is the earlier. Upon reaching retirement age and being otherwise eligible he shall receive a pension as set out above. Notwithstanding the above provisions, no person shall receive a pension hereunder prior to January 1, 1959, but those persons eligible and retiring prior to said date who have paid into said fund five dollars (\$5.00) per month for not less than 12 consecutive months shall be entitled to a pension in the amount of fifty dollars (\$50.00) per month or such reduced amount as set out above commencing January 1, 1959. No person shall be entitled to a pension hereunder until his official duties as a fireman shall have been terminated and no person shall further be entitled to a pension hereunder if he shall have retired as a fireman prior to August 15, 1957. (1957, c. 1420, s. 1.)

§ 118-30. **Payments in lump sums.**—The board of trustees shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman, upon the attaining of the age of 60 years, who, for any reason, is not qualified to receive the monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him; provided, this provision shall not be construed to preclude any active fireman from completing the requisite number of years of active service after attaining the age of 60 years as may be necessary to entitle him to the pension as herein provided.
- (2) If any fireman dies before attaining the age at which a pension is payable to him under the provisions of this article, there shall be paid to his widow, or if there be no widow, to his child or children, or, if there be no widow or children, then to his heirs at law as may be determined by the board of trustees or to his estate, if it is administered and there are no heirs, an amount equal to the amount paid into the fund by said fireman.
- (3) If any fireman dies after beginning to receive the pension herein provided for, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board of trustees, or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into

the fund by the said fireman and the amount received by him as a pensioner.

- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys such individual contributed to the fund, provided, if all or any part of the moneys contributed to the fund with respect to such member shall have been paid by any person, firm or corporation other than the member and notification of such action shall have been made to the board of trustees at the time of said contribution and each of them, then, upon proper application, by such other person, firm or corporation, said moneys contributed to the fund shall be paid to such person, firm or corporation originally contributing the same, upon the withdrawal of said member. (1957, c. 1420, s. 1.)

§ 118-31. Pro rata reduction of benefits when fund insufficient to pay in full.—If, for any reason, the fund hereby created and made available for any purpose covered by this article shall be insufficient to pay in full any pension benefits, then all benefits shall be proratably reduced for such time as such deficiency exists; provided, no claim shall accrue with respect to any amount by which pension or benefit payments shall have been so reduced. (1957, c. 1420, s. 1.)

§ 118-32. Provisions subject to future legislative change. — The pension provided herein shall be subject to future legislative change or revision, and no member of the fund, or any person, shall be deemed to have acquired any vested right to any pension or other payment herein provided. (1957, c. 1420, s. 1.)

§ 118-33. Determination of creditable service; information furnished by applicants for membership.—The board of trustees shall fix and determine by appropriate rules and regulations the number of years credit for service of firemen. Firemen who are now serving as such shall furnish the board with information upon applying for membership as to previous service. (1957, c. 1420, s. 1.)

§ 118-34. Computation of length of service; credit for prior service; transfer from one department to another.—In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service; but if out more than one year and less than five years, credit shall be given for prior service, but deduction made for the length of time out of service; if out of service more than five years, no previous service shall be counted. A fireman's length of service shall not be affected by the fact that he may have served in more than one fire department as defined in § 118-23, and upon transfer from one department to another, notice of such fact shall be given to the board. (1957, c. 1420, s. 1.)

§ 118-35. Effect of member being six months delinquent in making monthly payments.—Any member who becomes six months delinquent in making monthly payments as required by § 118-24 by the tenth of the month with respect to which said payment shall be due shall be removed from membership in the fund and shall lose one year of service credit for each six months' period that he remains so delinquent. (1957, c. 1420, s. 1.)

§ 118-36. Exemption of pensions from attachment, etc.; nonassignable.—The pensions herein provided shall not be subject to attachment, garnishments or judgments against the fireman entitled to same, nor shall any rights in said fund or pensions or benefits therefrom be assignable. (1957, c. 1420, s. 1.)

§ 118-37. **Farmers mutual fire insurance associations excepted.**—Nothing in this article shall be construed to include farmers mutual fire insurance associations. (1957, c. 1420, s. 1.)

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 2A.

Regulation of Re-Refined or Re-Processed Oil.

- Sec.
 119-13.1. Definitions.
 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.
 119-13.3. Violation a misdemeanor.

Article 3.

Gasoline and Oil Inspection.

- 119-16.1. "Kerosene" defined.

Article 4.

Equipment for Handling, etc., Liquefied Petroleum Gases.

- Sec.
 119-48. Purpose; definition.
 119-49. Minimum standards.
 119-50. Registration of dealers.
 119-51. Administration of article; rules and regulations.
 119-52. Right of entry; nonconforming weighing, measuring, etc., equipment.
 119-53. Unlawful acts.
 119-54. Penalty.

ARTICLE 2A.

Regulation of Re-Refined or Re-Processed Oil.

§ 119-13.1. **Definitions.**—As used in this article,

(1) "Re-refined or re-processed oil" means lubricating oil for use in internal combustion engines, which has been re-refined or processed in whole or part from previously used lubricating oils.

(2) "Specifications" means the minimum chemical properties or analysis as designated by the American Society for Testing Materials (A. S. T. M.) standards as indicated below:

	Society of Automotive Engineers				A.S.T.M. Method
Viscosity	# 20	30	40	50	
Gravity	26/27	25½/26	25/26	24/25	D 287-39
Flash-Cleveland Open Cup	420°F.	430°F.	440°F.	450°F.	D 92-46
Fire-Cleveland Open Cup	460°F.	470°F.	480°F.	490°F.	D 92-46
Viscosity @ 130°F. Saybolt Universal Seconds	150	190	255	—	D 88-44
Viscosity @ 210°F. Saybolt Universal Min.	53	60	70	85	D 88-44
Neutralization No. Max.	.50%	.50%	.50%	.50%	D 974-48T
Viscosity Index Min.	85	85	85	85	D 567-41
Pour Point. Min.	5°F.	10°F.	10°F.	15°F.	D 97-47
Carbon Residue Conradson	.4%	.5%	.6%	.9%	D 189-46
Water and Sediment	Nil	Nil	Nil	Nil	D 96-47T

(1953, c. 1137.)

§ 119-13.2. **Labels required on sealed containers; oil to meet minimum specifications.**—It shall be unlawful to offer for sale or sell or deliver in this State re-refined or re-processed oil, as hereinbefore defined, in a sealed container unless this container be labelled or bear a label on which shall be expressed the brand or trade name of the oil and the words “re-processed oil” in letters at least one-half inch high; the name and address of the person, firm, or corporation who has re-refined or re-processed said oil or placed it in the container; the Society of Automotive Engineers (S. A. E.) viscosity number; the net contents of the container expressed in U. S. liquid measure of quarts, gallons, or pints, which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each sealed container shall meet the minimum specifications as hereinbefore described for each Society of Automotive Engineers (S. A. E.) viscosity number. (1953, c. 1137.)

§ 119-13.3. **Violation a misdemeanor.**—Any person, firm, or corporation violating any of the provisions of this article shall for each offense be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) or not more than five hundred dollars (\$500.00) or imprisoned for not more than one year, or both, in the discretion of the court. (1953, c. 1137.)

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-16.1. **“Kerosene” defined.**—The term “kerosene” wherever used in this article, except to the extent otherwise provided in G. S. 119-16, shall include all petroleum oil free from water, glue and suspended matter and having flash point not below 115°F., Tag Closed Tester A.S.T.M. D-56, sulphur content not exceeding 0.13% (A.S.T.M., D-90 Modified), distillation “end point” not higher than 572° Fahrenheit (A.S.T.M., D-86). The presence or absence of coloring matter shall in no way be determinative of whether a substance is kerosene within the meaning of this section. (1955, c. 1313, s. 7.)

§ 119-43. **Display required on containers used in making deliveries.**

Violation of this section is a misdemeanor. Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

And is negligence per se. Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

Allegations Sufficient to Allege Concurrent Negligence of Defendants in Failing to Label Jug of Gasoline.—See Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

ARTICLE 4.

Equipment for Handling, etc., Liquefied Petroleum Gases.

§ 119-48. **Purpose; definition.**—The purpose of this article shall be to make, promulgate and enforce regulations setting forth minimum general standards of safety covering the odorizing of liquefied petroleum gases, and the design, construction, location, installation and operation of equipment used in handling, storing, measuring, transporting, distributing and utilizing liquefied petroleum gases as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such equipment and liquefied petroleum gases, and such other matters as may be deemed reasonably necessary in making effective the purposes of this article; provided that such rules and regulations shall be in substantial conformity with nationally accepted standards as adopted and recommended by the National Board of Fire Underwriters and the National Fire Protection Association.

The term “liquefied petroleum gas” as used in this article shall mean and include any material which is composed predominantly of any of the following

hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butanes or isobutane), and butylenes. (1955, c. 487.)

Editor's Note.—The 1955 amendment from Session Laws 1947, c. 822, ss. 1 to 5, rewrote the six former sections of this article to appear as the present seven sections. The former article was derived as amended by Sessions Laws 1949, c. 1294, and Sessions Laws 1953, c. 1232.

§ 119-49. Minimum standards.—The standards as set forth in the July, 1954, pamphlet no. 58 of the National Board of Fire Underwriters, entitled: "Standards of the National Board of Fire Underwriters for the Storage and Handling of Liquefied Petroleum Gases as Recommended by the National Fire Protection Association," and in the May, 1953, pamphlet no. 52 of the National Fire Protection Association, entitled: "Liquefied Petroleum Gas Piping and Appliance Installations in Buildings," are hereby adopted as minimum general standards of safety in handling, measuring, storing, odorizing, transporting, distributing and utilizing liquefied petroleum gases. The Board of Agriculture may amend any of the minimum standards as may be deemed reasonably necessary and advisable after a public hearing thereon. All registrants under this article shall be notified in writing thirty days prior to any hearing held hereunder. No municipality or other political subdivision shall adopt or enforce any regulation in conflict with the provisions of this article or in conflict with the rules and regulations made and promulgated in accordance with the provisions of this article. (1955, c. 487.)

§ 119-50. Registration of dealers.—Any person, firm, or corporation engaged in, or who desires to engage in the business of selling or otherwise dealing in liquefied petroleum gas which requires handling, storing, measuring, transporting or distributing liquefied petroleum gas, or who is engaged in or desires to engage in the business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment or appliances which use liquefied petroleum gas, shall forthwith, upon the ratification of this article and annually on or before January 1 thereafter, register with the Commissioner of Agriculture of North Carolina on a form or forms furnished by the Commissioner of Agriculture, giving the name and address of the person, firm, or corporation, and the place or places of and the type or types of business of such registrant, and such other pertinent information as the Commissioner may deem necessary; provided, however, that the provisions of this section shall not apply to a person, firm or corporation who retails liquefied petroleum gas in containers of less than fifty (50) pounds water capacity which retailing does not involve the filling of such containers. (1955, c. 487.)

§ 119-51. Administration of article; rules and regulations.—The Board of Agriculture is hereby authorized and empowered, in accordance with the provisions of this article, to make and to promulgate rules and regulations, including minimum standards of safety, and it shall be the duty of the Commissioner of Agriculture to administer, all of the provisions of this article and all of the rules and regulations made and promulgated under this article relating to handling, odorizing, storing, measuring, transporting, distributing and utilizing liquefied petroleum gases. (1955, c. 487.)

§ 119-52. Right of entry; nonconforming weighing, measuring, etc., equipment.—In administering the provisions of this article the Commissioner of Agriculture, his agent or representative, is hereby authorized and empowered, with the permission of the owner or occupant thereof, to enter and go into any place, building or premises where liquefied petroleum gas is used, stored, handled, transported or possessed, for the purpose of inspecting, testing, trying and ascertaining if such gas is being used, stored, handled, transported or possessed, and if the equipment and/or appliances are properly installed, in ac-

cordance with the laws and rules and regulations of the Commissioner of Agriculture, relating thereto: Provided, that if such permission to enter is refused by the owner or occupant, the Commissioner of Agriculture, his agent or representative, is hereby authorized, after written notice to said owner or occupant, to apply and obtain from the judge of a court of record in the county in which said property is located an order to inspect such place, building or premises upon showing to the said court the need therefor. In the general performance of his duty the Commissioner of Agriculture shall condemn any weighing, measuring, handling, storing, distributing apparatus or equipment which does not conform to the minimum standards or the rules and regulations made and promulgated in accordance with the provisions of this article, and the owner or user thereof shall not thereafter use or operate such equipment or apparatus until it has been made to conform. (1955, c. 487.)

§ 119-53. **Unlawful acts.**—It shall be unlawful for any person, firm or corporation other than the owner or those authorized by the owner to sell, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for any gas, compound, or for any other purposes whatsoever.

It shall be unlawful for any person, firm or corporation to leave a liquefied petroleum gas tank or container disconnected from a service hookup, whether full, partially empty, or empty, upon the premises of a consumer, unless it is securely capped in a safe manner with manually operated valves protected by means of a standard valve protecting cap, or for any dealer or distributor to install a system which does not conform to the minimum standards or rules and regulations herein provided for; or to ignore or fail to conform to any one of the minimum standards provided for by this article; or to violate any rule or regulation made and promulgated in accordance with the provisions of this article; or to misrepresent the quantity of liquefied petroleum gas offered for sale, sold, or delivered; or to otherwise violate any provision of this article. (1955, c. 487.)

§ 119-54. **Penalty.**—It shall be unlawful for any person, firm, or corporation, after April 7, 1955, to violate any of the provisions hereof or any of the rules and regulations made and promulgated in accordance with the provisions of this article. Any person, firm, or corporation violating any of the provisions of this article, or any of the rules and regulations made and promulgated in accordance with the provisions of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment or by both fine and imprisonment in the discretion of the court. (1955, c. 487.)

Chapter 120.

General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Sec.

120-3.1. Subsistence and travel allowances for members and presiding officers.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-3.1. Subsistence and travel allowances for members and

presiding officers.—(a) In addition to the compensation fixed by the Constitution for their services, members and presiding officers of the General Assembly shall also receive, while engaged in legislative duties, such subsistence and travel allowances as are limited and prescribed by subsections (b) and (c) of this section.

(b) The travel allowance authorized in subsection (a) of this section shall be paid the members and presiding officers of the General Assembly while coming to the city of Raleigh and returning to their respective homes, the distance to be computed by the usual route of public travel. Such travel allowance shall be paid only on the basis of one round trip for each regular or special session of the General Assembly, and shall not exceed that established by law for members of State boards and commissions generally.

(c) In addition to the travel allowance authorized in subsection (b) of this section, during any session of the General Assembly, whenever any member or presiding officer of either house of the General Assembly is directed by any committee of either house or by either house of the General Assembly to perform any legislative duties outside the city of Raleigh, then in such event such member or presiding officer shall be paid travel and subsistence allowances while engaged in such duties. Such travel allowance shall not exceed that established by law for State boards and commissions generally. No travel allowance shall be paid members and presiding officers of the General Assembly while they are engaged in legislative duties within the limits of the city of Raleigh. Subsistence allowance for expenses incurred in connection with their duties in the General Assembly, equal to the actual amount expended but not in excess of eight dollars (\$8.00) per day, shall be paid members and presiding officers for each day of the period during which any General Assembly remains in session.

(d) Reimbursement for travel and subsistence allowances shall be paid members and presiding officers of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed and furnished by the Budget Bureau. Claims for reimbursement for travel and subsistence shall be paid at such times as may be prescribed by the Budget Bureau. (1957, c. 8.)

ARTICLE 4.

Reports of Officers to General Assembly.

§ 120-13. **Reports of commissions; boards and departments.**—The State Highway Commission, the Superintendent of Public Instruction, the Department of Agriculture, the State Board of Health, and the State Board of Public Welfare, and such other boards, departments and commissions as the Governor may direct shall each make a full report of the operation of their respective departments or commissions together with their recommendations for the future operation of their departments or commissions to the members of the General Assembly.

All such reports shall be distributed as heretofore provided for, not later than twenty days after the general election in November preceding the convening of the General Assembly.

Failure on the part of any of the above mentioned commissions or departments to distribute their reports to the members of the General Assembly within the time prescribed by this section shall be cause for impeachment and for removal from office. (1929, c. 248; 1957, c. 65, s. 11; c. 100, s. 1.)

Editor's Note.—The first 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare." The second 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission," and the second 1957

ARTICLE 7.

Employees.

§ 120-33. Compensation of employees of the General Assembly; mileage.—The principal clerks of each house and the chief enrolling clerk shall be allowed the sum of twenty dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The reading clerks and sergeants-at-arms of each house shall be allowed the sum of sixteen dollars (\$16.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The journal clerks, calendar clerks and chief engrossing clerks in each house shall be allowed the sum of fifteen dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the calendar clerk and the assistants to the journal clerk and the clerks to the committees on finance and appropriations of each house shall be allowed the sum of thirteen dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The secretary to the Speaker of the House of Representatives, secretary to the Lieutenant-Governor, thirteen dollars per day. The assistants to the engrossing clerks, assistants appointed by the Secretary of State to supervise enrolling of bills and resolutions, the clerks to all committees which under the rules of either house are entitled to clerks, the disbursing clerks and joint disbursing clerks shall be allowed the sum of twelve dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from Raleigh to their homes and return. The typists, who are not stenographers, employed by either house of the General Assembly shall be allowed the sum of ten dollars per day and mileage at the rate of ten cents per mile for one round trip only, from their homes to Raleigh and return. The chief pages of the House of Representatives and the Senate shall receive the sum of seven dollars and fifty cents per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive the sum of six dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The chaplain of each house shall be allowed the sum of nine dollars per day and mileage at the rate of ten cents per mile, for one round trip only, from his home to Raleigh and return. All laborers authorized by law or rules of either the House of Representatives or the Senate shall receive during the session of the General Assembly the sum of eight dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 393; 1945, c. 9; 1951, c. 2; 1957, cc. 5, 1432.)

Editor's Note.—

The first 1957 amendment substituted "twenty" for "fifteen" in line two of the first sentence. The second 1957 amendment inserted the second sentence relating

to "reading clerks and sergeants-at-arms", deleted the reference to them from the present third sentence, and increased the compensation at several places in the section.

§ 120-35. Principal clerks; extra compensation.—The principal clerks of the General Assembly shall be allowed twelve hundred dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the General Assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office

of the Secretary of State. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 2732; 1911, c. 116; 1919, c. 170; C. S., s. 3855; 1921, c. 160; 1947, c. 998; 1953, c. 1315.)

Editor's Note.—

The 1953 amendment increased the amount in line two from seven hundred fifty to twelve hundred dollars.

ARTICLE 8.

Preservation and Protection of Furniture and Fixtures.

§ 120-39. **Removal of furniture and fixtures a misdemeanor.**—It shall be a misdemeanor for any person or persons to remove any of said furniture and fixtures from the halls of the General Assembly between sessions of the legislature for any purpose whatever, except as directed by the Board of Public Buildings and Grounds. (1921, c. 219, s. 3; C. S., s. 6116(c); 1953, c. 911.)

Editor's Note.—The 1953 amendment added the exception at the end of the section.

ARTICLE 10.

Influencing Public Opinion or Legislation.

§ 120-48. **Registration of persons and organizations engaged principally in influencing public opinion or legislation.**

Prosecution of Violations.—There is no language in this article which deprives the solicitor of his statutory and constitutional duty to prosecute its violation. National Ass'n for Advancement of Colored People v. Eure, 245 N. C. 331, 95 S. E.

(2d) 893 (1957).

The Attorney General has no specific enforcement duty in connection with this article. National Ass'n for Advancement of Colored People v. Eure, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

Chapter 121.

State Department of Archives and History.

- Sec. 121-1. Name.
- 121-2. Powers and duties of the Department.
- 121-3. Executive Board.
- 121-4. Director.
- 121-5. Preservation of records; copies furnished.
- 121-6. Administration of properties acquired by State.
- 121-7. Purchase of historic properties.

- Sec. 121-8. Additional power to acquire historic or archeological properties.
- 121-9. Designated employees commissioned special peace officers by Governor.
- 121-10. Powers of arrest.
- 121-11. Bond required.
- 121-12. Oaths required.
- 121-13. Acquisition of portrait of Governor during term of office.

§ 121-1. **Name.**—The archival and historical agency of the State of North Carolina shall be the State Department of Archives and History. (1945, c. 55; 1955, c. 543, s. 1.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote and revised this chapter which formerly contained eight sections. The chapter now provides for the preservation of historic sites by the Department of Archives and History, a matter formerly covered by repealed §§ 143-260.1 to 143-260.5, which were derived from Session Laws 1953, c. 1197, ss. 1-5, creating the former Historic Sites Com-

mission.

Park Properties Principally of Historic or Archeological Interest.—Session Laws 1955, c. 543, s. 3, provides: "All historic or archeological properties now administered by the Department of Conservation and Development shall be transferred to the Department of Archives and History on July 1, 1955. The Departments of Conservation and Development and of Ar-

chives and History shall jointly determine which park properties and parts thereof owned by the State of North Carolina are principally of historic or archeological interest. A report containing the joint findings of the two Departments shall be filed with the Governor and Council of State on or before July 1, 1955, and upon approval of this report by the Governor and Council of States, control and administration of the properties shall pass to the Department of Archives and History.

"If these Departments cannot agree as to whether particular properties are chiefly valuable because of their historic or archeological significance or because of their scenic or recreational values, and if they

cannot reach an agreement for joint or separate control and administration of properties concerning which some question may arise, or for the physical division of such properties, they shall submit separate reports to the Governor and Council of State, setting forth the recommendations of each Department with respect to those sites on which agreement cannot be reached. The Governor and Council of State, upon receiving these reports, shall determine whether the property or properties in question shall be controlled and administered by the Department of Archives and History or by the Department of Conservation and Development, or jointly by the two Departments."

§ 121-2. Powers and duties of the Department.—The State Department of Archives and History shall have the following powers and duties:

- (1) To adopt a seal for official use in official business.
- (2) To make to the Governor a biennial report of its activities and needs, including recommendations for improving its services to the State, to be transmitted by the Governor to the General Assembly.
- (3) To accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Department may either expend both the principal and interest of any gift or bequest or may invest such funds in whole or in part, by and with the consent of the State Treasurer, in such securities as those in which sinking funds may be invested under the provisions of G. S. 142-34.
- (4) To preserve and administer such public archives as shall be transferred to its custody, and to collect, preserve, and administer private and unofficial historical records and relics relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials, file them according to approved archival practices, and permit them, at reasonable times and under the supervision of the Department, to be inspected, examined, or copied: Provided, that any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.
- (5) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department.
- (6) To fix a reasonable price for any or all of its publications and to devote the revenue arising from such sales to the work of the Department.
- (7) To maintain one or more historical museums, to collect and preserve therein authentic, important historical materials, and according to approved museum practices to classify, catalog, file and when feasible display such materials and make them available for study.
- (8) To select suitable sites on property owned by the State of North Carolina or any subdivision of the State for the erection of historical markers calling attention to nearby historic sites and to prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured, and when completed, each marker shall be delivered to the State Highway and Public Works Commission for erection under the provisions of G. S. 136-42 and 136-43.
- (9) To acquire real and personal properties that have Statewide historical or archeological significance by gift, purchase, devise or bequest; to preserve and

administer such properties; to charge reasonable admission fees to such properties; and to determine criteria for the approval of such properties for State aid. In the acquisition of such property, the Department shall have the authority to acquire property adjacent to properties having Statewide historical or archeological significance deemed necessary for the proper use and administration of historic or archeological properties.

(10) To make reasonable rules for the regulation of the use by the public of such historical or archeological properties under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, 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 by imprisonment for not exceeding thirty days.

(11) To organize and administer a junior historian movement, in cooperation with the State Department of Public Instruction, the public schools, and other agencies or organizations that may be concerned therein.

(12) To establish and appoint an advisory board on historical materials, with whose advice and consent any records or materials in the Department's custody that appear to have no further use or value for official and administrative purposes or for research and reference purposes may be destroyed or otherwise disposed of; and to establish and appoint one or more additional advisory boards or advisory committees to assist the Department in the performance of its duties. The Department is authorized, out of any funds appropriated to the Department, to pay the actual expenses of such board or committee members incurred while on official business.

(13) To promote and encourage throughout the State knowledge and appreciation of North Carolina history by encouraging the people of the State to engage in the preservation and care of archives, historical manuscripts, museum items, and other historical materials; the writing and publication of State and local histories of high standard; the display and interpretation of historical materials; the marking and preservation of historic or archeological buildings and sites; the teaching of North Carolina history in the schools and colleges; the conduct and presentation of historical celebrations and dramas; the publicizing of the State's history through media of public information; and other activities in historical and allied fields.

(14) To cooperate with and assist, insofar as practicable, State institutions, departments, and agencies, the counties and municipalities, organizations and individuals engaged in activities in the fields of North Carolina archives and history. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C. S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1.)

Editor's Note.—The 1957 amendment rewrote paragraph (12).

§ 121-3. Executive Board.—(a) Membership; Terms.—The Department shall be governed by an Executive Board, composed of the seven persons heretofore appointed and now serving as the governing board of the Department. At the expiration of the current term of each member, his successor shall be appointed by the Governor for a term of six years and until his successor shall be appointed and qualified. Thereafter all members shall be appointed by the Governor and their terms shall be for six years and until their successors shall be appointed and qualified. Any vacancy occurring on the Board by reason of death, resignation or otherwise shall be filled by the Governor for the remainder of the unexpired term.

(b) Compensation.—The members of the Executive Board shall serve without salary but shall be allowed their actual expenses when attending to their

official duties, to be paid out of any funds appropriated for the maintenance of the Department.

(c) Organization; Meetings.—The Board shall elect one of its members as chairman and shall meet regularly at places and dates to be determined by the Board. The Director shall serve as secretary to the Board. Special meetings shall be called by the Director upon order of the chairman on the chairman's own initiative and must be called by the Director at the request of two or more members of the Board. All members shall be notified by the Director in writing of the time and place of regular and special meetings at least seven days in advance of such meeting, except that meetings may be held on shorter notice if all members of the Board shall agree. Four members shall constitute a quorum.

(d) Powers and Duties.—The Executive Board shall be the governing body for the State Department of Archives and History and shall have the power to adopt rules and regulations for its own government and for the conduct of any of the functions assigned to the Department under the provisions of this chapter. The Board shall fix the policies under which the Director and other employees of the Department shall carry out the duties imposed upon the Department. (1903, c. 767, s. 2; Rev., s. 4539; 1907, c. 714, s. 1; C. S., s. 6141; 1941, c. 306; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1.)

§ 121-4. Director.—The Executive Board shall elect a Director of the Department whose duty it shall be, under the supervision of the Board, to direct and administer the work and activities of the Department as defined and specified by law. He shall serve at a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission, upon the recommendation of the Executive Board of the Department. The Board, after proper notice and hearing, may remove the Director from office for neglect of duty, malfeasance, misfeasance or nonfeasance in office. The Director may employ such qualified persons as may be needed to perform the work and carry out the duties of the Department. (1945, c. 55; 1955, c. 543, s. 1; 1957, c. 541, s. 12.)

Editor's Note.—Prior to the 1957 amendment the salary was fixed by the Governor and Advisory Budget Commission.

§ 121-5. Preservation of records; copies furnished.—Any State, county, municipal or other public official is hereby authorized and empowered to turn over to the Department any State, county, municipal or other public records no longer in current official use, and the Department is authorized in its discretion to accept such records, and having done so, shall provide for their administration and preservation. When such records have been thus surrendered, photocopies, microfilms, typescripts, manuscripts, or other copies of them shall be made and certified under seal by the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department, and the Department may charge reasonable fees for such copies.

When the custodian of official State records certifies to the State Department of Archives and History that such records have no further use or value for official and administrative purposes and when the State Department of Archives and History states that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality or other governmental agency certifies to the State Department of Archives and History that such records have no further use or value for official business and when the State Department of Archives and History states that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality or

other governmental agency to be destroyed or otherwise disposed of by the agency having custody of them.

The Department is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of the three preceding paragraphs. When any State, county, municipal or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized above, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine. (1907, c. 714, s. 5; C. S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1.)

§ 121-6. Administration of properties acquired by State.—Historic or archeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Archives and History. This Department may, in its discretion, make a contract with any county or municipality within the State or with any non-profit corporation or organization for the administration of any portion of such property. (1955, c. 543, s. 1.)

§ 121-7. Purchase of historic properties.—The Department of Archives and History may, from funds appropriated to the Department for such purpose, purchase historical or archeological real and personal properties, or may assist a county, municipality, or nonprofit corporation or organization in the acquisition and preservation of such properties by providing a portion of the necessary purchase price; provided, that no purchase of such properties shall be made by the State of North Carolina and no contributions shall be made from State funds toward such purchase until the property or properties shall have been approved for such purpose by the Department of Archives and History according to criteria adopted by the Department. If funds for such purchase or contributions are not available, the Governor and Council of State may, upon the recommendation of the Department of Archives and History, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on property or properties, which option shall continue until thirty days after the adjournment sine die of the next General Assembly. State funds shall not be used for the purchase of property having historic or archeological significance unless the simple and unconditional title to such property is acquired by the State of North Carolina or a county or city therein or a nonprofit corporation or organization. (1955, c. 543, s. 1.)

§ 121-8. Additional power to acquire historic or archeological properties.—In the event that a historic or archeological property which has been found by the Department of Archives and History to be important for State ownership is in danger of being sold or used so that its historic or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the Department of Archives and History, after receiving the approval of the Governor and Council of State, shall have the power to acquire such historic or archeological property by condemnation under the provisions of chapter 40 of the General Statutes of North Carolina. The Department, upon finding that destruction or serious impairment of historic or archeological value is imminent, shall file with the Governor and the Council of State a report on the importance of the property and the desirability of its ownership by the State of North Carolina. Upon giving their approval the Governor and Council of State shall file such approval with the clerk of the superior court in the county or counties where such property may be situated. Until such approval is filed, the powers of condemnation shall not be exercised. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be admin-

istered, developed and operated as a State historical or archeological site. (1955, c. 543, s. 1.)

Power to Condemn Land for Restoration of Tryon's Palace.—Chapter 543, Session Laws of 1955, which rewrote this chapter, substituted the Department of Archives and History for the Department of Conservation and Development in chapter 791, Session Laws of 1945, so as to empower the Department of Archives and History under the 1945 act, after obtaining a certificate of public convenience and necessity, to condemn land for the restoration of Tryon's Palace without the approval of the Governor and Council of

State. In re Department of Archives & History, etc., 246 N. C. 392, 98 S. E. (2d) 487 (1957).

The restoration of the first fixed capital of the Colony of North Carolina is a public purpose for which the General Assembly may grant the power of eminent domain, and provide for the payment of the necessary property out of funds available therefor. In re Department of Archives & History, etc., 246 N. C. 392, 98 S. E. (2d) 487 (1957).

§ 121-9. Designated employees commissioned special peace officers by Governor.—Upon application by the Director of the Department of Archives and History, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of Archives and History as the Director may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of State historic or archeological properties under the control or supervision of the Department of Archives and History. Such employees shall receive no additional compensation for performing the duties of special peace officers under this article. (1955, c. 543, s. 1.)

§ 121-10. Powers of arrest.—Any employee of the Department of Archives and History commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule or regulation on or relating to the State historic or archeological properties under the control or supervision of the Department of Archives and History, and shall have power to pursue and arrest without warrant any person violating in his presence any law, rule or regulation on or relating to said historic and archeological properties under the control or supervision of the Department of Archives and History. (1955, c. 543, s. 1.)

§ 121-11. Bond required.—Each employee of the State Department of Archives and History commissioned as a special peace officer under this article shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and copies of the same, certified by the Insurance Commissioner, shall be received in evidence in all actions and proceedings in this State. (1955, c. 543, s. 1.)

§ 121-12. Oaths required.—Before any employee of the Department of Archives and History commissioned as a special peace officer shall exercise any power of arrest under this article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1955, c. 543, s. 1.)

§ 121-13. Acquisition of portrait of Governor during term of office.—During the term of office of each Governor of this State and at least six months prior to its expiration, the Director of the Department of Archives and History is directed to select some skilled artist to paint a portrait of such Governor, and have the same suitably framed. Upon the painting and acquisition of such portrait, the same shall be placed in some appropriate building to be designated by the State Board of Public Buildings and Grounds and which is located in the city of Raleigh.

The cost of the painting and acquisition of said portraits, including the cost of the frame and other necessary expenses incident thereto, shall be paid from the Contingency and Emergency Fund, but in no instance shall such cost exceed the sum of four thousand dollars (\$4,000.00) for any one portrait.

Provided, that none of said portraits shall be acquired that are done in techniques known as ultra-modern, non-objective, surrealistic, abstract or impressionistic. (1955, c. 1248.)

Chapter 122.

Hospitals for the Mentally Disordered.

Article 1.

Organization and Management.

Sec.

122-6. Epileptics who are mentally disordered cared for at Raleigh, Goldsboro and other hospitals.

122-8.1. Disclosure of information, records, etc.

122-10. [Repealed.]

122-13.1. Transfer of patients from Psychiatric Training and Research Center at Chapel Hill to State hospital or institution under control of North Carolina Hospitals Board of Control.

122-18. [Repealed.]

122-20. Board of Public Welfare and General Assembly, visitors; Board to make report.

Article 2.

Officers and Employees.

122-26. [Repealed.]

122-28. Physicians; appointment and removal.

122-29, 122-30. [Repealed.]

122-33. Superintendent or business manager may appoint employees as policemen, who may arrest without warrant.

Article 3.

Admission of Patients.

122-35.1. Definitions of mental disease, mental defective, etc.

122-43.1. Commitment of persons already in hospitals.

122-44. Detention of persons alleged to be mentally disordered and dangerous to themselves or others.

122-46.2. Commitment of an epileptic person.

122-46.3. Authorization of hospital for commitment.

122-46.4. Clerk to commit for observation to Psychiatric Training and Research Center at the North Carolina Memorial Hospital

Sec.

for commitment, release or discharge.

122-46.5. Clerk may make final commitment to Center.

122-46.6. Commitment upon patient's application.

122-52, 122-53. [Repealed.]

122-54. Female patient to be accompanied by female attendant or member of the family.

122-60. [Repealed.]

122-63.2. Reciprocal agreements with other states to set requirements for State hospital care and release of patients.

Article 4.

Discharge of Patients.

122-66.1. Discharge of patients; filing thereof.

122-67.1. Release of patients from the Psychiatric Training and Research Center at the North Carolina Memorial Hospital in Chapel Hill.

122-68. Superintendent may release patient temporarily.

122-68.1. Superintendent must notify General Superintendent and State Hospitals Board of Control of unusually dangerous mentally disordered patients.

Article 5.

Private Hospitals for the Mentally Disordered.

122-72. Established under license and subject to control of Board of Public Welfare.

Article 6.

Mentally Disordered Criminals.

122-91. Alleged criminal may be committed for observation; procedure.

ARTICLE 1.

Organization and Management.

§ 122-1. **Incorporation and names.**—The hospital for the mentally disordered, located near Morganton, shall be and remain a corporation under this name: The State Hospital at Morganton. The hospital for the mentally disordered, located near Raleigh, shall be and remain a corporation under this name: The State Hospital at Raleigh. The hospital for the mentally disordered, located near Goldsboro, shall be and remain a corporation under this name: The State Hospital at Goldsboro. The hospital for the mentally disordered located near Butner shall be and remain a corporation under this name: State Hospital at Butner. The North Carolina Hospitals Board of Control shall be authorized to acquire property and to establish, operate and maintain thereon a hospital or institution and to exercise with respect to such hospital or institution the same property rights and powers as are exercised by it with respect to the State hospitals above referred to. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C. S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1955, c. 887, s. 1.)

Editor's Note.—

The 1955 amendment inserted the fourth

sentence, relating to the State Hospital at Butner.

§ 122-2. **Power to acquire and hold property.**—The State Hospital at Morganton, the State Hospital at Goldsboro, the State Hospital at Raleigh, and the State Hospital at Butner, and any institution established, operated and maintained by the North Carolina Hospitals Board of Control, may each acquire and hold, for the purpose of its institution, real and personal property by devise, bequest, or by any manner of gift, purchase or conveyance whatsoever. (1899, c. 1, s. 2; Rev., s. 4543; C. S., s. 6152; 1947, c. 537, s. 3; 1955, c. 887, s. 2.)

Editor's Note.—The 1955 amendment Hospital at Raleigh and the State Hospital made this section applicable to the State at Butner.

§ 122-3. **Division of patients among the several institutions under the North Carolina Hospitals Board of Control.**—The State Hospital at Raleigh, the State Hospital at Morganton, and the State Hospital at Butner shall be exclusively for the accommodation, maintenance, care and treatment of white mentally disordered persons of the State, and the State Hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment for the colored mentally disordered, epileptic, feeble-minded, and inebriate of the State.

(1957, c. 1232, s. 1.)

Editor's Note.—

The 1957 amendment inserted in the first paragraph the reference to the State

Hospital at Butner. As the rest of the section was not affected by the amendment it is not set out.

§ 122-6. **Epileptics who are mentally disordered cared for at Raleigh, Goldsboro and other hospitals.**—Whenever it becomes necessary for any person of this State afflicted with the disease known as epilepsy and who is mentally disordered to be confined or to receive hospital treatment, such person shall be committed by the clerks of superior court of the several counties in the manner now provided by law for the commitment of mentally disordered persons to the several hospitals for the mentally disordered. Commitment of negro epileptic persons shall be made to the State Hospital at Goldsboro. Com-

mitment of white epileptic persons shall be made to the State Hospital at Raleigh. The superintendents of the State hospitals to which such epileptic persons have been committed or transferred shall receive, care for, maintain and treat such persons as are afflicted if necessary to prevent them from becoming public charges, to the extent of the facilities of the hospital.

Charges for the patients shall be made in the same manner as now provided by law for care of mentally disordered persons. (1909, c. 910, ss. 1, 2; C. S., s. 6155; 1945, c. 952, s. 11; 1947, c. 537, s. 8; 1957, c. 1232, s. 2.)

Editor's Note.—

The 1957 amendment inserted in the first sentence the words "and who is mentally disordered."

§ 122-7. Management of certain institutions by unified board of directors; appointment; quorum; term of office.—The following institutions of this State shall be under the management of one board of directors composed of fifteen members, all of whom shall be appointed by the Governor of North Carolina: The State Hospital at Raleigh, the State Hospital at Morganton, the State Hospital at Goldsboro, the State Hospital at Butner, the Caswell Training School at Kinston, the Butner Training School, and the Goldsboro Training School. In order that all sections of the State shall have representation on said board, the Governor shall name one member from each congressional district of the State and three members at large on said board. The board of directors to be named from congressional districts shall be divided into four classes of three directors each, the first class to serve for a period of one year, the second class to serve for a period of two years, the third class to serve for a period of three years, the fourth class to serve for a period of four years, and the three directors at large to serve for a period of four years, and at the expiration of their respective terms of office all appointments shall be for a term of four years, except such as are made to fill unexpired terms. Eight directors shall constitute a quorum.

Members of the board shall serve for terms as prescribed above, and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1921, c. 183, s. 2; C. S., s. 6159(a); 1925, c. 306, s. 3; 1943, c. 136, s. 2; 1945, c. 925, s. 1; 1957, c. 1232, s. 3.)

Editor's Note.—

The 1957 amendment made this section applicable to the State Hospital at Butner, the Butner Training School, and the Goldsboro Training School.

§ 122-8.1. Disclosure of information, records, etc.—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the North Carolina Hospitals Board of Control shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the North Carolina Hospitals Board of Control through its agents and officers may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants. (1955, c. 887, s. 12.)

§ 122-10: Repealed by Session Laws 1957, c. 1232, s. 4.

§ 122-11.2. **Superintendent of Mental Hygiene.**—The board of directors is hereby authorized and given full power to employ a general Superintendent of Mental Hygiene and prescribe his duties and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The said Superintendent shall be a person of demonstrated executive ability and a doctor of medicine who shall have had special education, training and experience in psychiatry and in the treatment of mental diseases, and he shall be a person of good character and otherwise qualified to discharge his duties. He shall be employed for a period of six years from and after the date of his selection, unless sooner removed therefrom by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment.

The board of directors shall provide the said Superintendent with such stenographic and clerical assistance as it may deem necessary. The salary of said Superintendent and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations. Upon the request of the board of directors the State Board of Public Buildings and Grounds shall provide suitable office space in the city of Raleigh for said Superintendent. (1943, c. 136, s. 7; 1945, c. 925, s. 2; 1957, c. 541, s. 13; c. 1232, s. 5.)

Editor's Note.—

Prior to the first 1957 amendment the salary was fixed by the board of directors. The second 1957 amendment deleted from the end of the first paragraph the words "and shall hold no office except that he shall serve as secretary to the board of

directors, if the board so orders." It also deleted the words "made to the several institutions herein mentioned and on such pro rata basis as the board of directors shall in their judgment fix and determine" formerly appearing at the end of the second sentence of the second paragraph.

§ 122-11.3. **Business manager for institutions.**—The board of directors is hereby authorized and given full power to employ a general business manager for the institutions enumerated in § 122-7, and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. Subject to the supervision, direction and control of the board of directors, the said general business manager shall perform the duties set out in this section and all other duties which the board of directors may prescribe. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. Under the direction of said board, said general manager shall have full supervision over the fiscal management and over the management and control of the physical properties and equipment of the institutions enumerated in § 122-7. All personnel or employees of said institutions engaged in any aspect of the business management or supervision of the properties or equipment of any of said institutions shall be responsible to and subject to the supervision and direction of said general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The said general business manager shall be employed for a period of six years from and after the time of his selection, unless sooner removed by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

The board of directors shall provide the said general business manager with such stenographic and clerical assistance as it may deem necessary. The salary of said business manager and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the State Hospitals Board of Control. Upon the request of the board of directors the State Board of Public Buildings and Grounds shall

provide suitable office space in the city of Raleigh for said general business manager in conjunction with the office space provided for the General Superintendent of Mental Hygiene hereinbefore provided for. (1943, c. 136, s. 7½; 1945, c. 925, s. 3; 1957, c. 541, s. 14; c. 1232, s. 6.)

Editor's Note.—

Prior to the first 1957 amendment the salary was fixed by the board of directors. The second 1957 amendment substituted at the end of the second sentence of the third paragraph the words "State Hospitals

Board of Control" for the words "several institutions hereinbefore mentioned and on such pro rata basis as the board of directors shall in its judgment fix and determine."

§ 122-11.6. Outpatient mental hygiene clinics.—The North Carolina Hospitals Board of Control is authorized to establish, in its discretion, outpatient mental hygiene clinics at any of the institutions under its control, and to operate such outpatient facilities as are essential for its inservice training program in psychiatric care and treatment. (1943, c. 136, s. 11; 1955, c. 155, s. 2.)

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

§ 122-13.1. Transfer of patients from Psychiatric Training and Research Center at Chapel Hill to State hospital or institution under control of North Carolina Hospitals Board of Control.—When it is deemed desirable that any patient of the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill be transferred to a State hospital or institution under the control of the North Carolina Hospitals Board of Control such a transfer may be effected upon the approval of the superintendent of the appropriate State hospital and the recommendation of the Director of the Inpatient Service of the Psychiatric Training and Research Center. A certified copy of the commitment on file at the Psychiatric Training and Research Center and the order of the Director of the Inpatient Service shall be sufficient warrant for holding the mentally disordered person by the officials of the appropriate State hospital. (1955, c. 1274, s. 1.)

§ 122-14. Delivery of inmates to federal agencies.—The directors and superintendents of the State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States government or to the representatives or agents of such Veterans Bureau or other department or bureau of said government, all inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts or acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 623, s. 1; 1953, c. 675, s. 15.)

Editor's Note.—

The 1953 amendment substituted "or"

for "of" immediately before the word "acknowledgments" in line twelve.

§ 122-18: Repealed by Session Laws 1957, c. 1232, s. 7.

§ 122-20. Board of Public Welfare and General Assembly, visitors; Board to make report.—The State Board of Public Welfare and the members of the General Assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the State Board of Public Welfare to visit the

hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the General Assembly, with such suggestions and remarks as they may think proper. (1899, c. 1, s. 37; Rev., s. 4554; 1917, c. 150, s. 1; C. S., s. 6168; 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."

ARTICLE 2.

Officers and Employees.

§ 122-26: Repealed by Session Laws 1957, c. 1232, s. 8.

§ 122-27. **Superintendent to notify of escape or revocation of probation of inmate.**—When any patient of a State hospital who has been released therefrom on probation has breached the conditions of his probation, or when any patient has escaped, the superintendent of the hospital shall immediately notify the sheriff and clerk of court of the county from which the patient was committed; if the superintendent has reasonable grounds to believe that the patient is in any other county, he may also notify the sheriff of such county. Upon receipt of such notice, it shall be the duty of the sheriff to return such patient to the hospital from which he has escaped or has been released on probation. The expense of returning such patient shall be borne by the county of such patient's legal settlement. (1899, c. 1, s. 27; Rev., s. 4563; C. S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3.)

Editor's Note.— notify the committing physician. The 1955 amendment rewrote the section. The 1953 amendment eliminated a former requirement that the superintendent

§ 122-28. **Physicians; appointment and removal.**—Each superintendent shall appoint one or more physicians, the number to be fixed by the Board of Control. The superintendent shall have the power to prescribe the duties of each physician, and may suspend him, or any employee, for thirty days, for insubordination, immorality, neglect of duty, or incompetence, and, by and with the advice of the general superintendent and the executive committee of the Board of Control, may remove such physician, or employee, for like cause. Each physician shall hold his office for two years, unless removed for cause, which shall be specified and the action of the superintendent and the general superintendent reported to the Board of Control, which shall record the same on its minutes. (1899, c. 1, s. 10; Rev., s. 4564; C. S., s. 6176; 1957, c. 1232, s. 9.)

Editor's Note. — The 1957 amendment rewrote this section which formerly related to assistant physicians.

§§ 122-29, 122-30: Repealed by Session Laws 1957, c. 1232, ss. 10, 11.

§ 122-31 **Salaries of superintendent and employees.**—The board of directors shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said board. The salaries shall not be diminished during the term of the incumbents. (1899, c. 1, s. 12; Rev., s. 4567; 1917, c. 150, s. 1; C. S., s. 6179. 1953, c. 256, s. 2.)

Editor's Note.—The 1953 amendment struck out the former last sentence of this section which read: "The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit."

§ 122-33. **Superintendent or business manager may appoint employees as policemen, who may arrest without warrant.**—The superintendent or business manager of each hospital, the superintendent of the North Carolina School for the Deaf and Dumb, and the superintendent of the Caswell Training School, are each hereby empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the State law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12.)

Editor's Note.—The 1957 amendment inserted the words "or business manager" near the beginning of this section.

ARTICLE 3.

Admission of Patients.

§ 122-35.1. **Definitions of mental disease, mental defective, etc.**—The words "mental disease", "mental disorder" and "mental illness" shall mean an illness which so lessens the capacity of the person to use his customary self-control, judgment, and discretion in the conduct of his affairs, and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. The terms shall be construed to include "lunacy", "unsoundness of mind", and "insanity".

A "mental defective" shall mean a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care, or control is necessary or advisable. The term shall be construed to include "feeble-minded", "idiot", and "imbecile". (1957, c. 1232, s. 13.)

§ 122-36. **Persons entitled to immediate admission if space available.**—Any resident of North Carolina who has been legally adjudged by a clerk of court or other properly authorized person in accordance with the provisions of this chapter to be mentally disordered or a proper person to be committed to a State hospital for observation shall, if space is available, be entitled to immediate admission in the State Hospital at Morganton, the State Hospital at Raleigh, the State Hospital at Goldsboro, or the State Hospital at Butner, in accordance with the principles of division of race and residence prescribed in this chapter. No resident of this State who has been legally adjudged mentally disordered or a proper subject for observation and who has been presented to the superintendent of the proper State hospital for the mentally disordered as provided in this article, shall be refused admission thereto if space is available, but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law.

Upon the admission of any such person, the superintendent of the institution shall notify the clerk of the superior court who has committed such person as mentally disordered, or as a proper subject for observation. (1919, c. 326, ss. 1, 6; C. S., s. 6184; 1945, c. 952, s. 13; 1957, c. 1232, s. 14.)

Editor's Note.—For article on hospitalization of the mentally ill, see 31 N. C. Law Rev. 274. The 1957 amendment made this section applicable to the State Hospital at Butner.

§ 122-38. Priority given to indigent patients; payment required from others.—In the admission of patients to any State hospital, priority of admission shall be given to indigent persons; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients, upon proper compensation, based upon the ability of the patient or his estate to pay. Where the clerk of court or the superintendent of the hospital has doubt as to the indigency of the mentally disordered person, he shall refer the question to the county department of public welfare for investigation. If any patient of any State hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the State hospital may maintain an action against his estate for his support and maintenance. (1899, c. 1, s. 44; Rev., s. 4573; 1915, c. 254; 1917, c. 150, s. 1; C. S., s. 6186; 1945, c. 952, s. 15; 1957, c. 1232, s. 15.)

Editor's Note.—

The 1957 amendment deleted the words “for a period of five years prior to his death” formerly ending the last sentence.

§ 122-39. Only bona fide residents entitled to care in State mental hospitals.—No clerk of superior court shall commit to any State hospital any mentally disordered person known to be a resident of another state or whose residence is unknown unless he shall state that the mentally disordered person is known to be a resident of another state or that his residence is not known, and he shall give all available information concerning places in which he has been recently living.

The legal residence of a person as to his being entitled to mental hospital care shall be determined between this and the other state or states as elsewhere provided.

No person who shall have removed into this State while mentally disordered or while under commitment to a mental hospital in any other state, nor any person not a resident of North Carolina but under commitment to any mental institution, public or private, in this State shall be considered as a resident; and no length of residence in this State of such a person, while mentally disordered or under commitment, shall be sufficient to make him a resident of this State or entitled to State mental hospital care: Provided, however, that any person either native born or a bona fide resident of this State continuously up to the time of his or her marriage to a nonresident of this State, and who since the marriage has become mentally disordered or insane as a result of which such person has been committed to a mental institution of the state of his or her residence at the time of such commitment, and such patient, in the meanwhile or prior thereto, has been divorced or deprived by death of his or her spouse, and whose family (father, mother, brothers or sisters, if any) of the patient's former county residence of this State files with the clerk of the superior court of such former residence an application for commitment of such person to the appropriate State hospital for the insane in this State and the clerk of such court, after due examination as in cases of residents of this State, finds that such person is a fit subject for care and treatment as an incompetent person, then, and in such event, the authorities of the appropriate State hospital for the insane in this State are authorized and empowered to receive such patient for care and treatment as a mentally incompetent person. (1899, c. 1, s. 18; Rev., ss. 3591, 4587; C. S., s. 6187; 1945, c. 952, s. 16; 1947, c. 537, s. 11; 1957, c. 1386.)

Editor's Note.—

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

§ 122-40. Findings as to residence reported; commitment.—In every examination of an alleged mentally disordered person it shall be the duty of the clerk to particularly inquire whether the alleged mentally disordered person is a resident of this State, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged mentally disordered person and the clerk or the assistant clerk of court shall be of the opinion that the alleged mentally disordered person is a resident of this State, within the meaning of the law, and in all other respects would be a proper person to be committed as mentally disordered or for observation, he shall state that he was unable to ascertain the legal residence of the alleged mentally disordered person and shall commit him to the proper State hospital in accordance with the principles of divisions as to race and residence prescribed in this chapter. (1899, c. 1, s. 18; Rev., s. 4588; C. S., s. 6188; 1945, c. 952, s. 17; 1953, c. 256, s. 3.)

Editor's Note.—

The 1953 amendment struck out the words "or justice of the peace" formerly

appearing after the word "clerk" in line three.

§ 122-42. Affidavit of mental disorder and request for examination.

Quoted in *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

§ 122-43. Clerk to issue an order for examination.

Applicant May Act as Intermediary in Obtaining Affidavit of Physician.—Since this section expressly provides that the affidavits may be made before notaries, rather than before the clerk, it follows by necessary implication that it sanctions the procedure whereby the affiant in the affidavit-application acts as intermediary in carrying the papers to and from the physician for the execution of the physician's affidavit. *Jarman v. Offutt*, 239 N. C. 468,

80 S. E. (2d) 248 (1954).

Statement of Physician Is Absolutely Privileged.—In a lunacy proceeding instituted by proper affidavit sworn to before the clerk, under § 122-42, a statement of a physician sworn to before a notary public, as provided by this section, is absolutely privileged and will not support an action for libel. *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

§ 122-43.1. Commitment of persons already in hospitals. — Where there is a patient who is voluntarily committed to a State hospital, or is in a private hospital, a private psychiatric clinic, or a public general hospital and it becomes necessary and in the best interest of both the public and the patient to have such patient involuntarily committed to a State hospital without removal of said patient from the hospital, the clerk of superior court of the county in which the patient is confined shall, upon request of the controlling officer of said hospital, go to such hospital and hold the hearing required by G. S. 122-46. The expenses of such hearing shall be borne by the county of residence of such mentally disordered person. The records of such commitment shall be maintained in accordance with the provisions of G. S. 122-50. (1957, c. 1232, s. 16.)

§ 122-44. Detention of persons alleged to be mentally disordered and dangerous to themselves or others.—If the affidavit required to be filed by § 122-42 states that the alleged mentally disordered person is likely to endanger himself or others, he may be taken into custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health officer for such detention, upon an order of the clerk of court. He shall not, except because of and during an extreme emergency, be detained in a non-medical facility used for the detention of individuals charged with or convicted of penal offenses, and then only upon an order of the clerk of court, and with notification as soon as practicable to the local health officer.

The clerk shall expedite the hearing, and, if the alleged mentally disordered

person is committed, the transmission of this information to the proper State hospital, so that the alleged mentally disordered person can be admitted. (1941, c. 179; 1955, c. 887, s. 5.)

Editor's Note.—

The 1955 amendment rewrote this section.

§ 122-46. Clerk to commit for observation in a hospital, for commitment, release or discharge.—When the two physicians shall have certified that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered, the clerk shall hold an informal hearing. The clerk shall cause to be served on the alleged mentally disordered person a notice of the hearing. The clerk shall have the hearing without unnecessary delay and shall examine the certificates or affidavits of the physicians and any proper witnesses, and at its conclusion may issue an order of commitment on the form approved by the North Carolina Hospitals Board of Control, which shall authorize the hospital to receive said person and there to examine him and observe his mental condition for a period not exceeding sixty days. The clerk may authorize the transfer of said alleged mentally disordered person to the proper hospital, when notified by the superintendent that space is available.

The clerk shall transmit to the hospital information relevant to the mental condition of the alleged mentally disordered person. He shall certify as to the indigency of the mentally disordered person and any persons liable for the care of the person under G. S. 35-33 or 143-117 et seq., on forms approved by the North Carolina Hospitals Board of Control.

When a person has been admitted to one of the State hospitals under the provisions of this chapter for a period of observation, and when he has been carefully examined and if he is found to be not mentally disordered or not in need of care in a State hospital, the superintendent of the State hospital shall immediately report these findings to the clerk of superior court of the county in which such person has residence, who shall order his discharge. The removal of said person from the State hospital shall be after the notice and in the manner prescribed in § 122-67.

Neither the institution of a proceeding to have any alleged mentally disordered person committed for observation as provided in this section nor the order of commitment by the clerk as provided in this section shall have the effect of creating any presumption that such person is legally incompetent for any purpose. Provided, however, that if a guardian or trustee has been appointed for any alleged mentally disordered person under G. S. 35-2 or 35-3 the procedure for restoration to sanity shall be as is now provided in G. S. 35-4 and 35-4.1. (1899, c. 1, s. 15; Rev., s. 4578; 1915, c. 204, s. 1; C. S., s. 6193; 1923, c. 144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15; 1953, c. 133; 1955, c. 887, ss. 4, 6; 1957, c. 1232, s. 17; c. 1257.)

Editor's Note.—

The 1955 amendment rewrote the first paragraph as changed by the 1953 amendment and added the third paragraph.

The first 1957 amendment changed the

period of observation in the first paragraph from thirty to sixty days. The second 1957 amendment added the last paragraph.

For brief comment on the 1953 amendment, see 31 N. C. Law Rev. 411.

§ 122-46.1. Clerk may make final commitment to hospital.—When such alleged mentally disordered person is committed to a State hospital for observation, the hospital authorities shall, at the expiration of sixty days, file with the clerk of the superior court of the county in which the alleged mentally disordered person resided, if known, if not known, with the clerk of the superior court who committed such alleged mentally disordered person for observation, a written report stating the conclusion reached by the hospital authorities as to

the mental condition of the alleged mentally disordered person. Upon the basis of this report, the clerk of the superior court of the county in which the alleged mentally disordered person resided, or if such alleged mentally disordered person's residence is not known, the clerk of the superior court who committed him for observation is authorized to order said person discharged or to order him to remain at the hospital as a patient, as the facts may warrant. Any person who has been committed to any State hospital as mentally disordered as provided by law shall be and remain a charge of such State hospital until he has been discharged from said hospital or declared competent as otherwise provided by law.

At the end of the sixty-day observation period the superintendent of the State hospital in which the alleged mentally disordered person has been confined for a sixty-day period of observation may signify in writing to the clerk of the court of the county in which the alleged mentally disordered person is settled that his observation of the alleged mentally disordered person has not been completed and that a second period of observation of the alleged mentally disordered person is requested. This second period of observation shall not exceed four months. Whereupon the clerk of the superior court who committed the alleged mentally disordered person for observation is authorized to order said person to remain at the hospital as a patient for another observation period not to exceed four months. (1945, c. 952, s. 23; 1957, c. 1232, s. 18.)

Editor's Note. — The 1957 amendment substituted "sixty" for "thirty" in line three of the first paragraph. It also increased the observation period in the first sentence of the second paragraph from thirty to sixty days, inserted the second sentence thereof, and changed the last sentence which formerly provided for another observation period of thirty days.

Method of Securing Release.—A person

committed to a State mental institution under article 3 of chapter 122 may not invoke the provisions of § 35-4 for a determination of the restoration of sanity by a jury trial as a condition precedent to his release under this section, the proper remedy being by habeas corpus under § 17-32. In re Harris, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

§ 122-46.2. Commitment of an epileptic person.—The procedure for the commitment of an epileptic person with mental disorder or serious mental impairment shall be the same as provided for mentally disordered persons under G. S. 122-42 and sections following. (1953, c. 256, s. 4.)

§ 122-46.3. Authorization of hospital for commitment.—By this amendment the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill shall be authorized to receive allegedly mentally disordered persons committed for observation, for commitment, release or discharge in the same manner as a State hospital. The clerk of the court shall not make commitment to this Center without the approval of the Director of the Inpatient Service. (1955, c. 1274, s. 2.)

§ 122-46.4. Clerk to commit for observation to Psychiatric Training and Research Center at the North Carolina Memorial Hospital for commitment, release or discharge.—When the clerk of court has approval as provided in § 122-46.3 he may make commitment of an allegedly mentally disordered person as provided in § 122-46. Any two duly licensed physicians not directly connected with the Inpatient Service of this Center may serve as the certifying physicians. (1955, c. 1274, s. 2.)

§ 122-46.5. Clerk may make final commitment to Center.—When the allegedly mentally disordered person has been observed for a period of thirty days the Director of the Inpatient Service shall report concerning the person's condition to the clerk in the same manner as the superintendent of the State hospital as provided in § 122-46.1, the clerk shall then act on this report as provided in § 122-46.1. (1955, c. 1274, s. 2.)

§ 122-46.6. Commitment upon patient's application.—Any person believing himself to be of unsound mind or threatened with mental disorder may voluntarily commit himself to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in Chapel Hill as to a State hospital upon approval of his application by the Director of the Inpatient Service; the application for commitment shall be in the form designated in the General Statutes, § 122-62. The patient's application shall be accompanied by the recommendation of a licensed physician.

Final commitment of voluntarily committed patients must proceed through the same channels as in the case of the involuntary commitment of an allegedly mentally disordered person. (1955, c. 1274, s. 2.)

§ 122-50. Clerk to keep record of examinations and discharges.—The clerk shall keep a record of all examinations of persons alleged to be mentally disordered and he shall record in such record a brief summary of the proceedings and of his findings. He shall also keep a record of all probations and discharges provided for in article 4 of this chapter. (1899, c. 1, s. 17; Rev., s. 4586; C. S., s. 6197; 1945, c. 952, s. 26; 1955, c. 887, s. 7.)

Editor's Note.—

The 1955 amendment rewrote this sec-

tion, eliminating provisions for recording proceedings before a justice of the peace.

§ 122-51. Fees for examination.—The following fees shall be allowed to the officers who make the examination and they shall be paid by the county in which the alleged mentally disordered person is settled:

To the clerk who makes the examination, ten dollars (\$10.00), and if the clerk goes to the place where the alleged mentally disordered person is or resides, seven cents (7¢) a mile each way in addition. This shall cover his entire costs in taking the examination and making out the necessary papers.

To the physicians making the examination, the sum of fifteen dollars (\$15.00) each and mileage at the rate of seven cents (7¢) a mile. If the county physician is a salaried officer, he is not allowed any fee for his services in this examination.

The sheriff shall be entitled to such fees as are now allowed by law for service of a process of similar character. (1899, c. 1, s. 15; Rev., ss. 4580, 4581; C. S., s. 6198; 1947, c. 537, s. 17; 1955, c. 887, s. 8; 1957, c. 1232, s. 19.)

Local Modification.—Johnston: 1957, c. 954.

Editor's Note.—

The 1955 amendment substituted "ten dollars" for "two dollars" and "seven cents" for "five cents" in the second paragraph. It also rewrote the first sentence of the third paragraph, which for-

merly provided for a fee of five dollars to the physician or physicians called in addition to or in the absence of the county physician.

The 1957 amendment inserted at the end of the first sentence of the third paragraph the words "and mileage at the rate of seven cents (7¢) a mile."

§§ 122-52, 122-53: Repealed by Session Laws 1953, c. 256, s. 5.

§ 122-54. Female patient to be accompanied by female attendant or member of the family.—Each female mentally disordered patient must be accompanied to the hospital by a member of her family; if a member of her family is not available, she must be accompanied by a female designated by the county superintendent of public welfare of the county of the patient's settlement, the expenses of said female attendant to be borne by the county commissioners. (1919, c. 326, s. 4; C. S., s. 6201; 1945, c. 952, s. 29; 1953, c. 256, s. 6.)

Editor's Note.—

The 1953 amendment struck out the former first paragraph of this section relating to action required of sheriff when

superintendent of hospital for the mentally disordered failed to send an attendant for a patient. The amendment also changed the catchline.

§ 122-56. Preparation of patient for admission to hospital.—Every sheriff or other person bringing to a hospital a patient shall see that the patient is clean, free from contagious disease and vermin, and that he has clothing proper for the season of the year. (1899, c. 1, s. 24; Rev., s. 4556; C. S., s. 6203; 1955, c. 887, s. 9.)

Editor's Note.—The 1955 amendment deleted the words "and in all cases two full suits of underclothing" at the end of this section.

§ 122-57. Commitment in case of sudden or violent mental disorder.—Whenever any citizen or resident of this State or any other state becomes suddenly or violently mentally disordered, he may be committed to the proper State hospital for the mentally disordered, private hospital, county hospital, or other suitable place, until adjudication can be made or for a period not exceeding ten days upon the affidavit of one physician not related by blood to the mentally disordered person and licensed to practice medicine in North Carolina, or by the order of the clerk of the superior court of the county in which the patient becomes suddenly or violently mentally disordered upon the application of a respectable citizen. The physician's signature must be sworn to before a notary public or a deputy sheriff. The physician's notarized signature shall constitute authority for the temporary commitment of the alleged mentally disordered person who has become suddenly or violently mentally disordered without an order of the clerk of the superior court. Adjudication of a person temporarily committed under the provisions of this section may proceed without removing said person to the county of his residence. (1899, c. 1, s. 16; Rev., s. 4582; C. S., s. 6204; 1945, c. 952, s. 31; 1957, c. 1232, s. 20.)

Editor's Note.—The 1957 amendment deleted the former second sentence relating to the standard form for commitment and struck out references to the standard form formerly appearing in the present second and third sentences.

§ 122-60: Repealed by Session Laws 1953, c. 256, s. 7.

§ 122-62. Commitment upon patient's application.—Any person believing himself to be of unsound mind or threatened with mental disorder may voluntarily commit himself to the proper hospital. The application for commitment shall be in the following form:

State of North Carolina, County of I,, a resident of County, North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the State Hospital at I agree in all respects to conform to the rules and regulations of said institution. I understand that I shall not be entitled to a discharge until I shall have given the superintendent ten days' written notice of my desire to be discharged.

Attest:

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his admission. The certificate of the clerk of the superior court need not accompany this application, and the medical director of the State hospital shall not notify the clerk of court of the county of the residence of the patient of the discharge of the patient. The superintendent may, if he think it a proper application, receive the patient thus voluntarily committed and treat him, but no report need to be made to the clerk of court of the county of his settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided except that a voluntary patient shall be entitled to a discharge after he shall have given the superintendent ten days' written notice of

his desire to be discharged, unless proceedings have been instituted for the involuntary commitment of such patient.

If in the opinion of the examining physician or of the superintendent of the hospital the patient should be admitted for not less than a thirty-day period to permit more adequate examination and treatment, the superintendent may have the patient sign the above form to which has been added:

I understand that I will be admitted for a minimum period of thirty days, and that my written notice of a desire to be discharged will not be effective until the expiration of the thirty-day period.

When the patient shall have signed this form admitting himself for thirty days, the superintendent may require that the patient remain at the hospital for this full period.

If necessary, final commitment of voluntarily committed patients must proceed through the same channels as in case of the involuntary commitment of an alleged mentally disordered person or in accord with the provisions of G. S. 122-43.1. (1899, c. 1, s. 49; Rev., s. 4593; 1917, c. 150, s. 1; C. S., s. 6209; 1945, c. 952, s. 32; 1953, c. 256, s. 8; 1955, c. 887, s. 10; 1957, c. 1232, s. 21.)

Editor's Note.—

The 1953 amendment inserted the word "written" in line ten of the first paragraph.

The 1955 amendment inserted the word "written" in line thirteen of the second paragraph, and inserted the third, fourth and fifth paragraphs.

The 1957 amendment added at the end of the second paragraph the words "unless proceedings have been instituted for the involuntary commitment of such patient." It also added the words "If necessary" at the beginning of the last paragraph, and the reference to G. S. 122-43.1 at the end.

§ 122-63.2. Reciprocal agreements with other states to set requirements for State hospital care and release of patients.

The Hospitals Board of Control is authorized to enter into reciprocal agreements with other states for the purpose of fixing the requirements whereby a patient under commitment to a state hospital in such other state or states may be released and come into this State while still on conditional release or probation from the state hospital of such other state or states. The said Board may also enter into reciprocal agreements with another state or states to fix and establish the requirements whereby a patient under commitment to a State hospital in this State may be released and go into such other state or states while still on conditional release or probation from a State hospital in this State. Any such patient so released from a state hospital or other mental institution in another state or states for the purpose of coming into this State shall not be considered to gain residence in this State by any period of time he resides in this State, and a person or patient released from a State hospital in North Carolina will retain his North Carolina residence or legal settlement during his acceptance in the other state under agreements authorized under this section. No members of the State Hospitals Board of Control or the General Superintendent or any physician, psychiatrist, officer, agent or employee of the State Hospitals Board of Control shall be held personally liable for any acts done or damages sustained by reason of any official acts done or committed under the authority of this section. (1947, c. 537, s. 20; 1955, c. 887, s. 13.)

Editor's Note.—The 1955 amendment was not changed by the amendment, it is added the above paragraph at the end of this section. As the rest of the section not set out.

§ 122-65. Mentally disordered person temporarily committed.—

When any person is found to be mentally disordered under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threatened injury to himself and danger to the community, and he cannot otherwise be properly restrained, he may be temporarily committed to a private hospital, county

hospital, or other suitable place until a more suitable provision can be made for his care. (1899, c. 1, s. 45; Rev., s. 4594; C. S., s. 6212; 1951, c. 359; 1955, c. 887, s. 11.)

Editor's Note.—

The 1955 amendment deleted the words

“or to the county jail” after the word “place” in line six.

ARTICLE 4.

Discharge of Patients.

§ 122-66.1. Discharge of patients; filing thereof.—(a) The superintendent of any State hospital may discharge a patient in the following manner and with the following effect:

- (1) The superintendent shall prepare a certificate of discharge and in said certificate find that the patient is not incompetent or that such patient has been restored to competency in all respects or that such patient is not of unsound mind.
- (2) The certificate of discharge shall be sent by the superintendent to the clerk of the superior court of the county from which the patient was committed.
- (3) The certificate of discharge shall be filed and a notation made in the lunacy docket by the clerk of the superior court and such certificate shall operate to remove all disabilities arising from the commitment.

(b) The discharge of patients provided for in this section shall not conflict with the procedure provided in G. S. 122-67. (1957, c. 1232, s. 22.)

§ 122-67. Release of patients from hospital; responsibility of county.

When a patient has been found to be without mental disorder, or to have recovered from mental disorder, or to be in such condition that he may safely be released, the superintendent shall notify the natural or legal guardian or nearest of kin and at the same time the superintendent shall send duplicate of such notice to the superintendent of public welfare of a patient's home county. If the person notified should fail to come for the patient or to remove him from the hospital within a reasonable time, the superintendent shall notify the clerk of superior court of the county in which the patient has or had residence, who shall issue an order to the sheriff of such county directing the sheriff to call for and reconvey him to the county of his residence. The sheriff shall first take this patient to his or her family, or guardian, and if they cannot, or will not, provide a place for such patient in the home the sheriff shall then place this person under the charge of the superintendent of public welfare in the patient's home county. (1899, c. 1, s. 22; Rev., s. 4596; 1917, c. 150, s. 1; C. S., s. 6214; 1945, c. 952, s. 36; 1947, c. 537, s. 21; 1953, c. 256, s. 9; 1955, c. 887, s. 4(a).)

Editor's Note.—

The 1953 amendment added the above paragraph at the end of this section, and the 1955 amendment rewrote the second sentence of such paragraph. As the rest of the section was not changed by the

amendments, it is not set out.

Quoted in *In re Tate*, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

Cited in *Mabry v. Mabry*, 243 N. C. 126, 90 S. E. (2d) 221 (1955).

§ 122-67.1. Release of patients from the Psychiatric Training and Research Center at the North Carolina Memorial Hospital in Chapel Hill.—The Director of the Inpatient Service may release patients on probation in the same manner as provided for the superintendent of a State hospital in § 122-67. He may also discharge such patients as in his opinion are no longer in need of hospital care. (1955, c. 1274, s. 3.)

§ 122-68. Superintendent may release patient temporarily.—Each superintendent may, for the space of thirty days, release upon probation any

patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. (1899, c. 1, s. 23; Rev., s. 4597; C. S., s. 6215; 1945, c. 952, s. 37; 1957, c. 1232, s. 23.)

Editor's Note.—

The 1957 amendment substituted "release" for "discharge."

§ 122-68.1. Superintendent must notify General Superintendent and State Hospitals Board of Control of unusually dangerous mentally disordered patients.—Whenever a person is found by the State hospital psychiatrists to be unusually dangerous to himself or others, the superintendent must notify the General Superintendent and the State Hospitals Board of Control. Such a patient cannot be paroled without the agreement of the State Hospitals Board of Control and the General Superintendent. If the General Superintendent finds that any patient in one of the State hospitals is unusually dangerous to himself or to others he may place the patient under the rules of this section. (1945, c. 952, s. 39; 1957, c. 1232, s. 24.)

Editor's Note.—The 1957 amendment substituted "General Superintendent" for "Commissioner of Mental Health."

ARTICLE 5.

Private Hospitals for the Mentally Disordered.

§ 122-72. Established under license and subject to control of Board of Public Welfare.—It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of mentally disordered persons, mental defectives, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the State Board of Public Welfare, and such hospitals, homes, or schools shall at all times be subject to the visitation of the said Board or any member thereof, and each hospital, home, or school shall make to the Board a semiannual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home, or school. Each hospital, home, or school shall file with the Board a copy of its bylaws, rules, and regulations, and rates of charges. The books of each hospital, home, or school shall at all times be open to the inspection of the Board or any member thereof. The State Board of Public Welfare is hereby given the authority to supervise and regulate all private hospitals, homes, and schools established hereafter in this State for the treatment of the above classes of people, and the Board shall have power to prescribe all such rules and regulations as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of their Board to visit and supervise any private hospital, home, or school hereafter established under this article. The State Board of Public Welfare may bring an action in the Superior Court of Wake County to vacate and annul any license granted by the Board, when it shall appear to the satisfaction of the Board that the managers of any private hospital, home, or school have been guilty of gross neglect, cruelty, or immorality. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4.)

Editor's Note.—

The 1957 amendment substituted "Public Welfare" for "Charities" in the catchline and the last sentence. It also substi-

tuted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the first and fifth sentences.

§ 122-73. **Counties and towns may establish hospitals.**—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such mentally disordered persons as cannot be admitted into a State hospital, and of mental defectives and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the State Board of Public Welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals. (1899, c. 1, s. 61; Rev., s. 4601; C. S., s. 6220; 1945, c. 952, 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."

§ 122-74. **Private hospitals part of public charities.**—All hospitals, homes, or schools for the care and treatment of insane persons, idiots, and feeble-minded persons and inebriates, formed in compliance with the two preceding sections and duly licensed by the Board of Public Welfare as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the State of North Carolina. (1903, c. 329, s. 1; Rev., s. 4602; C. S., s. 6221; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "Welfare" for "Charities" in line four.

§ 122-79. **Examination and commitment to private hospital.**

Editor's Note.—

read "country."

The word "county" in line three of this section in the recompiled volume should be applied in *In re Dunn*, 239 N. C. 378, 79 S. E. (2d) 921 (1954).

§ 122-80. **Patients transferred from State hospital to private hospital.**—When it is deemed desirable that any patient of any State hospital be transferred to any licensed private hospital within the State, the executive committee may so order. A certified copy of the commitment on file at the State hospital shall be sent to the private hospital which, together with the order of the executive committee, shall be sufficient warrant for holding the mentally disordered person, mental defective, or inebriate by the officers of the private hospital. A certified copy of the order of transfer shall be filed with the clerk of superior court of the county from which such mentally disordered person, mental defective, or inebriate was committed. After such transfer the State hospital from which such patient was transferred shall be relieved of all future responsibility for the care and treatment of such patient. (1903, c. 329, s. 3; Rev., s. 4608; C. S., s. 6227; 1945, c. 952, s. 50; 1957, c. 1232, s. 25.)

Editor's Note.—

The 1957 amendment rewrote this section.

ARTICLE 6.

Mentally Disordered Criminals.

§ 122-83. **Mentally disordered persons charged with crime to be committed to hospital.**

This article deals exclusively with mentally disordered criminals. It does not include a proceeding under § 35-4 to determine restoration to sanity. *In re Tate*,

239 N. C. 94, 79 S. E. (2d) 259 (1953).

Cited in *State v. Duncan*, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

§ 122-84. **Persons acquitted of certain crimes or incapable of being tried, on account of mental disorder, committed to hospital; return for trial; detention for treatment.**

Accused to Be Committed and Charged Only by Judge of Superior Court.

—The legislature intended that the criminal insane and those who may plead in-

sanity or want of understanding to plead to a bill of indictment shall be committed to and discharged from a mental institution of the State only by a judge of the superior court. In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

Commitment of Accused Does Not End Jurisdiction of Court in Which Indictment Is Pending.—The commitment to a State hospital of a person who pleads want of mental capacity to answer to an indictment does not end the jurisdiction of the superior court in which the indictment is pending. The petitioner remains in the technical custody of that court and upon his

recovery must be returned to it for trial. He may, however, be heard under a writ of habeas corpus under § 122-86. In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953). See also § 122-87.

Adjudication of Insanity as Evidence.—An adjudication, pursuant to this section, that defendant was without sufficient mental capacity to undertake his defense, entered about a month after the time of the commission of the offense, is competent in evidence for the consideration of the jury on defendant's defense of insanity. State v. Duncan, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

§ 122-85. Convicts becoming mentally disordered committed to hospital.—All convicts becoming mentally disordered after commitment to any penal institution in this State shall be admitted to the hospital designated in § 122-83. The same commitment procedure as prescribed in article 3 of this chapter shall be followed except that temporary authority for admission of the convict may be given by the clerk of court of the county in which the prison is located, that the prisoner need not be removed from the prison for a hearing, and that the clerk of court of the county from which the convict was sentenced shall issue the order of commitment.

In case of the expiration of the sentence of any convicted mentally disordered person, while such person is confined in said hospital, such person shall be kept in said hospital until transferred or discharged, as provided by §§ 122-66.1, 122-67 and 122-68. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 5; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c. 1232, s. 26.)

Editor's Note.—

The 1955 amendment rewrote this section.

The 1957 amendment inserted in the second paragraph the words "transferred or" and the number 122-66.1.

§ 122-86. Persons acquitted of crime on account of mental disorder; how discharged from hospital.

Cited in In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

§ 122-87. Proceedings in case of recovery of patient charged with crime.

Cited in State v. Duncan, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

§ 122-90. Inferior courts without jurisdiction to commit.

Cited in In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

§ 122-91. Alleged criminal may be committed for observation; procedure.—Any alleged criminal indicted or charged with the commission of a felony may, on the order of the presiding or resident judge of the superior court, in or out of term, be committed to a State hospital for a period of not exceeding sixty days for observation. The order of commitment shall contain the name and address of the nearest responsible relative, if known, and shall also contain the address of the alleged criminal, if known. If at the end of the observation period herein provided the alleged criminal is found to be mentally incompetent of pleading to the charge against him, the superintendent of the State hospital concerned shall report his findings and recommendations to the clerk of the superior court of the county from which the alleged criminal was committed. It shall be the duty of such clerk to bring the report to the attention

of the presiding or resident judge of the superior court who may, on the basis of the report of the superintendent, commit such alleged criminal in accordance with the provisions of G. S. 122-83. If the alleged criminal shall be found competent, the superintendent of the State hospital concerned shall report his findings to the clerk of the superior court of the county from which such alleged criminal was committed and the clerk shall notify the sheriff who shall remove the alleged criminal from the State hospital and return him to the county for trial. (1945, c. 952, s. 60; 1951, c. 181; 1957, c. 1232, s. 27.)

Editor's Note.—

The 1957 amendment rewrote this section.

ARTICLE 7.

Camp Butner Hospital.

§ 122-92. Acquisition of Camp Butner Hospital authorized.

Cross Reference.—

For provision designating the hospital as "State Hospital at Butner," see § 122-1.

Chapter 125.

Libraries.

Article 1.

Sec.

State Library.

Sec.

- 125-1. Name.
- 125-2. Powers and duties of Library.
- 125-3. Board of trustees.
- 125-4. Librarian.
- 125-5. Public libraries to report to State Library.
- 125-6. Librarian's seal.
- 125-7. State policy as to public library

- service; annual appropriation therefor; administration of funds.
- 125-8. Library authorized to accept and administer funds from federal government and other agencies.
- 125-9. Library Certification Board.
- 125-10. Temporary certificates for public librarians.
- 125-11. Failure to return books.

ARTICLE 1.

State Library.

§ 125-1. Name.—The library agency of the State of North Carolina shall be the North Carolina State Library. (1955, c. 505, s. 3.)

Editor's Note.—Session Laws 1955, c. 505, s. 3, rewrote this chapter, which became effective July 1, 1956. For consolidation of library agencies and transfer of powers and duties, etc., see Session Laws 1955, c. 505, ss. 1, 2 and 5.

§ 125-2. Powers and duties of Library.—The North Carolina State Library shall have the following powers and duties:

- (1) To adopt a seal for use in official business.
- (2) To make to the Governor a biennial report of its activities and needs, including recommendations for improving its services to the State, to be transmitted by the Governor to the General Assembly.
- (3) To accept gifts, bequests and endowments for the purposes which fall within the general legal powers and duties of the State Library. Unless otherwise specified by the donor or legator, the Library may either expend both the principal and interest of any gift or bequest or may invest such sums in whole or in part, by and with the consent of the State Treasurer, in securities in which sinking funds may be invested under the provisions of G. S. 142-34.

(4) To purchase and maintain a general collection of books, periodicals, newspapers, maps, films and audio-visual materials, and other materials for the use of the people of the State as a means for the general promotion of knowledge within the State. The scope of the Library's collections shall be determined by the board of trustees on the recommendation of the State Librarian, and, in making these decisions, the board of trustees and Librarian shall take into account the book collections of public libraries and college and university libraries throughout the State and the availability of such collections to the general public. All materials owned by the State Library shall be available for free circulation to public libraries and to all citizens of the State under rules and regulations fixed by the Librarian and approved by the board of trustees, except that the Librarian, with the approval of the board, may restrict the circulation of books and other materials which, because they are rare or are used intensively in the Library for reference purposes or for other good reasons, should be retained in the Library at all times.

(5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections, and to establish in the State Library a union catalogue of all books, pamphlets and other materials owned and used for reference purposes by all other State agencies in Raleigh and of all books, pamphlets and other materials maintained by public libraries in the State which are of interest to the people of the whole State. Where practical, the State Library may maintain a union catalogue of a part or all of the book collections in the Supreme Court Library, the North Carolina State College Library, and other libraries in the State for the use and convenience of patrons of the State Library.

(6) To fix reasonable penalties for damage to or failure to return any book, periodical or other material owned by the Library, or for violation of any rule or regulation concerning the use of books, periodicals, and other materials in the custody of the Library.

(7) To maintain at least two sets of the laws and journals of the General Assembly for the use of members of the General Assembly while in session. Before each session of the General Assembly the Librarian shall have these and other requested materials moved into the Senate and House chambers for the use of members of the General Assembly.

(8) To give assistance, advice and counsel to all libraries in the State, to all communities which may propose to establish libraries, and to all persons interested in public libraries, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance and other details of library management. (1955, c. 505, s. 3.)

§ 125-3. Board of trustees.—(a) Creation; Membership; Terms.—The North Carolina State Library shall be governed by a board of trustees composed of eight persons, six members appointed by the Governor for six-year overlapping terms and the Superintendent of Public Instruction and the Librarian of the University of North Carolina, *ex officio*. All appointments shall be for six-year terms following the expiration of the terms of the original members of the board appointed effective July 1, 1955, two of whom were appointed for two-year terms, two for four-year terms, and two for six-year terms. 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 the board because of death, resignation or otherwise shall be filled by the Governor for the unexpired term of the member causing such vacancy.

(b) Powers of *Ex Officio* Members.—The Superintendent of Public Instruction and the Librarian of the University of North Carolina shall have all the privileges, rights, powers and duties held by appointive members under the provisions of this chapter.

(c) Compensation.—The members of the board of trustees shall serve without salary, but they shall be allowed their actual expenses when attending to their official duties, to be paid out of funds appropriated for the maintenance of the State Library.

(d) Organization; Meetings. — The board of trustees shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules and regulations. The board shall meet regularly, and at least once every quarter, at places and dates to be determined by the board. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the board. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting, except that meetings may be held on shorter notice if all members of the board shall agree. Four members shall constitute a quorum. The chairman may appoint members to such committees as the work of the board may require. The State Librarian shall serve as secretary to the board and shall keep an accurate and complete record of all meetings.

(e) Powers and Duties. — The board of trustees shall be the governing body for the North Carolina State Library and shall have the power to adopt rules and regulations for its own government and for the conduct of any of the functions assigned to the Library under the provisions of this chapter. The board shall fix the policies under which the Librarian and other employees of the Library shall carry out the duties imposed upon the Library. (1955, c. 505, s. 3.)

§ 125-4. **Librarian.**—The board of trustees of the State Library shall appoint a State Librarian whose duty it shall be, under the supervision of the board, to direct and administer the work and activities of the Library as defined by law. In choosing the State Librarian the board shall take into consideration the functions of the Library and the experience required to administer such functions, and shall fix standard of professional library training and library administrative experience which the State Librarian must meet in order to assure competent administration of the Library. These standards must be equal to those established for chief county librarians by the North Carolina Library Certification Board. The Librarian shall serve at a salary to be fixed by the Governor and approved by the Advisory Budget Commission. The board, after proper notice and hearing, may remove the Librarian from office for neglect of duty or any failure to perform his duties in accordance with the standards of performance deemed necessary by the board for effective administration of the Library. The Librarian may employ such other qualified persons as may be needed to perform the functions of the Library, subject to the provisions of the State Personnel Act. (1955, c. 505, s. 3.)

§ 125-5. **Public libraries to report to State Library.** — Every public library in the State shall make an annual report to the State Library in such form as may be prescribed by the board of trustees. The term “public library” shall, for the purpose of this section, include subscription libraries, college and university libraries, legal association, medical association, Supreme Court, and other special libraries. (1955, c. 505, s. 3.)

§ 125-6. **Librarian's seal.**—It shall be the duty of the Secretary of State to furnish the State Librarian with a seal of office. The State Librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in the Library. When a certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matter therein contained, and as such shall receive full faith and credit. (1955, c. 505, s. 3.)

§ 125-7. State policy as to public library service; annual appropriation therefor; administration of funds.— (1) It is hereby declared the policy of the State to promote the establishment and development of public library service throughout all sections of the State.

(2) For promoting, aiding, and equalizing public library service in North Carolina a sum shall annually be appropriated out of the monies within the State treasury to be known as the Aid to Public Libraries Fund.

(3) The fund herein provided shall be administered by the board of trustees of the North Carolina State Library, which board shall frame bylaws, rules and regulations for the allocation and administration of such funds. The funds shall be used to improve, stimulate, increase and equalize public library service to the people of the whole State, shall be used for no other purpose, except as herein provided, and shall be allocated among the counties in the State taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the State program of public library service.

(4) For the necessary expenses of administration, allocation, and supervision, a sum not to exceed 7 per cent (7%) of the annual appropriation may annually be used by the North Carolina State Library.

(5) The fund appropriated under this section shall be separate and apart from the appropriations of the North Carolina State Library, which appropriation shall not be affected by this section or the appropriation hereunder.

(6) The powers herein granted shall be in addition to and not in subrogation of, or repeal of, any power or authority now or heretofore granted to the North Carolina State Library or the North Carolina Library Commission. (1955, c. 505, s. 3.)

§ 125-8. Library authorized to accept and administer funds from federal government and other agencies.— The North Carolina State Library is hereby authorized and empowered to receive, accept and administer any money or monies appropriated or granted to it, separate and apart from the appropriation by the State for the North Carolina State Library, for providing and equalizing public library service in North Carolina:

(1) By the federal government and,

(2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the board of trustees of the North Carolina State Library, which board shall frame bylaws, rules and regulations for the allocation and administration of this fund. This fund shall be used to increase, improve, stimulate and equalize library service to people of the whole State, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the State, taking into consideration local needs, area and population to be served, local interests as evidenced by local appropriations, and such other factors as may affect the State program of library service. Any gift or grant from the federal government or other sources shall become a part of said funds, to be used as part of the State fund, or may be invested as the board of trustees of the State Library may deem advisable, according to provisions of G. S. 125-5 (5), the income to be used for the promotion of libraries as stated in this section. (1955, c. 505, s. 3.)

§ 125-9. Library Certification Board.—The State Librarian, the Dean of the School of Library Science of the University of North Carolina, the President of the North Carolina Library Association, and one librarian appointed by the executive board of the North Carolina Library Association shall constitute the Library Certification Board. Members of the Board shall serve without pay. The Board shall issue librarian's certificates to public librarians under such reasonable rules and regulations as it may adopt. A complete record of the transactions of the Board shall be kept at all times in the office of the North Carolina State Library. (1955, c. 505, s. 3.)

§ 125-10. **Temporary certificates for public librarians.**—The provisions of G. S. 125-11 shall not affect any librarian who was acting as such librarian on May 4, 1933, and any person who was serving as a librarian on that date shall be entitled to receive a certificate in accordance with the position then held. Upon the submission of satisfactory evidence that no qualified librarian is available for appointment as Chief Librarian, and upon written application by the Library board of trustees for issuance of a temporary certificate to an unqualified person who is available for the position, a temporary certificate, valid for one year only, may be issued to such persons by the Library Certification Board. (1955, c. 505, s. 3.)

§ 125-11. **Failure to return books.**—Any person who shall fail to return any book, periodical, or other material withdrawn by him from the Library shall be guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days if he shall fail to return the borrowed material within 30 days after receiving a notice from the State Librarian that the material is overdue. The provisions of this section shall not be in effect unless a copy of this section is attached to the overdue notice by the State Librarian. (1955, c. 505, s. 3.)

Chapter 126.

Merit System Council.

§ 126-1. **Appointment of members of Merit System Council; qualifications; terms; compensation.**—The Governor of North Carolina is hereby authorized to appoint a Merit System Council, which shall be composed of five members, all of whom shall be public-spirited citizens of this State of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the Employment Security Commission, the North Carolina Medical Care Commission, the State Board of Health, the State Board of Public Welfare, and the State Commission for the blind. At least one of the members of the Council shall be a person who has had experience in county government. Two of the members of the Council shall also serve as members of the State Personnel Council. No Council member shall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the Council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the Merit System Council shall be paid seven dollars (\$7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the Council but shall receive no other salary. (1941, c. 378, s. 1; 1947, c. 598, s. 1; 1947, c. 933, s. 4; 1949, c. 492; 1957, c. 100, s. 1; c. 1004, s. 1; c. 1037.)

Editor's Note.—

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

third sentences. And the third 1957 amendment deleted from the first sentence the former provision relating to employees of the North Carolina State Hospitals Board of Control.

§ 126-2. Supervisor of merit examinations; rules and regulations; examinations.—The supervisor of merit examinations appointed under the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the General Assembly of 1949, in co-operation with the Merit System Council, and with the approval of the State Personnel Director, the State agencies affected by this chapter, as amended, and the federal security agency or other federal agency or department charged with the administration of the Federal Social Security Laws, shall prepare rules and regulations, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2; 1949, c. 718, s. 2; 1957, c. 1004, s. 3.)

Editor's Note.—

The 1957 amendment deleted the words "job descriptions and specifications," formerly appearing immediately after "regulations" in line seven.

§ 126-14. Authority of Merit System Council. — The Merit System Council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in co-operation with the State Board of Health and the State Board of Public Welfare, for the administration of a system of personnel standards on a merit basis, including job descriptions and specifications and a uniform schedule of compensation, for all employees of the county welfare departments and the county, city, and district health departments. The rules and regulations governing annual leave, sick leave, hours of employment, and holidays for those employees shall be effective except when modified as follows:

- (1) When a board of county commissioners, or the governing body of a municipality, has adopted rules and regulations governing such matters for other employees under its jurisdiction, that board of county commissioners, or municipal governing body, may modify the rules and regulations of the Merit System Council governing such matters with respect to that county's welfare and/or health employees, or that municipality's health employees, as the case may be, to conform to the rules and regulations applicable to the other employees of the governmental unit; and the modified rules and regulations shall then be in effect in such county or municipality.
- (2) When two or more counties are combined in a district health department, the boards of commissioners of the counties comprising the district may jointly modify the rules and regulations of the Merit System Council governing such matters with respect to the health employees of the district department so as to make them conform generally to the rules and regulations governing other county employees in the counties comprising the district; and the modified rules and regulations shall then be in effect in such district. (1941, c. 378, s. 13; 1957, c. 100, s. 1; c. 1004, s. 4.)

Editor's Note.—The first 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare." The second 1957 amendment made the same change and rewrote the section.

Chapter 127.

Militia.

Article 1.

Classification of Militia.

Sec.

127-3.1. Composition of historic military commands.

Article 2.

General Administrative Officers.

127-15. Property and fiscal officer for North Carolina.

Article 3.

National Guard.

127-21. [Repealed.]

127-23.1. Commissions by brevet for retired officers and enlisted men.

127-37.1. North Carolina Distinguished Service Medal.

127-41.1. Jurisdiction of courts-martial.

Sec.

127-41.2. Nonjudicial punishment.

127-43.1. Forms for courts-martial procedure.

127-44. Manual for Courts-Martial.

Article 13.

Municipal and County Aid for Construction of Armory Facilities.

127-112. Appropriations to supplement available funds authorized.

127-113. Authority to raise funds.

127-114. Taxes in excess of limitations authorized if approved by voters.

127-115. Bonds in excess of limitations authorized if approved by voters.

127-116. Elections on questions of levying taxes.

127-117. Armory Commission Act not affected by article.

ARTICLE 1.

Classification of Militia.

§ 127-1. **Composition of militia.**—The militia of the State shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than seventeen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into four classes: the national guard, the naval militia, historical military commands and the unorganized militia. (1917, c. 200, s. 1; C. S., s. 6791; 1949, c. 1130, s. 1; 1957, c. 1043, s. 1.)

Editor's Note.—The 1957 amendment substituted "four classes" for "three classes" in line six and inserted as one of the classes "historical military commands."

§ 127-2. **Composition of national guard.** — The national guard shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of eighteen and sixty-two years. (1917, c. 200, s. 2; C. S., s. 6792; 1949, c. 1130, s. 1; 1957, c. 136, s. 1.)

Editor's Note.—The 1957 amendment substituted "eighteen and sixty-two" for "twenty-one and sixty-four" in line four.

§ 127-3 1. **Composition of historic military commands.** — Historic military commands are those historic groups which remain active by meeting at least once a month and which follow military procedures. Only such groups as may be designated by the Governor shall fall within this branch of the militia. The maximum age limit prescribed by G. S. 127-1 shall not be applicable to members of historic military commands. (1957, c. 1043, s. 2.)

ARTICLE 2.

General Administrative Officers

§ 127-14. **Adjutant General's department.** — There shall be an Ad-

jutant General's department. The Adjutant General shall be the head of the department and as such subordinate only to the Governor in matters pertaining thereto. He shall make such returns and reports to the National Guard Bureau and Secretary of the Navy or to such officers as the National Guard Bureau and Secretary of the Navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make an annual report to the Governor on or before the thirty-first day of December of each year, including a detailed statement of all expenditures made for military purposes during that year. He shall also make a biennial report to the General Assembly. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the State. The Adjutant General shall perform such other duties not herein specified as may be required by the military laws and regulations or by the Governor. The Adjutant General shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The Adjutant General may appoint an assistant, which appointment may carry with it the rank of Brigadier General, and such clerks and employees as may be prescribed by the Governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the Governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. (1917, c. 200, s. 13; C. S., s. 6803; 1927, c. 217, s. 4; 1957, c. 136, s. 2.)

Editor's Note.—The 1957 amendment substituted "National Guard Bureau" for "Secretary of War" in lines four and five. It also struck out the words "may have an assistant" following "Adjutant General" in line twenty and inserted in lieu thereof the words "may appoint an assistant, which appointment may carry with it the rank of Brigadier General."

§ 127-15. Property and fiscal officer for North Carolina.—The Governor of the State shall appoint, designate, or detail, subject to the approval of the Department of the Army, an officer of the national guard of the State, who shall be regarded as property and fiscal officer for North Carolina. In consideration of his services, for the care, responsibility, and issue of federal property, the property and fiscal officer for North Carolina shall receive from the State such salary as the Governor may authorize to be just and proper; the salary to constitute a charge upon the appropriations made to the Adjutant General's department. When ordered into actual service and receiving the pay of his rank for such service, from either State or federal funds, he shall not be entitled to, or receive, any salary from the State for the period of time for which he shall receive the pay of his rank. (1917, c. 200, s. 24; C. S., s. 6804; 1957, c. 136, s. 3.)

Editor's Note.—The 1957 amendment substituted "fiscal" for "disbursing", "Department of the Army" for "Secretary of War" and "North Carolina" for "the United States."

§ 127-18. Advisory board.—There shall be an advisory board composed of the Adjutant General, the general officers of the active national guard, and two other members of the active national guard to be appointed by the Governor for terms of two years, which shall meet at such times as may be ordered by the Adjutant General. This board shall make such recommendations to the Governor as it may deem for the best interests of the national guard. (1917, c. 200, s. 27; C. S., s. 6807; 1921, c. 120, s. 1; 1957, c. 136, s. 4.)

Editor's Note.—The 1957 amendment rewrote this section.

ARTICLE 3.

National Guard.

§ 127-21: Repealed by Session Laws 1957, c. 136, s. 5.

§ 127-23.1. **Commissions by brevet for retired officers and enlisted men.**—The Governor is authorized to confer commissions by brevet in the North Carolina national guard upon officers and enlisted men of the North Carolina national guard who have been retired and who may hereafter be retired from any reserve component of the army of the United States under the authority of Title III, Public Law 810, 80th Congress, 2nd Session, (Army and Air Force, Vitalization and Retirement Equalization Act of 1948), and who have satisfactorily served as an active member of the North Carolina national guard for a period of ten years. The commissions by brevet shall be in grade as follows: A commissioned officer shall be commissioned by brevet in a grade one grade higher than the highest grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized officer of the North Carolina national guard; a warrant officer shall be commissioned by brevet in the grade of captain or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard; an enlisted man shall be commissioned by brevet in the grade of first lieutenant or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard. No officer shall be commissioned by brevet in a grade higher than that of lieutenant general.

For the purpose of computing national guard service within the meaning of this section, such service shall include extended active duty in the armed forces of the United States by any officer, warrant officer, or enlisted man, who was a member of a federally recognized unit of the North Carolina national guard at the time of his induction into federal service.

The provisions of this section shall apply to officers and enlisted men of the North Carolina national guard who have been or who may hereafter be honorably retired from any component of the army of the United States by reason of disability, who have attained the age of 60 years, and who have satisfactorily served as an active member of the North Carolina national guard for a period of 10 years. (1955, c. 255, s. 1; 1957, c. 1003.)

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

§ 127-31. **Enlistments in national guard.**—Original enlistments in the national guard shall be for a period of three years and subsequent enlistments for a period of one year each, or for such periods as may be prescribed by the Secretary of the Army: Provided, that persons who have served in the army for not less than six months, and have been honorably discharged therefrom, may, within two years after June four, one thousand nine hundred and twenty, enlist in the national guard for one year, and re-enlist for like period: Provided, that qualifications for enlistment shall be the same as those prescribed for admission to the regular army. (1917, c. 200, s. 30; C. S., s. 6820; 1921, c. 120, s. 6; 1957, c. 136, s. 6.)

Editor's Note.—The 1957 amendment substituted "the Army" for "War" in line four.

§ 127-37.1. **North Carolina Distinguished Service Medal.**—There is hereby created the “North Carolina Distinguished Service Medal” which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. The Governor is authorized to present such medal, upon the recommendation of the Adjutant General of North Carolina and a board consisting of all active federally recognized general officers of the North Carolina national guard, to any member or former member of the North Carolina national guard who has distinguished or who shall distinguish himself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina national guard. (1955, c. 255, s. 2.)

§ 127-39. **General courts-martial.** — General courts-martial of the national guard not in the service of the United States may be convened by orders of the Governor of the State, and such courts shall have the power to impose fines not exceeding four hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S., s. 6826; 1957, c. 136, s. 7.)

Editor's Note.—The 1957 amendment provided for the convening of courts-martial substituted “four” for “two” in line four. by the President.
Prior to the amendment this section pro-

§ 127-40. **Special courts-martial.** — In the national guard, not in the service of the United States, special courts-martial may be appointed by the following authorities:

- (1) For an infantry division, by the commanding officers of the regiments.
- (2) For division artillery, by the commander of division artillery.
- (3) For corps artillery, by the commander of corps artillery.
- (4) For all other units of an infantry division, by the commander of the infantry division.
- (5) For the air national guard, by the senior officer of the air national guard.
- (6) For all other units of the national guard, by the Governor of North Carolina.

Such courts-martial shall have the power and authority to try any person subject to military law for any crime or offenses within the jurisdiction of a general military court. Such courts-martial shall have the same powers of punishment as general courts-martial except that fines imposed by such courts-martial shall not exceed two hundred dollars (\$200.00), and such courts-martial shall not have the power of dismissal from the national guard. (1917, c. 200, s. 57; C. S., s. 6827; 1957, c. 136, s. 8.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 127-41. **Summary courts-martial.**—In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commanding officer of any company, battery, detachment, squadron, or any other federally recognized unit, either army or air. Such court shall consist of one officer, who shall have the power to administer oaths and try enlisted men of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose fines not exceeding fifty dollars (\$50.00) for any single offense, may sentence noncommissioned officers to reduction in rank, or may sentence to forfeiture of pay and allowances. (1917, c. 200, s. 58; C. S., s. 6828; 1957, c. 136, s. 9.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 127-41.1. **Jurisdiction of courts-martial.**—The jurisdiction of courts-martial of the national guard, not in the service of the United States, except as to punishments, shall be as prescribed by the Manual for Courts-Martial, United States, 1951, as amended. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from such service without the State in like manner and to the same extent as while serving within the State. (1957, c. 136, s. 10.)

§ 127-41.2. **Nonjudicial punishment.**—Any commanding officer of the national guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended. (1957, c. 136, s. 10.)

§ 127-42. **Powers of courts-martial.**—All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each two dollars of fine authorized. (1917, c. 200, s. 59; C. S., s. 6829; 1949, c. 1130, s. 3; 1957, c. 136, s. 11.)

Editor's Note.—

The 1957 amendment substituted "two dollars" for "dollar."

§ 127-43. **Procedure of courts-martial.**—In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

In lieu of the provisions of the first paragraph of this section, imposition of restraint of persons subject to military law may be as prescribed by articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended. (1917, c. 200, s. 60; C. S., s. 6830; 1957, c. 136, s. 12.)

Editor's Note.—The 1957 amendment added the second paragraph.

§ 127-43.1. **Forms for courts-martial procedure.** — In the national guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, 1951, as amended. (1957, c. 136, s. 13.)

§ 127-44. **Manual for Courts-Martial.**—Trials and proceedings by all courts and boards shall be in accordance with the plans and procedures laid down in the Manual for Courts-Martial, United States, 1951, as amended. (1917, c. 200, s. 64; C. S., s. 6831; 1957, c. 136, s. 14.)

Editor's Note.—The 1957 amendment rewrote this section.

ARTICLE 10.

Support of Militia.

§ 127-102. Allowances made to different organizations.

There shall be allowed annually to each of the following federally recognized organizations of the national guard the sum of four hundred dollars (\$400.00) to be applied by the commanding officers of such organizations to the payment of necessary administrative expenses in accordance with rules and regulations prescribed by the Adjutant General: Commanding officer, corps artillery; commanding officers, infantry regiments; commanding officers, infantry battalions; commanding general, 30th Infantry Division (in part); commanding officers, field artillery group; commanding officers, separate field artillery battalions, 30th Infantry Division; commanding officers, separate AAA AW battalions, 30th Infantry Division; commanding officers, separate nondivisional AAA AW battalions; commanding officers, separate nondivisional field artillery battalions; commanding officers, separate nondivisional military police battalions; commanding officers, separate engineer combat battalions; commanding officers, similar organizations to the above. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1949, c. 1130, s. 5; 1951, c. 1144, s. 1; 1953, c. 1246.)

Editor's Note.—

The 1953 amendment struck out, in line six of the last paragraph, the words "30th Infantry Divisions" and inserted in lieu thereof the words "commanding officers,

infantry battalions; commanding general, 30th Infantry Division (in part)." As only the last paragraph was affected by the amendment the rest of the section is not set out.

ARTICLE 12.

State Guard.

§ 127-111. Authority to organize and maintain State guard of North Carolina.—1. The Governor is authorized, subject to such regulations as the Secretary of Defense may prescribe, to organize such part of the unorganized militia as a State force, for discipline and training, into companies, battalions, or regiments, as may be deemed necessary for the defense of the State; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be hereafter provided by the State laws for the national guard; to train such force in accordance with training regulations issued by the war department. Such military force to be subject to the call or order of the Governor to execute the law, suppress riots or insurrections, or to repel invasion, as is now or may hereafter be provided by law for the national guard and for the unorganized militia.

3. The Governor is hereby authorized to prescribe the rules and regulations governing the appointment of officers, the enlistment of men, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the Secretary of Defense such arms and equipment as may be in possession of and can be spared by the Department of Defense, and to extend thereto the facilities of available armories and their equipment and such State premises and property as may be available for the purpose of drill and instruction.

(1957, c. 1083.)

Editor's Note.—

The 1957 amendment substituted "Secretary of Defense" for "Secretary of War" and made other changes in subsection 1. The amendment changed subsection 3 by

substituting "Secretary of Defense" for "Secretary of War" and "Department of Defense" for "war department." As only subsections 1 and 3 were changed the rest of the section is not set out.

ARTICLE 13.

Municipal and County Aid for Construction of Armory Facilities.

§ 127-112. **Appropriations to supplement available funds authorized.**—Any city or town and any county in the State separately or jointly, may make appropriations to supplement available federal or State funds to be used for the construction of armory facilities for the North Carolina national guard. Appropriations made under authority of this article shall be in such amounts and in such proportions as may be deemed adequate and necessary by the governing body of the county and/or municipality desiring to participate in the armory construction program. (1955, c. 1181, s. 1.)

§ 127-113. **Authority to raise funds.**—Counties and municipalities are hereby authorized to borrow money and issue and sell bonds and notes and to raise by taxation and otherwise, sufficient moneys to carry out the purpose of this article. The principal and interest on such bonds and notes as may be issued may be paid from general or other available funds of the county or municipality concerned; and, if necessary, the governing boards may levy sufficient taxes to raise funds to meet appropriations and to meet payments of principal and interest on such bonds or notes which may be issued hereunder. Taxes may be levied by the governing body of any county or municipality of the State for the special purpose of this article, for which special approval is hereby given. Counties may issue and sell such bonds or notes under the provisions of the County Finance Act, and municipalities may issue and sell such bonds or notes under the provisions of the Municipal Finance Act. (1955, c. 1181, s. 2.)

§ 127-114. **Taxes in excess of limitations authorized if approved by voters.**—Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of any county or municipality of the State for the special purposes of this article for which special approval is hereby given; provided, that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. Such election as to counties may be held at the same time and in the same manner as elections held under the provisions of article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act. Such election as to municipalities may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes. (1955, c. 1181, s. 3.)

§ 127-115. **Bonds in excess of limitations authorized if approved by voters.**—Notwithstanding any limitations provided by the Constitution or by any general or special law as to the amount of bonds or obligations that may be issued, a county or municipality may issue and sell bonds or obligations in excess of such limitations for the purposes authorized by this article; provided, that such amount in excess of such constitutional limitation is referred to and approved by a majority of the qualified voters of such county or municipality voting in an election upon such question. (1955, c. 1181, s. 4.)

§ 127-116. **Elections on questions of levying taxes.**—Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a county or municipality for the purpose of financing the appropriations authorized in §§ 127-112 and 127-113 and the special approval of the General Assembly is hereby given for the levying of taxes for such purposes; provided, that the levy of such taxes shall be approved by the majority vote of the qualified voters of such county or municipality, who shall vote on the question of levying such taxes in an election held for such pur-

pose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipality and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Armory Construction Facility Tax," and "Against Armory Construction Facility Tax," with squares in front of each proposition, in one of which squares the voter may make a cross-mark (X). 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 section. Such elections as to counties may be held at the same time and in the same manner as elections held under article 9, of chapter 153, of the General Statutes, the same being designated as the County Finance Act. Such elections as to cities and towns may be held under the Municipal Finance Act, the same being article 28, of chapter 160, of the General Statutes. Such elections may be held at any time fixed by the governing body of the county or municipality concerned. The question of levying a tax for the purposes of this article may be submitted at the same time the question of issuing bonds is submitted as provided in this article, or the question of a levy of taxes may be submitted in a separate election according to the discretion and judgment of the governing body of the county or municipality concerned. (1955, c. 1181, s. 5.)

§ 127-117. **Armory Commission Act not affected by article.**—Nothing contained in this article shall have the effect of repealing any of the provisions of chapter 1010 of the Session Laws of 1947, (codified as §§ 143-229 to 143-235), and the power and authority herein granted are in addition to and not in substitution of existing power and authority of cities, counties and towns of this State as set forth in said sections. (1955, c. 1181, s. 6.)

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec. 128-15. Employment preference for veterans and their wives or widows.

Article 3.

Retirement System for Counties, Cities and Towns.

Sec. 128-38. Reservation of power to change.

ARTICLE 1.

General Provisions.

§ 128-5. **Oath required before acting; penalty.**

Failure to take on oath of office, while it might subject one exercising the duties of the office to a penalty under this section, would not deprive his acts of the

validity given those of de facto officers performing the duties of a de jure office. *Vance S. Harrington & Co. v. Renner*, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

§ 128-9. **Peace officers employed by State to give bond.**

Failure to Require Bond Does Not Render Board Liable for Assault.—Members of county alcoholic beverage control board are not liable to person assaulted by enforcement officer by reason of their failure to require enforcement officer to file

bond. *Langley v. Taylor*, 245 N. C. 59, 95 S. E. (2d) 115 (1956).

Applied in *Langley v. Patrick*, 238 N. C. 250, 77 S. E. (2d) 656 (1953).

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

§ 128-15. **Employment preference for veterans and their wives or widows.** — Hereafter, in all examinations of applicants for positions with this State or any of its departments, institutions or agencies, a preference rating

of ten (10) points shall be awarded to all the citizens of the State who served the State or the United States honorably in either the Army, Navy, Marine Corps, Nurses' Corps, Air Corps, Air Force, or any of the armed services in time of war, including the Korean war or conflict.

All the departments, or institutions of the State, or their agencies, shall give preference in appointments and promotional appointments to qualified veteran applicants as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways or any other employment under the supervision of the State or its departments, institutions, or agencies; provided, that the provisions of this section shall apply to the widows of such veterans and to the wives of disabled veterans. No State department, officer, institution or agency of the State shall bar or prohibit any veteran or person named in this section from employment because of age if such veteran or person is otherwise qualified.

In all promotional examinations a preference rating of one point for each year, or greater fraction thereof, of service in time of war, including the Korean conflict, shall be awarded in all departments of this State, institutions or agencies, to the veterans or persons named in this section; provided, that such points shall not exceed a total of 5 points. (1939, c. 8; 1953, c. 1332.)

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

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Editor's Note.—

Session Laws 1953, c. 539, gave author-

ity for the town of Morganton to withdraw from the provisions of this article.

§ 128-23. Acceptance by cities, towns and counties.

(6) Effective January 1, 1955, there shall be three classes of employers to be designated Class A, Class B and Class C, respectively. Each employer whose date of participation occurs before July 1, 1951, shall be a Class A employer unless such an employer by written notice filed with the board of trustees on or before June 30, 1951, elected to be a Class B employer. Each employer whose date of participation occurs on or after July 1, 1951, but before January 1, 1955, shall be a Class A employer. Each employer whose date of participation occurs on or after January 1, 1955, shall be a Class C employer. (1939, c. 390, s. 3; 1951, c. 274, s. 1; 1955, c. 1153, s. 1.)

Editor's Note.—The 1955 amendment rewrote subsection (6). As only this sub-

section was changed the rest of the section is not set out.

§ 128-24. **Membership.**—The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or re-entering the service of a participating county, city, or town after the date of participation in the retirement system of such county, city, or town, except that law enforcement officers, as defined in subsection (m) of § 143-166 of the General Statutes, may elect to become members of the Law Enforcement Officers' Benefit and Retirement Fund or the North Carolina Local Governmental Employees' Retirement System.
- (2) All persons who are employees of a participating county, city, or town except those who shall notify the board of trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing

laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county welfare and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation.

- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (4)
 - a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing twenty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of sixty years, or if a uniformed policeman or fireman upon the date he shall have attained the age of fifty-five years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired; provided further that such application shall be filed within a period of twelve months from and after such member's attainment of age sixty, or if a uniformed policeman or fireman within a period of twelve months from and after such member's attainment of age fifty-five. Such deferred retirement allowance shall be computed in accordance with the provisions of G. S. 128-27, subsection (b), paragraphs (1), (2) and (3). In the event that such member attains age sixty-one, or if a uniformed policeman or fireman such member attains age fifty-six, and has not filed such application, his membership shall cease and he shall be entitled to the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of the accumulated regular interest thereon.
 - b. In lieu of the benefits provided in paragraph a of this subsection (4), any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing thirty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the board of trustees

setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within sixty days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age sixty years, or if a uniformed policeman or fireman at the attainment of age fifty-five years, upon proper application therefor.

- c. Should an employee who retired on an early retirement allowance be restored to service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 128, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in G. S. 128-28; provided that, should such restoration occur on or after the time he shall have attained the age of fifty-five years, or if a uniformed policeman or fireman after the time he shall have attained the age of fifty years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854.)

Local Modification.—City of Raleigh: members set out in subsection (3).
1953, c. 1035.

Editor's Note.—Prior to the 1955 amendment there were only two classes of members set out in subsection (4).
The 1957 amendment added subsection (4).

§ 128-26. Allowance for service.

(6) Effective January 1, 1955, there shall be three classes of prior service certificates, to be designated as Class A, Class B and Class C respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate; each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate; and each such certificate issued on account of service rendered to a Class C employer shall be a Class C prior service certificate. Each Class C prior service certificate shall specify a prior service benefit percentage rate which shall be three per centum (3%) in the case of any member entitled to such certificate who is, at the date of participation of his employer, in a position covered by the Social Security Act under a federal-State agreement and which shall be five per centum (5%) in the case of a member entitled to such certificate but who at the date of participation of his employer is in a position not so covered. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3.)

Editor's Note.—Prior to the 1955 amendment there were only two classes of members referred to in subsection (6). As only this subsection was changed the rest of the section is not set out.

§ 128-27. Benefits.—(a) Service Retirement Benefit.

(1) Any member in service may retire upon written application to the board of trustees setting forth at which time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, or if a uniformed policeman or fireman he shall have attained the age of fifty-five years, and notwithstanding that, during such period of notification, he may have separated from service.

(2) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.

(3) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years; Provided, further that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(b) Allowance for Service Retirement.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of sixty years or at the actual age at retirement if prior thereto, computed on the basis of contributions made prior to the attainment of age sixty; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years (60), or at the actual age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the system been in operation and he contributed thereunder at the rate of five per centum (5%) of his compensation if such certificate is a Class A certificate, or at the rate of four per centum (4%) of his compensation if such certificate is a Class B certificate, or at the prior service benefit percentage rate specified therein if such certificate is a Class C certificate.

(c) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(d) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;

(2) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation; and

- (3) With respect to any member covered under the Social Security Act in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, a pension at the rate of nine dollars (\$9.00) per year for each full year membership service for which credit would be allowed under paragraph (2) of this subsection and during which he is so covered, including the prospective period to age sixty (60): Provided, however, that notwithstanding any provision to the contrary the pension provided in this paragraph shall not be payable after the retired member attains the age of sixty-five (65) years and shall not be subject to the provisions of subsection (g) of this section.

(e) Re-Examination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

- (1) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.
- (2) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the contribution rate in effect for a Class A or Class B member, whichever is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.
- (f) Return of Accumulated Contributions.—Should a member cease to be an

employee except by death or retirement under the provisions of this article, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member or a former member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees. Notwithstanding any other provision of chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary, provided that such participating employer shall have notified the board of trustees of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) **Optional Allowance.**—With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement and prior to his attainment of age sixty-five or within thirty days after the date such election is made if such date is after his attainment of age sixty-five, until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such option election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate: Provided, such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees.

(h) **Adjustment of Retirement Allowances for Social Security Benefits.**—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that, with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after he attains age sixty-five (65). A member who makes an election in accordance with this subsection (h) shall be deemed to have made a further election of Option one above.

(i) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions

of chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the board of trustees may adopt, the provisions of chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4.)

Editor's Note.—The 1955 amendment rewrote paragraph (3) of subsection (b), added paragraph (3) of subsection (d) and added the first sentence of subsection (h). The 1957 amendment rewrote the second sentence of subsection (f) and added the third sentence thereto. It also rewrote the portion of subsection (g) preceding the words "Option one" and added the second sentence of subsection (h).

§ 128-29. Management of funds.—(a) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in G. S. 128-30, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Cooperatives, and Federal Land Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the two highest ratings of at least two nationally recognized rating services; and
- (7) Obligations of any corporation incorporated in North Carolina if such obligations bear either of the three highest ratings of at least two nationally recognized rating services.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(b) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum per annum with respect to all calculations and allowances on account of members' contributions and at the rate of three per centum per annum with respect to employers' contributions, with the right reserved to the board of trustees to set a different rate or rates from time to time.

(c) Custodian of Funds.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such amount as shall be required by the board, the premium to be paid from the expense fund.

(d) Cash Deposits for Meeting Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit in one or more banks or trust companies of the State of North Carolina, organized under the laws of the State of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company.

(e) Selection of Depositories.—The board of trustees shall select a bank or banks for the deposits of the funds and securities of the Retirement System in the same manner as such banks are selected by the Treasurer of the State of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the State. The funds and properties of the North Carolina Governmental Employees' Retirement System held in any bank of the State shall be safeguarded by a fidelity and surety bond, the amount to be determined by the board of trustees.

(f) Immunity of Funds.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1939, c. 390, s. 9; 1941, c. 357, s. 7; 1945, c. 526, s. 5; 1957, c. 846, s. 1.)

Editor's Note.—

The 1957 amendment rewrote subsection (a).

§ 128-30. Method of financing.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payment from the annuity savings fund shall be made as follows:

(a) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his earnable compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under

G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty (60) years and has completed thirty-five (35) years of service. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if any employee was not a member on the first day of the payroll period. In determining the amount earnable by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer as to the amount of fees received by such member as compensation during the preceding year, and each month such member shall pay to his employer four per centum (4%) of one-twelfth (1/12) of such compensation received from fees during the previous year, which shall be considered as deductions by the employer as provided in paragraphs (a) and (b) of this subsection.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one-half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(1955, c. 1153, s. 7.)

Editor's Note.—The 1955 amendment As only subsection (1) was changed the rewrote paragraph (a) of subsection (1). rest of the section is not set out.

§ 128-33. Certain laws not applicable to members.—Subject to the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as

amended, no other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this article. (1939, c. 390, s. 13; 1955, c. 1153, s. 8.)

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

§ 128-38. **Reservation of power to change.** — The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes in the benefit and other provisions of the Social Security Act made after January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the North Carolina Local Governmental Employees' Retirement System. (1955, c. 1153, s. 9.)

Editor's Note.—Former § 128-38, relating to withdrawal from System by participating units, was repealed by Session Laws 1945, c. 526, s. 8, and the 1955 act inserted the present section.

Chapter 129.

Public Buildings and Grounds.

Article 1.

General Services Division.

- Sec.
- 129-1. General Services Division created.
- 129-2. Definitions.
- 129-3. Appointment of Director; term of office; salary.
- 129-4. Powers and duties of Director.
- 129-5. Powers and duties of Division.
- 129-6. Rules and regulations.
- 129-7. Disorderly conduct in and injury to public buildings and grounds.
- 129-8. Construction and repair of public

Sec.

- buildings; use of Contingency and Emergency Fund.
- 129-9. Moore and Nash squares and other public lots.
- 129-10. Change of titles.
- 129-11. Transfer of Division into Department of Administration.

Article 2.

Building Program.

- 129-12. Program for location and construction of future public buildings.

ARTICLE 1.

General Services Division.

§ 129-1. **General Services Division created.**—There is hereby created the General Services Division as a part of the office of the Governor. (1957, c. 215, s. 2.)

Editor's Note.—Former chapter 129, entitled Public Buildings and Grounds, §§ 129-1 to 129-13, and codified from Public Laws 1941, c. 224, and Session Laws 1951, c. 1132, was repealed by Session Laws 1957, c. 215, which inserted this new chapter.

Transfer of Property, Records, etc., to Division.—Session Laws 1957, c. 215, s. 3

provides: "All records, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Board of Public Buildings and Grounds and the Superintendent of Public Buildings and Grounds are hereby transferred to the General Services Division, effective July 1, 1957."

§ 129-2. **Definitions.**—As used in this chapter: "Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the city of Raleigh, but does not mean any building or grounds which a State agency other than the General Services Division is required by law to care for and maintain.

“Public buildings” means all buildings owned or maintained by the State in the city of Raleigh, but does not mean any building which a State agency other than the General Services Division is required by law to care for and maintain.

“Public grounds” means all grounds owned or maintained by the State in the city of Raleigh, but does not mean any grounds which a State agency other than the General Services Division is required by law to care for and maintain.

“Division” means the General Services Division.

“Director” means the Director of General Services.

“Agency” includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State situated within the corporate limits of the city of Raleigh. (1957, c. 215, s. 2.)

§ 129-3. **Appointment of Director; term of office; salary.**—The Director of General Services is appointed by the Governor and serves at the pleasure of the Governor. The Director is paid a salary which is fixed by the Governor, subject to the approval of the Advisory Budget Commission. (1957, c. 215, s. 2.)

§ 129-4. **Powers and duties of Director.** — The Director of General Services has the following powers and duties:

- (1) To administer the General Services Division.
- (2) To employ, supervise, and control such subordinate officers and employees as are necessary for the efficient execution of the powers and duties of his office and those of the Division. The compensation of all persons employed by the Director shall be fixed in accordance with the State Personnel Act.
- (3) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.
- (4) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
- (5) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.
- (6) To serve as a special police officer, and in that capacity to arrest with warrant any person violating any law in or on, or with respect to, public buildings and grounds, and to arrest, or to pursue and arrest, without warrant any person violating in his presence any law in or on, or with respect to, public buildings and grounds. Before the Director may exercise the powers of arrest under this subsection, he shall take an oath, to be administered by the Attorney General, in the following form:

“I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of special peace officer for public buildings and grounds according to the best of my skill and ability, and according to law; so help me, God.”
- (7) To designate as special peace officers such reliable and efficient employees of the Division as he may think proper, who shall have the same powers of arrest as the Director is given herein. Before any officer designated by the Director may exercise the powers of arrest under this subsection, he shall take an oath, to be administered by the Director, in the same form as the oath herein prescribed for the Director.
- (8) To perform all duties, exercise all powers, and assume and discharge

all responsibilities vested by law in the Division, except as otherwise expressly provided by statute.

- (9) To perform such additional duties as the Governor may direct. (1957, c. 215, s. 2.)

§ 129-5. Powers and duties of Division. — The General Services Division has the following powers and duties:

- (1) To operate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.
- (2) To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.
- (3) To provide necessary night watchmen for the public buildings and grounds.
- (4) To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.
- (5) To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.
- (6) To establish and operate central record storage facilities for the use of State agencies; and to destroy or otherwise dispose of obsolete papers, records, and documents which have been discarded by any State agency and which have been certified by the Department of Archives and History to have no further use or value for research or reference.
- (7) To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Director, to make application for and procure a post office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Director may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.
- (8) To provide necessary and adequate messenger service for the State agencies served by the Division. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.
- (9) To establish and operate a central motor pool and such subsidiary related facilities as the Director may deem necessary, and to that end:
 - a. To establish and operate central facilities for the maintenance, repair, and storage of State-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Director may deem necessary.
 - b. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Division shall become part of a central motor pool. The Director of the Budget is authorized to transfer the appropriations, made to the several agencies for the purchase of passenger motor vehicles during the 1957-1959 biennium, to the Division for use in acquiring motor vehicles for the motor pool.

- c. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the General Services Division.
 - d. To maintain, store, repair, dispose of, and replace State-owned motor vehicles under the control of the Division.
 - e. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
 - f. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
 - g. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all State-owned motor vehicles under the control of the Division, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Division, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Division the duty of enforcing the rules and regulations adopted by the Division pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Division and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
 - h. To require any State agency to keep such records and make such reports to the Director as the Director may require regarding motor vehicle use.
 - i. To acquire liability and indemnity insurance on all State-owned motor vehicles under the control of the Division for the protection of any officer or employee of the State operating such a motor vehicle in the performance of his official duties.
 - j. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Director, of prison labor for use in connection with the operation of a central motor pool and related activities.
- (10) To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Director may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to subdivision (11), below. Upon the establishment of central mimeographing and duplicating services, the Director may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the General Services Division ownership, custody, and control of any or all

- mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.
- (11) To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.
- (12) To provide necessary information service for visitors to the Capitol.
- (13) To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor. (1957, c. 215, s. 2.)

§ 129-6. **Rules and regulations.**—The Governor, with the approval of the Council of State, shall adopt reasonable rules and regulations governing the use, care, protection, and maintenance of the public buildings and grounds (other than parking). Any person who violates a rule or regulation adopted by the Governor with the approval of the Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2.)

§ 129-7. **Disorderly conduct in and injury to public buildings and grounds.**—Any person who commits a nuisance or conducts himself in a disorderly manner in or around any public building or grounds, or defaces or injures any public building or grounds, is guilty of a misdemeanor and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2.)

§ 129-8. **Construction and repair of public buildings; use of Contingency and Emergency Fund.**—It is lawful to resort to the Contingency and Emergency Fund provided in the Appropriation Act for financial aid in the construction, alteration, renovation, or repair of any public building, when in the opinion of the Governor and Council of State it is necessary to construct, alter, renovate, or repair such building. (1957, c. 215, s. 2.)

§ 129-9. **Moore and Nash squares and other public lots.**—The governing body of the city of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Director, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the Director shall call the matter to the attention of the governing body, and if the governing body then fails for a period of sixty days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the city of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2.)

§ 129-10. **Change of titles.**—All statutory references to the "Superintendent of Public Buildings and Grounds" shall be deemed to refer to the Director of General Services. All statutory references to the "Board of Public Buildings and Grounds" shall be deemed to refer to the General Services Division. (1957, c. 215, s. 2.)

§ 129-11. Transfer of Division into Department of Administration. — If at any time a Department of Administration or its equivalent is created by statute, the Governor and Council of State are authorized, if in the exercise of their discretion they deem it advisable to do so, to transfer the General Services Division into the Department of Administration. In that event:

- (1) The Director of General Services shall become the head of the General Services Division, and the appointment, removal, and salary of that officer shall be governed by the provisions of the Department of Administration Act;
- (2) The General Services Division shall become a division of the Department of Administration; and
- (3) The powers and duties herein given the Director of General Services shall become a part of the powers and duties of the Director of Administration, and the powers and duties herein given the General Services Division shall become a part of the powers and duties of the Department of Administration. (1957, c. 215, s. 2.)

ARTICLE 2.

Building Program.

§ 129-12. Program for location and construction of future public buildings. — The Department of Administration is hereby authorized, empowered, and directed to formulate a long range building policy program and shall cooperate with the governing board of the city of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the city of Raleigh desires to zone said property. If the Department of Administration is of opinion that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes, it shall so advise the governing body of the city of Raleigh. At such times as the governing body of the city of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the Department of Administration as to whether the Department finds a future need for such property for State building purposes. In the event that the governing board of the city of Raleigh is informed by the Department of Administration that any property herein covered be needed for building purposes by the State in the future, the governing body of the city of Raleigh shall give full consideration to such opinion of the Department before making any rezoning order. (1957, c. 215, s. 2.)

Chapter 130.

Public Health.

(This chapter is effective through December 31, 1957.)

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

Article 2A.

Loan Fund for Dental Students.

- Sec.
130-17.1. Division of Oral Hygiene authorized to establish loan fund.
130-17.2. Conditions under which loans to be made.

Sec.

- 130-17.3. Administration and custody of loan fund; selection of recipients; loans to minors.

Article 6.

Sanitary Districts in General.

- 130-48.1. Funding or refunding bonds.
130-56.1. District and municipality extending boundaries and corporate limits simultaneously.

(This chapter is effective through December 31, 1957.)

- Sec.
 130-57.1a. Continuance of annexed district with outstanding obligations and continuance in office of members of district board.
 130-57.5. Further validation of creation of districts.
 130-57.6. Further validation of dissolution of districts.
 130-57.7. Further validation of bonds of districts.
 130-57.8. Further validation of appointment or election of members of district boards.
 130-57.9. Contract with city or town to which all or part of district annexed concerning property of district and its operation.
 130-57.10. District in pursuance of contract with annexing city or town may convey property to non-profit and nonstock corporation for recreational purposes.

SUBCHAPTER II. VITAL STATISTICS.

Article 9.

Registration of Births and Deaths.

- 130-69.1. "Bureau of Vital Statistics" changed to "Office of Vital Statistics."
 130-78. Fetal deaths to be registered.
 130-94. State Registrar to supply blanks; to perfect and preserve birth and death certificates.
 130-102. Certified or photocopies of records; fee.

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

Article 10.

Water Protection.

- 130-109.1. Board of Health to be administrative agent of State Stream Sanitation Committee.

Article 24A.

Voluntary Inspection of Poultry.

- 130-267.1. State Board of Health authorized to enforce regulations for voluntary program.

- Sec.
 130-267.2. Investigation and inspection of poultry establishment; issuance of permit.
 130-267.3. Cost of inspection paid by applicant for permit.
 130-267.4. Rules and regulations enforced by county, city or district board of health.
 130-267.5. Inspection supervised by veterinarian.
 130-267.6. Poultry products approved labeled with stamp.
 130-267.7. Establishments given official State number; revocation of permits.
 130-267.8. Application of article; election to come within provisions.

Article 30.

Post-Mortem Medicolegal Examinations.

- 130-293. Committee created.
 130-294. Powers and duties of the committee.
 130-295. Powers and duties of the chairman of the committee.
 130-296. Assistants and employees, salaries and expenses.
 130-297. District pathologists.
 130-298. County medical examiner.
 130-299. Duties of county medical examiner.
 130-300. When autopsies and other pathological examinations to be performed.
 130-301. When medical examiner's permission necessary before embalming, burial and cremation.
 130-302. Coroner to hold inquests, etc.; post-mortem examinations and remains under control of chairman of committee.
 130-303. Election to adopt article.

Article 31.

Mental Health Outpatient Clinics.

- 130-304. Designation of State Board of Health.
 130-305. State policy.
 130-306. Authority of local governmental units.

Article 32.

Mosquito Control in General.

Article 33.

Mosquito Control Districts.

(This chapter is effective through December 31, 1957.)

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

ARTICLE 1.

State Board of Health.

§ 130-3. Duties of Board.

Editor's Note.—Session Laws 1957, c. be substituted for "Charities" in line four-
100, s. 3, directed that "Public Welfare" teen of the recompiled volume.

ARTICLE 2A.

Loan Fund for Dental Students.

§ 130-17.1. Division of Oral Hygiene authorized to establish loan fund. — The Division of Oral Hygiene of the North Carolina State Board of Health is hereby authorized to establish a loan fund for junior and senior dental students by setting aside an amount, not to exceed twenty-two thousand, five hundred dollars (\$22,500.00), for such purpose from the special dental fund. (1953, c. 916, s. 1.)

§ 130-17.2. Conditions under which loans to be made.—Loans are to be made upon agreement that the recipient will, upon graduation from dental school and the securing of license to practice dentistry in North Carolina, join the staff of the Division of Oral Hygiene of the North Carolina State Board of Health, and repay said Board of Health each month, from salary received, an amount to be agreed upon by the loan committee and the recipient, until said loan is paid in full. The loan is to be secured by approved notes, without interest. Should said borrower-employer relationship be severed, for any cause, the unpaid balance of the loan will become due immediately. (1953, c. 916, s. 2.)

§ 130-17.3. Administration and custody of loan fund; selection of recipients; loans to minors.—Administration of the loan fund and selection of recipients are to be directed by a loan committee to be composed of the State Health Officer, the dental member of the State Board of Health and the Director of the Division of Oral Hygiene. The budget officer of the State Board of Health is to be the custodian of the loan fund and will issue checks and receive payments of loans. The loan committee herein established shall have the power and authority to formulate and negotiate all contracts involved in making loans under this article. It shall have the power and authority to impose such reasonable contractual conditions as may be necessary to safeguard the fund herein established and shall fix all conditions as to amounts, length of time loans shall run, conditions of repayment and any and all things necessary to carry out the intent and purpose of this article. The fact that a junior or a senior dental student is under twenty-one years of age shall not invalidate any obligation signed by such junior or senior dental student, and all contracts, notes, agreements and other papers and documents signed by any junior or senior dental student under twenty-one years of age shall be legal, valid, binding and enforceable to the same extent as if said junior or senior dental student had already attained the age of twenty-one years or more. (1953, c. 916, s. 3.)

ARTICLE 3.

County Organization.

§ 130-21. To elect county physician and health officer.

Local Modification.—Nash: 1955, c. 226.

(This chapter is effective through December 31, 1957.)

§ 130-23. Duties of county physician; may employ another physician.

Editor's Note.—Session Laws 1955, c. 972, s. 3, effective January 1, 1956, amended G. S. 130-23 by striking out the words "to make the medicolegal post-mortem exam-

inations for the coroners' inquest," as to such county or counties as elect to come within the purview of §§ 130-293 through 130-303.

§ 130-25. Abatement of nuisances.

Cited in *Dare County v. Mater*, 235 N. C. 179, 69 S. E. (2d) 244 (1952).

ARTICLE 6.

Sanitary Districts in General.

§ 130-33. Creation by State Board of Health.—For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation; provided further that if such municipal corporation shall not have levied any tax nor performed any official act nor held any elections within a period of fifteen years next preceding the date of the petition for said sanitary district, as hereinafter provided, such a request of the governing board shall not be required. (1927, c. 100, s. 1; 1955, c. 1307.)

Editor's Note.—The 1955 amendment added the second proviso.

Cited in *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 130-34. Incorporation; petition from freeholders.

Withdrawal of Names from Petition.—In accord with original. See *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

Approval by Board of Commissioners.—The approval by the board of commissioners of the creation and establishment

of the territory described in the petition as a sanitary district as requested by 51% or more of the freeholders resident therein is prerequisite to the jurisdiction of the State Board of Health. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

§ 130-35. State Board of Health to hold public hearing.

The required public hearing contemplates that every interested person has a right to be heard by the State Board of Health before it determines whether it deems it advisable to create and establish

a sanitary district in compliance with the request of the approved jurisdictional petition. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

§ 130-36. Declaration that district exists; status of industrial villages within boundaries of district.

No sanitary district exists unless legally created and established by the State Board of Health. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

State Board of Health May Not Establish Territory Different from That Described in Petition.—The intention of the General Assembly is clear. Fifty-one per cent or more of the resident freeholders may petition for the establishment of a specific territory as a sanitary district. The

board of commissioners and the State Board of Health may approve or reject their petition. It is not contemplated that, upon consideration of said petition, a different territory, for which no jurisdictional petition has been presented, may be created and established. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

The State Board of Health did not have authority to create as a sanitary district a portion of the territory described in the

(This chapter is effective through December 31, 1957.)

approved petition, that is, a territory substantially less in area and in property valuations than the territory described in the

approved petition. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

§ 130-37. Election and terms of office of sanitary district boards.

—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, freeholders within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners candidates for said district board shall be elected in the primary and elected at said general election as are county officers except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates to be elected in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidate in the primary or general election: Provided that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more. The said board of elections shall canvass the returns from any primary or general election and within ten days thereafter certify the results thereof to the clerk of the superior court. The clerk of the superior court in each county is authorized, directed and empowered to take and file the oaths of office of those persons elected.

Prior to the election of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution determine that such sanitary district board shall consist of five members, freeholders within such district. In such case, when more than ten candidates for membership on such sanitary district board qualify for a primary, then the ten candidates receiving the highest number of votes in the primary shall be nominated as candidates to be elected in the next general election, and the five candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board; when ten or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in

(This chapter is effective through December 31, 1957.)

December following their election. The term of office shall be two years and until their successors qualify.

In the event that members of the sanitary district board of any sanitary district were not elected at the general election in November, 1956, the board of commissioners for the county in which such sanitary district is located may appoint members of such sanitary district board to serve until the general election in November, 1958. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1272.)

Local Modification.—Alamance: 1955, c. 588. The 1955 amendment inserted the third paragraph.

Editor's Note.—The 1957 amendment added the last paragraph.
The 1953 amendment added the last two sentences of the second paragraph.

§ 130-48.1. **Funding or refunding bonds.**—A sanitary district may issue its negotiable funding or refunding bonds for the purpose of funding or refunding valid indebtedness of the sanitary district if such debt be payable at the time of the passage of the bond resolution authorizing bonds to fund or refund such debt, or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "indebtedness" or "debt" as used in this section includes the principal of bonds, certificates of indebtedness and revenue anticipation notes, and includes the principal of funding bonds, refunding bonds and other evidences of indebtedness heretofore or hereafter issued pursuant to this article.

All such funding or refunding bonds shall be authorized by a bond resolution passed by the sanitary district board, which bond resolution shall state:

1. In brief and general terms the purpose for which the bonds are to be issued, including a brief description of the indebtedness to be funded or refunded sufficiently to identify such indebtedness.
2. The maximum aggregate principal amount of the bonds.
3. That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the sanitary district.
4. That the resolution shall take effect upon its passage and shall not be submitted to the voters.

Such bond resolution shall be published once a week for three successive weeks and a statement substantially in the form provided by § 130-45 shall be published with the bond resolution. Such funding or refunding bonds shall mature at any time or times, not later than forty years from their date. (1955, c. 705.)

§ 130-51. **Engineers to provide plans and supervise work; bids.**

Local Modification.—Bessemer Sanitary District: 1953, c. 729, s. 3.

§ 130-56.1. **District and municipality extending boundaries and corporate limits simultaneously.**—Whenever the boundaries of a sanitary district lie wholly within or are coterminous with the corporate limits of a city or town and such sanitary district provides the only public water supply and sewage disposal system for such city or town, the boundaries of such sanitary district and the corporate limits of such city or town may, if and when extended, be extended simultaneously in the following manner:

Twenty-five per cent or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects it is pro-

(This chapter is effective through December 31, 1957.)

posed to accomplish, which petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of such petition the sanitary district board and the governing board of the city or town meeting jointly, and before passing upon the petition, shall hold a public hearing upon the same and shall give prior notice of such hearing by advertising to be made by posting a notice at the courthouse door of their county and also by publication in a newspaper published in said county at least once a week for four successive weeks. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly and with the approval of the State Board of Health, shall each approve the petition, then the question shall be submitted to a vote of all of the qualified voters in the area or areas proposed to be annexed and in the sanitary district and in the city or town, voting as a whole. Such election to be held on a date approved by the sanitary district board and by the governing board of the city or town.

At such election the qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension", and if at such election a majority of all the votes cast be "For Extension", then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all debts, ordinances, and regulations in force in said sanitary district and in said city or town, and shall be entitled to the same privileges and benefits as other parts of said sanitary district and said city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of such annexation.

If at such election a majority of all the votes cast be "Against Extension" then there shall be no extension of either the boundaries of the sanitary district or the corporate limits of the city or town.

The costs of holding and conducting such election for annexation, as herein provided, shall be paid one-half ($\frac{1}{2}$) by the sanitary district and one-half ($\frac{1}{2}$) by the city or town.

Except as herein otherwise provided, when ordered by the sanitary district board and the governing board of the city or town acting jointly, the board of elections of the county in which the sanitary district and the city or town are located, shall call, hold, conduct and determine the result of such election according to the provisions of § 160-448 of the General Statutes.

In any cases where the boundaries of a sanitary district and the corporate limits of a city or town are extended, as herein provided, and the proposition of issuing bonds of the sanitary district as enlarged, in order to provide adequate facilities for the annexed area or areas, as may be determined by the sanitary district board, shall not be approved by the voters at an election held within one year subsequent to such extension, the territory so annexed may be disconnected and excluded from such sanitary district in the manner provided by § 130-56 of the General Statutes, and if the territory so annexed is disconnected and excluded from such sanitary district it shall automatically and without any further procedure or action of any kind whatsoever be disconnected and excluded from such city or town, provided, however, if the petition also includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, such areas already within the corporate limits of the city or town shall not be disconnected or excluded from such city or town under the provisions of this section.

The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977.)

(This chapter is effective through December 31, 1957.)

§ 130-57.1a. **Continuance of annexed district with outstanding obligations and continuance in office of members of district board.**—Whenever all of the area included within the corporate limits of the sanitary district becomes annexed to an incorporated city or town and there are outstanding obligations of said district which said city or town has contracted to pay as a part of the purchase price of the water and sewer system of such district, then, and in that event, said district shall continue to exist for the preservation of the rights of holders of such obligations and for the purpose of enforcing any contract between said district and any such city or town, and the members of the sanitary district board shall thereafter continue to hold office until said outstanding obligations and contract have been terminated and fulfilled. Prior to the happening of any such events, any member of said board may resign and such resignation shall be submitted to the board of county commissioners of the county wherein said sanitary district lies, and such board of commissioners shall accept same and shall fill said vacancy, and, further, in the event of the death or inability of any member of said board to serve as presently or hereinafter constituted, the said board of county commissioners shall fill said vacancy. Except as herein set out, said members of the board, after said annexation, shall be without power to do or perform any other act or thing, and no further election shall thereafter be held for the election of the members of such sanitary district board. (1957, c. 1250, s. 2.)

§ 130-57.5. **Further validation of creation of districts.**—All actions prior to April 1, 1953, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1.)

§ 130-57.6. **Further validation of dissolution of districts.**—All actions prior to April 1, 1953, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the dissolution of any sanitary district in the State, and the dissolution or attempted dissolution of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed. (1953, c. 596, s. 2.)

§ 130-57.7. **Further validation of bonds of districts.**—All actions and proceedings prior to April 1, 1953, had and taken and all elections held in any sanitary district in the State or in any district purporting to be a legal sanitary district by virtue of the purported authority and acts of any county board of commissioners or the State Board of Health or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of any such sanitary district, and all such bonds at any time issued by or on behalf of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are hereby declared to be the legal and binding obligations of such sanitary district. (1953, c. 596, s. 3.)

§ 130-57.8. **Further validation of appointment or election of members of district boards.**—All actions and proceedings prior to April 1, 1953, had and taken in the appointment or election of any members of any sanitary district board are hereby in all respects legalized, ratified, approved, validated and

(This chapter is effective through December 31, 1957.)

confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed by article 6 of chapter 130 of the General Statutes until their respective successors are elected and qualified: Provided, however, that any vacancy in any sanitary district board may be filled as provided in § 130-38 of the General Statutes. (1953, c. 596, s. 4.)

§ 130-57.9. Contract with city or town to which all or part of district annexed concerning property of district and its operation.—Whenever all or any part of the area included within the corporate limits of a sanitary district is annexed to or becomes a part of a city or town, the governing body of such district may contract with the governing body of such city or town to give, grant or convey to such city or town, with or without consideration, in such manner and on such terms and conditions as the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, including, but without limitation, any water supply and distribution system or systems and any sewage collection and disposal system or systems, and may provide in such contract for the operation or use of all or any part of any such system or systems or other property or for the furnishing of the services provided thereby by the city or town or by the district. (1957, c. 527.)

§ 130-57.10. District in pursuance of contract with annexing city or town may convey property to nonprofit and nonstock corporation for recreational purposes.—Whenever all of any area included within the corporate limits of a sanitary district is annexed to or becomes a part of a city or town which is contiguous thereto, the governing body of said district, prior to the effective date of the annexation and pursuant to the terms of a written contract between the city or town to which such sanitary district is to be annexed, is hereby authorized to give, grant or convey, with or without consideration, and in such manner and on such terms and conditions as the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, excluding any water supply and distribution system or systems and disposal system or systems and rights of way in connection therewith, any and all property owned by the district, real or personal, to any nonstock and nonprofit corporation, organized under chapter 55 of the General Statutes of North Carolina or any other applicable law, for use by said corporation for recreational facilities and purposes within the corporate limits of said district upon such terms and conditions as the sanitary district board may designate and said sanitary district board is further authorized and empowered to give, grant, convey, transfer and assign any of its property, real or personal, to such corporation upon such terms and conditions as it may determine, and said sanitary district board may convey such real or personal property in kind, by deed or bill of sale, to said corporation, or it may sell any real or personal property to the city or town to which the district is to be annexed or to any other person, firm or corporation at private or public sale, and after payment of costs of sale to give, grant, convey, assign and transfer the proceeds to such corporation as above referred to. Upon the transfer and conveyance to such nonprofit corporation, the properties will be deemed to have been withdrawn from public use and from any prior dedication thereof for any public purpose or purposes and to have been abandoned as public properties. Any municipality, to which such sanitary district is annexed, is hereby authorized to purchase personal property or real estate belonging to such sanitary district without advertising for bids and at private sale regardless of the amount involved. (1957, c. 1250, s. 1.)

(This chapter is effective through December 31, 1957.)

SUBCHAPTER II. VITAL STATISTICS.

ARTICLE 9.

Registration of Births and Deaths.

§ 130-69.1. "**Bureau of Vital Statistics**" changed to "**Office of Vital Statistics**."—Wherever the words "Bureau of Vital Statistics" appear in any section of this article, as amended, or wherever the words "Bureau of Vital Statistics" shall appear in any other section of any other article or chapter of the General Statutes, the same are hereby stricken out, and the words "Office of Vital Statistics" are inserted in lieu thereof. (1955, c. 951, s. 26.)

§ 130-71. **Registration districts.**—For the purposes of this article, the State shall be divided into registration districts as follows: Each city, each incorporated town with a population of twenty-five hundred (2500) or over according to the latest decennial census, each township, each county, and any area served by a district health department or any combination of the above governmental units, as directed by the State Registrar, shall constitute a local registration district. (1913, c. 109, s. 3; C. S. s. 7088; 1955, c. 951, s. 5.)

Editor's Note.—The 1955 amendment rewrote this section. Formerly each city, each incorporated town and each town-

§ 130-73. **Appointment of local registrar.**—Whenever the State Board of Health fails to exercise the authority granted to it under the provisions of G. S. 130-74 to designate and appoint the health officer of a county as registrar for that county, or fractional part or parts thereof, the chairman of every board of county commissioners shall appoint a local registrar of vital statistics for each incorporated city or town of twenty-five hundred (2500) population and over and for each township or any combination thereof in his county and shall notify the State Registrar in writing of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year for which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the chairman of the board of county commissioners, except where the local health officer is appointed under the provisions of G. S. 130-74. On the making of such appointment, the chairman of the board of county commissioners shall notify the State Registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any local registrar appointed under the provisions of this section, a successor shall be appointed by the chairman of the board of county commissioners. Except for local health officers serving as local registrar, each local registrar shall be a bona fide resident of the local registration district for which he is appointed; and removal from the district shall terminate the office. (1913, c. 109, s. 4; 1915, c. 20; C. S. s. 7089; 1955, c. 951, s. 6.)

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

§ 130-74. **County health officer may act as registrar.**—The State Board of Health shall have authority and power to designate and appoint the health officer of the county as registrar for that county, or fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by

(This chapter is effective through December 31, 1957.)

the county health officer under such appointment, shall be used by the local board of health in its discretion for health service. (1933, c. 9, s. 3; 1955, c. 951, s. 7.)

Editor's Note.—The 1955 amendment appearing in the first sentence immediately deleted the word "whole-time" formerly preceding the words "health officer."

§ 130-76. Appointment of deputy and sub-registrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial-transit permits in and for such portions of the district as may be designated; and each sub-registrar shall enter the date the certificate was received by him and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the State Registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the State Registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S., s. 7091; 1955, c. 951, s. 8.)

Editor's Note.—The 1955 amendment rewrote that part of the second sentence preceding the proviso.

§ 130-77. Permit for burial or other disposition of body.—The body of any person whose death occurs in this State, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial-transit permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial-transit permits under this article other than the compensation provided in § 130-102. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9.)

Editor's Note.—The 1955 amendment "burial or removal permits" at two places inserted "burial-transit permits" in lieu of in this section.

§ 130-78. Fetal deaths to be registered.—A stillborn child shall be registered as a fetal death on a fetal death (stillbirth) certificate when the child has advanced to at least the twentieth (20th) week of uterogestation. The fetal death certificate shall contain such information as may be prescribed by the State Registrar. A burial-transit permit shall be required before any disposition is made of the body. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of fetal death. When

(This chapter is effective through December 31, 1957.)

a fetal death is attended by a midwife, the midwife shall sign as the attendant, but shall not sign the medical certificate of fetal death; but such cases, and fetal deaths occurring without attendance of either physician or midwife shall be treated as deaths without medical attendance as provided for in G. S. 130-80. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10.)

Editor's Note.—

The 1955 amendment rewrote this section.

§ 130-79. Contents of death certificate.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial-transit permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; C. S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11.)

Editor's Note.—

The 1955 amendment inserted "burial-transit permit" in lieu of "burial or removal permit" formerly appearing in the

second sentence of the fourth paragraph. As only the fourth paragraph of the section was affected by the amendment the rest of the section is not set out.

§ 130-80. Death without medical attendance; duty of undertaker and officials.

Editor's Note.—

Session Laws 1955, c. 972, s. 4, effective January 1, 1956, provided that G. S. 130-80 is hereby repealed as to such county or counties as elect to come within, and by

appropriate resolution place themselves within the purview of §§ 130-293 through 130-303, so long as such county or counties shall remain hereunder.

§ 130-81. Undertaker to file death certificate and obtain permit.—

The undertaker or person acting as undertaker shall file the certificate of death with the local registrar of the district in which the death occurred, and obtain a burial-transit permit, prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in §§ 130-79 and 130-80. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. He shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company, this permit to accompany the corpse to its destination, where, if within the State, it shall be delivered to the person in charge of the place of burial. (1913, c. 109, s. 9; C. S., s. 7096; 1955, c. 951, s. 12.)

Editor's Note.—The 1955 amendment inserted "burial or removal permit" formerly appearing in the first sentence of this section.

(This chapter is effective through December 31, 1957.)

§ 130-83. **Permit for burial in State.**—If the interment, or other disposition of the body is to be made within the State, the wording of the burial-transit permit may be limited to a statement by the Registrar, over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the State Registrar. (1913, c. 109, s. 10; C. S., s. 7098; 1955, c. 951, s. 13.)

Editor's Note.—The 1955 amendment "burial or removal permit" formerly appearing in this section.

§ 130-84. **Interment without permit forbidden.**—No person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial-transit permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial-transit permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099; 1955, c. 951, s. 14.)

Editor's Note.—The 1955 amendment "burial or removal permit" formerly appearing in the last sentence of the section.

§ 130-88. **Registration of birth certificate four years or more after birth.**

Local Modification.—Beaufort: 1957, c. 640.

§ 130-89. **Contents of birth certificate.**—The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics and as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics: Provided, that in case of a child born out of wedlock, the father's name shall not be shown on the certificate without his written consent under oath, and, provided further, that in case of a child born out of wedlock, the last name of the child shall be the same as that of the mother, or, if requested in writing and under oath, the name of the child shall be the same as the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, or her whereabouts shall have been unknown for a period of three years, then the person or persons caring for such child may make such a request for such change. Where it has been adjudicated in a court of competent jurisdiction that a mother has abandoned her child, then the consent required by this section shall not be necessary. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15.)

Editor's Note.—

The 1955 amendment rewrote the proviso and added the last sentence.

(This chapter is effective through December 31, 1957.)

§ 130-93.1. **Certificate of identification for child of foreign birth.**—

In the case of an adopted child born in a foreign country and having legal settlement in this State, the information pertaining to births as provided for in G. S. 130-102 may be filed for such children with the State Registrar, provided, that the country of birth shall be specified in lieu of the state of birth on the new certificate and on all certified copies thereof. (1949, c. 160, s. 2; 1955, c. 951, s. 16.)

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

§ 130-94. **State Registrar to supply blanks; to perfect and preserve birth and death certificates.**—The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar. No certificate of birth or death, after its acceptance for registration by the State Registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed: Provided, that the State Registrar may promulgate rules and regulations governing the type and amount of proof of the correctness of the change or amendment which must accompany the request for a correction or amendment in the certificate of birth or death, or other record made in pursuance of this article: Provided, further, that a new certificate of birth shall be made by the State Registrar whenever:

(a) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

(b) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(c) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the State Registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall forward a copy of the new certificate to the register of deeds of the county of birth, and the copy of the certificate of birth on file with the register of deeds, if any, shall be replaced with the new copy. The State Registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. No persons

(This chapter is effective through December 31, 1957.)

other than those authorized by the State Registrar shall have access to any original birth and death records. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17.)

Editor's Note.—

The 1955 amendment inserted "State Registrar" in lieu of "local registrar" formerly appearing in the fourth sentence of the first paragraph and added the first pro-

viso thereto. The amendment also rewrote the first sentence of the next to the last paragraph and rewrote the last paragraph.

§ 130-95. **To inform registrars as to dangerous diseases.**—The State Registrar shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Board of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S., s. 7106; 1955, c. 951, s. 18.)

Editor's Note.—The 1955 amendment "He" formerly appearing as the first word inserted "The State Registrar" in lieu of in the section.

§ 130-98. **Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.**

Upon receipt of said notification the State Registrar shall record the information upon the birth certificate of the illegitimate child: Provided, however, that unless the judgment, order, or decree discloses that the child has been legitimated under the provisions of G. S. 49-10 or G. S. 49-12, the surname of said illegitimate child shall remain the same as the surname of its mother. (1941, c. 297, s. 1; 1955, c. 951, s. 19.)

Editor's Note.—The 1955 amendment of this section. As the first paragraph was added the above as the second paragraph not affected it is not set out.

§ 130-99. **Duties of local registrar as to birth and death certificates; reports.**—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the State Registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial-transit permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial-transit permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He may number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make two complete and accurate copies of each birth and each death certificate registered by him on blanks supplied by the State Registrar. He shall, on the fifth day of each month, transmit to the State Registrar all original certificates registered by him for the preceding month and shall, at the same time, transmit

(This chapter is effective through December 31, 1957.)

to the register of deeds of the county a copy of each certificate of birth or death registered by him for the preceding month and shall retain one copy of each certificate for his own files. The register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the State Registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1955, c. 951, s. 20.)

Editor's Note.—

The 1955 amendment inserted "burial-transit permit" in lieu of "burial or re-

moval permit" at two places in this section, and inserted "may" in lieu of "shall" in the nineteenth line.

§ 130-99.1. State Registrar to forward copies of certificates of nonresidents.— Upon receipts of the original certificates of birth, death, and fetal death from the local registrars of vital statistics, the State Registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within ninety days, through the local health department, to the register of deeds of the county of residence. (1949, c. 133; 1955, c. 951, s. 21.)

Editor's Note.—The 1955 amendment inserted "fetal death" in lieu of "stillbirth" formerly appearing in the first sentence

and "ninety days, through the local health department," in lieu of "thirty days" formerly appearing in the second sentence.

§ 130-100. Delivery of data to health officer.— Each local registrar, other than a local health officer who is serving as local registrar, shall, on or before the fifth day of each month, deliver by mail or in person to the health officer of his respective county or municipality such data from birth and death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said health officer, and as authorized by the State Registrar of Vital Statistics.

(1955, c. 951, s. 22.)

Editor's Note.—The 1955 amendment rewrote the first paragraph. As only the

first paragraph was affected by the amendment the rest of the section is not set out.

§ 130-102. Certified or photocopies of records; fee.—The State Registrar shall, upon request, supply to any authorized applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of one dollar (\$1.00), to be paid by applicant. Such certified copy of the birth record shall be issued in the form of a birth registration card which shall include only the full name, birth date, city and county of birth, race, sex, date of filing, and birth certificate number: Provided, that a full and complete copy of the birth certificate shall be supplied upon request to the registrant, if of legal age; or the parent or parents; or to public welfare or public health agencies; or to duly licensed private welfare agencies upon the approval of the State Registrar; or to any other person, for good cause shown, upon the order of a judge of the superior court. Such birth registration card, properly certified by the State Registrar or his duly authorized agent, shall be prima facie evidence of the facts stated therein. Any federal agency or bureau approved by the State Registrar may, however, obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of fees herein prescribed, and for transcripts so furnished the State Registrar may receive from such agency or bureau such compensation for this service, as the State Board of Health may approve.

(This chapter is effective through December 31, 1957.)

Any copy of the record of a birth or death, properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of one dollar (\$1.00) for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the State Board of Health. Provided, that upon the receipt of a certificate of birth as provided in G. S. 130-99, unless said child was born out of wedlock, the State Registrar shall within three months forward a photocopy thereof for the child to the address of the mother, if living; and if not, to the father or person standing in loco parentis to said child. No fee shall be collected for supplying this certificate.

When issuing a certified copy of the record of any birth or death registered under the provisions of this article, the State Registrar may, upon request, supply to any applicant a photocopy of such record with a photocopy of the certificate of the State Registrar signed by a facsimile of his signature; and such photocopy of the record of a birth or death shall be prima facie evidence in all courts and places of the facts therein stated. The State Registrar shall have the power and authority to appoint one or more employees or agents of the North Carolina State Board of Health; and upon such appointment by the State Registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the State Registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or the facsimile of the State Registrar affixed thereto shall be prima facie evidence in all courts and places of the facts therein stated. The provisions of this section shall not apply to copies of birth certificates of adopted children. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; C. S., s. 7111; 1941, c. 297, s. 4; 1945, c. 39; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3; 1955, c. 951, s. 23.)

Editor's Note.—

The 1955 amendment rewrote the first paragraph, inserted "photocopy" in lieu of "photostatic copy" in several places in the

section and inserted "When issuing" in lieu of the words "In lieu of" formerly appearing in the first line of the second paragraph.

§ 130-103. Information furnished to officers of American Legion or other veterans' organization.—Upon application to the Office of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, or by any officer of any other veterans' organization chartered by Congress or organized and operating on a State-wide or nation-wide basis, it shall be the duty of the Office of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to members or former members of the armed forces of the United States and members of their families and/or beneficiaries under government insurance or adjusted compensation certificate issued to such member or former member of armed forces of the United States: Provided, that the State Registrar shall furnish to any American Legion Post in this State, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this section. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24.)

Editor's Note.—

The 1955 amendment inserted "Office of Vital Statistics" in lieu of "Bureau of Vital Statistics" formerly appearing in

two places in the first sentence and struck out the words "who served in the First or Second World War" formerly appearing in the second sentence.

(This chapter is effective through December 31, 1957.)

§ 130-104. **Violations of article; penalty.**—(a) Felonies.—Any person, who for himself or as an officer, agent, or employee of any person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done without the authority of a burial-transit permit issued by the local registrar of the district in which the death occurred or in which the body was found, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by fine or imprisonment in the State's prison for a term of not more than ten years, or by both such fine and imprisonment, in the discretion of the court.

(b) Misdemeanors.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

1. Shall remove the dead body of a human being, or permit the same to be done, from the primary registration district in which the death occurred or the body was found without the authority of a burial-transit permit issued by the proper local registrar;

2. Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;

3. Willfully alter, otherwise than as provided by § 130-94, or shall falsify any certificate of birth or death, or any record established by this article;

4. Being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required;

5. Being a State Registrar, a chairman of a board of county commissioners, a local registrar, a deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the State Registrar thereunder;

Shall, upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25.)

Editor's Note.—The first 1955 amendment rewrote this section. The second 1955 amendment deleted the words "a mayor of a city or town" formerly appearing after the words "county commis-

sioners" in paragraph 5 of subsection (b), and substituted "burial-transit permit" for "burial or removal permit" in subsection (a) and in paragraph 1 of subsection (b).

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

ARTICLE 10.

Water Protection.

§ 130-109.1. **Board of Health to be administrative agent of State Stream Sanitation Committee.**—In addition to the other duties imposed upon it by this article, the State Board of Health, through its Division of Water Pollution Control, shall be the administrative agent of the State Stream Sanitation Committee for the purpose of administering that Committee's duties and functions in accordance with the provisions of article 21 of chapter 143 of the General Statutes, as amended. (1957, c. 1267, s. 1.)

§ 130-111. **Condemnation of lands for water supply.**

Stated in *McKinney v. High Point*, 237 N. C. 66, 74 S. E. (2d) 440 (1953).

(This chapter is effective through December 31, 1957.)

ARTICLE 12.

Privies.

§ 130-159. **Exceptions to provisions of this article.**

Local Modification.—Rockingham: 1957,
c. 285.

ARTICLE 14.

Infectious Diseases Generally.

§ 130-182. **Transportation of bodies of persons dying of infectious diseases.**—No railroad corporation or other common carrier of persons shall convey or cause to be conveyed through or from any city, town, or county in this State the remains of any person who has died of smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever, or cholera until such body has been disinfected and encased in such manner as shall be directed by the State Board of Health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk, or health officer or any other person shall give a permit for the removal of such body until he has received from the local board of health or other proper health authorities of the city, town, or county where the death occurred a certificate stating the cause of death and that the said body has been prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists. (1893, c. 214, s. 16; Rev., s. 4459; C. S., s. 7161; 1953, c. 675, s. 16.)

Editor's Note.—The 1953 amendment substituted "of" for "or" immediately before the word "persons" in line one.

ARTICLE 19A.

Prevention of Spread of Tuberculosis.

§ 130-225.1. **Health officer to cause suspects to be examined.**

Cited in *In re Stoner*, 236 N. C. 611, 73
S. E. (2d) 566 (1952).

§ 130-225.2. **Precautions necessary pending admission to the hospital.**—Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in any State sanatorium for tuberculosis, county sanatorium for tuberculosis or in any private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the county health officer to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health officer shall investigate from time to time for the purpose of seeing if said instructions are being carried out in a reasonable and acceptable manner. Any person shall be guilty of a misdemeanor who shall willfully fail to do any of the following acts:

(a) Willfully fail and refuse to present himself or herself to any private physician qualified in chest diseases hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as ordered by

(This chapter is effective through December 31, 1957.)

the health officer or at such time and place agreed upon between such suspected person and the health officer.

(b) Willfully fail and refuse to present himself or herself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health officer to be necessary for the prevention of spread of the disease, in accordance with the provisions of § 130-225.1.

(c) Willfully fail or refuse to follow the instructions of the health officer as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in paragraphs (b) and (c) immediately above or shall enter a plea of guilty thereto when charged with such violations, then such person shall be imprisoned in the prison department of the North Carolina sanatorium or if the defendant is a female, such female shall be imprisoned in the hospital section of the woman's division of the State's prison until provision is made for caring for female prisoners at the North Carolina sanatorium. The period of imprisonment shall be for a period of two years. The medical superintendent of the State sanatorium, upon signing and placing among the permanent records of the North Carolina sanatorium a statement to the effect that such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health officer serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Highway and Public Works Commission. The court may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium or State sanatorium and shall remain there until discharged by the medical superintendent or controlling authority of any county sanatorium or State sanatorium. The general superintendent of the North Carolina sanatoriums, with the advice and consent of the Commissioner of Paroles, where he finds in an occasional and rare instance that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty (60) days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to any State sanatorium or Veterans Administration Tuberculosis Hospital, and the medical superintendent shall be responsible for his care and custody.

The county of legal residence of such committed person shall be responsible for the regularly established fee for indigent or welfare patients and shall be responsible for this fee during the patient's period of hospitalization in the hospital section of the prison division of the State's prison. (1943, c. 357; 1951, c. 448; 1955, c. 89.)

Editor's Note.—The 1955 amendment made changes in the fifth paragraph and added the last paragraph.

Sufficiency of Warrant.—Where a warrant cites the statute under which it is drawn as § 130-225.1 whereas the penal provisions of the statute for the prevention of spread of tuberculosis are contained in this section, but the warrant sets out the charge of a criminal offense under the law, the reference by its number to § 130-

225.1 will be regarded as surplusage, and is at most an irregularity which would not render the warrant and judgment void and detention thereunder unlawful. In re Stoner, 236 N. C. 611, 73 S. E. (2d) 566 (1952).

Judgment in Prosecution for Violation of Section.—Where defendant has been found by a jury to be an active tubercular carrier in the infectious stage, and as such had willfully failed to take the precautions

(This chapter is effective through December 31, 1957.)

prescribed by the public health authorities, judgment that he be confined in the prison department of the North Carolina Sanatorium is in accord with this section, and further provision of the judgment that he

be released to a veterans' hospital if he could secure admission thereto is in his interest. In re Stoner, 236 N. C. 611, 73 S. E. (2d) 566 (1952).

ARTICLE 24A.

Voluntary Inspection of Poultry.

§ 130-267.1. **State Board of Health authorized to enforce regulations for voluntary program.**—For the better protection of the public health, the State Board of Health is hereby authorized and empowered to prepare and enforce rules and regulations governing the sanitation of all poultry processing plants, and to establish a voluntary program providing for the inspection of poultry meat products for wholesomeness for those poultry processing plants which make application to the State Board of Health for such inspection. Inspection for wholesomeness shall include post-mortem examination of poultry slaughtered, the methods of preparing, handling, and storage of poultry meat products, and the condemnation and disposal of all poultry meat found unfit for human consumption. (1955, c. 976, s. 1.)

§ 130-267.2. **Investigation and inspection of poultry establishment; issuance of permit.**—It shall be the duty of the State Board of Health, upon receipt of an application for inspection, to cause to be made a thorough investigation of the processing plant, sanitary conditions existing in such establishment and the availability of qualified inspecting personnel. If such establishment is found to be operating in accordance with the regulations of the State Board of Health, as provided for in this article, a number permit shall be issued to the person, firm or corporation making application for same. No permit shall be issued unless the plant requesting inspection holds a Grade A sanitation rating under the sanitation rules and regulations prepared and enforced by the State Board of Health pursuant to this article and to § 130-264. (1955, c. 976, s. 1.)

§ 130-267.3. **Cost of inspection paid by applicant for permit.**—The entire cost of this inspection will be paid by the firm, person, or corporation making application for a permit. Funds will be paid into the county treasury of the county where said plant is located. (1955, c. 976, s. 1.)

§ 130-267.4. **Rules and regulations enforced by county, city or district board of health.**—Plants operating under this article shall be supervised by the city, county or district board of health, which will be empowered by this article to enforce the rules and regulations prepared by the State Board of Health, which Board is hereby authorized to make and establish reasonable rules and regulations not inconsistent with the provisions of this article after consulting with a committee from the processors coming under this article. (1955, c. 976, s. 1.)

§ 130-267.5. **Inspection supervised by veterinarian.**—The inspection shall be under the supervision of a licensed veterinarian who shall be in the employ of the city, county or district board of health. The Veterinary Public Health Section of the State Board of Health shall exercise technical supervision over the inspecting veterinarian as to his inspection procedures, records and reports, and other aspects of poultry inspection. (1955, c. 976, s. 1.)

§ 130-267.6. **Poultry products approved labeled with stamp.**—Poultry products passed in accordance with this article shall be labeled with a stamp bearing the number of the establishment and the words: "Veterinary Inspected and Passed for Wholesomeness—N. C. State Board of Health." All labels and stamps

(This chapter is effective through December 31, 1957.)

bearing the inspection stamp shall be kept in the custody of the veterinary inspector, unless said plant runs inspected poultry exclusively. (1955, c. 976, s. 1.)

§ 130-267.7. **Establishments given official State number; revocation of permits.**—Each establishment approved for inspection under the provisions of this article will be issued a numbered permit which will be the establishment's official State number, and such number will be used to identify all inspected and passed poultry products. Such permits may be revoked by the State Board of Health at any time when the establishment violates any of the regulations prescribed for efficient inspection and sanitation, with the right of appeal from the order of the State Board of Health to the superior court. (1955, c. 976, s. 1.)

§ 130-267.8. **Application of article; election to come within provisions.**—This article shall apply to Wilkes County only; provided, however, that the board of county commissioners of any county may elect, operate under and be covered by the provisions of this article, and upon the passage of a resolution by said board signifying such election, this article shall apply to said county. (1955, c. 976, s. 2.)

ARTICLE 30.

Post-Mortem Medicolegal Examinations.

§ 130-293. **Committee created.**—For the purpose of administering this article, there is hereby created within the State Board of Health a committee to be known as the Committee on Post-Mortem Medicolegal Examinations, which committee shall consist of seven persons, six of whom shall be ex officio members designated by notification in writing to the Governor as follows:

- (1) The State Health Officer.
- (2) The Attorney General, or a member of his staff designated by him.
- (3) The Director of the State Bureau of Investigation or a member of his staff designated by him.
- (4) The head of the Department of Pathology of the Medical School of the University of North Carolina or his representative from said Department designated by such departmental head.
- (5) The head of the Department of Pathology of the Bowman Gray School of Medicine of Wake Forest College or his representative from said Department designated by such departmental head.
- (6) The head of the Department of Pathology of the School of Medicine of Duke University or his representative from said Department designated by such departmental head.
- (7) One member shall be a layman appointed by the Governor.

The State Health Officer shall be the chairman of the committee.

Regular meetings shall be held at such times as may be determined by the committee, and special meetings may be called at any convenient time and place upon reasonable notice signed by any three members.

Four members shall constitute a quorum for the transaction of any business coming before the committee.

The ex officio members shall have all the privileges, rights, powers, and duties of the appointed member and shall serve on the committee during the tenure of their respective offices or that of the officer they represent. The member appointed by the Governor shall serve for a period of four years. (1955, c. 972, s. 1.)

§ 130-294. **Powers and duties of the committee.**—The committee shall have power subject to the approval of the State Board of Health:

- (a) To make, amend, repeal, and promulgate necessary rules and regulations for its own government and procedure and for the performance of its duties under this article, including the power to allocate the expenses of performing au-

(This chapter is effective through December 31, 1957.)

topsies and to impose and allocate the expenses of performing toxicological studies.

(b) To accept grants, contributions, gifts, devises and bequests which may be used for purposes not inconsistent with the said grants, gifts, contributions, devises and bequests and for any other purposes as deemed necessary by the committee.

(c) To authorize the chairman of the committee and his employees to cooperate with all educational institutions and law enforcement agencies of the State for the purpose of furthering medicolegal education and training.

(d) To establish and maintain a toxicological laboratory under the supervision of the State Board of Health or if the committee deems it advisable so to do, contract with other technical personnel or for the use of technical facilities for the purpose of providing toxicologic service. (1955, c. 972, s. 1.)

§ 130-295. Powers and duties of the chairman of the committee.—

It shall be the duty of the chairman of the committee to attend the meetings of the committee, to keep a record of such meetings, to attend to the official correspondence of the committee, to act as custodian of the files and records of the committee, to receive reports directed to the committee, to cause to be performed and to supervise and control medicolegal post-mortem examinations, to furnish pertinent information and reports relating to such investigations as directed by the committee, and to perform all other duties delegated to him by the committee. (1955, c. 972, s. 1.)

§ 130-296. Assistants and employees, salaries and expenses. —

(a) The chairman of the committee may, with the approval of the committee, employ such professional, clerical, technical, and other assistants as are necessary to serve at the pleasure of the chairman of the committee and, subject to the provisions of the state personnel regulations and budgetary laws, fix the compensation and travel expenses of all persons so employed, such compensation and travel expenses to be in keeping with the compensation paid to persons employed to do similar work in other State departments, institutions, or commissions.

(b) No salary or other compensation for services shall be allowed members of the committee who already receive compensation as officials or employees of the State. Service on the committee is to be considered as part of the duties of such officials as representatives of their respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members of the committee who are not officials or employees of the State shall receive ten dollars (\$10.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting or when on official business of the committee.

(c) For the more efficient conduct of the fiscal affairs of the committee, as well as for the convenience of any State agency, officer or department that may hold or have appropriated to or the custody of funds for the use and benefit of the committee, all such funds shall be held in a separate or special account on the books and records of such State agency, officer or department with a separate financial designation or code number to be assigned by the Budget Bureau or its agent, and said funds shall be expended solely upon the proper authorization or order of the committee (1955, c. 972, s. 1.)

§ 130 297. District pathologists.—The committee shall have the power to divide the State into districts, and to alter such districts as from time to time the committee shall see fit, for the more effective administration of its duties under this article. The chairman of the committee shall be empowered, with the concurrence of the committee, to appoint district pathologists to serve at the pleasure

(This chapter is effective through December 31, 1957.)

of the committee. Any person holding the office of coroner may be appointed as district pathologist or as a member of the committee, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, section 7, of the Constitution of North Carolina.

It shall be the duty of each district pathologist with whatever aid, assistance, and guidance by the chairman of the committee as the circumstances may require, to perform a complete autopsy upon the body of the deceased in cases referred to him, under the provisions of G. S. 130-300, and to make pathological studies of such anatomical materials as may be submitted to him by any medical examiner in his district or by others empowered by this article to make such reference in the performance of their official duties.

The district pathologist shall prepare a report to the chairman of the committee on every post-mortem examination, and on every pathological anatomical study, in such form as may from time to time be prescribed by the committee, copies of which he shall deliver to the referring medical examiner or other referring person, to the solicitor of the superior court of the district, and to the coroner of the county wherein the body of the deceased or any part of a body examined by him was found: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown.

For each autopsy performed by reason of reference by a medical examiner or by others empowered by this article to make such references, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county of legal residence of the deceased or by the county wherein the body or remains of the deceased were first found, if the legal residence is unknown or is other than the State of North Carolina.

For each report made on pathological anatomical materials submitted to him for study, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county wherein the anatomical materials were first found.

Such fees shall constitute full compensation of the district pathologist for duties performed under this section. (1955, c. 972, s. 1.)

§ 130-298. County medical examiner.—The chairman of the committee shall appoint, subject to the approval of the committee and of the board of county commissioners of each county of the State that elects to come under this article, a qualified and practicing physician as medical examiner for the county to serve at the pleasure of the board of county commissioners and until his successor has been appointed and qualified, and said person so appointed may be the county coroner, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, section 7 of the Constitution of North Carolina. Each county medical examiner may appoint one or more assistant county medical examiners, with the concurrence of the chairman of the committee, to serve at the pleasure of the county medical examiner who makes such appointment.

Upon the death of any person on or after January 1, 1956, apparently by the criminal act or default of another, or apparently by suicide, or suddenly when apparently in good health, or while an inmate of any penal or correctional institution, or under any suspicious, unusual or unnatural circumstances, the medical examiner of the county in which the body of the deceased is found shall be notified by the physician in attendance, by any law enforcement officer having knowledge of such death, by the undertaker, by a member of the family of the deceased, by any person present, or by any person having knowledge of such deaths, and no person shall disturb the body at the scene of death until authorized by the

(This chapter is effective through December 31, 1957.)

county medical examiner. In cases which come under G. S. 152-7, the medical examiner shall notify the coroner.

A similar procedure shall be followed upon discovery of anatomical materials suspected of being or determined to be a part or parts of a human body. (1955, c. 972, s. 1.)

§ 130-299. **Duties of county medical examiner.**—Upon receipt of notice as specified in G. S. 130-298, the county medical examiner shall in each case make a physical and medical examination of the body or parts of a body which may be found, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the coroner of the county in which the body or any part of a body was found, to the solicitor of the superior court of the district in which the body or any part of a body was found, to the chairman of the committee and may, upon request furnish a copy of his report to the head of the law enforcement agency charged with the responsibility for the investigation of the incident upon forms or in the manner prescribed by the committee: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. The county medical examiner may delegate his duties in a particular case to one of his assistant county medical examiners, or may perform the same jointly with him.

For each investigation under this article, including the making of the required reports, the county medical examiner shall receive a fee to be fixed by the board of county commissioners, after consultation with the committee, which shall be paid by the county for which he is appointed. (1955, c. 972, s. 1.)

§ 130-300. **When autopsies and other pathological examinations to be performed.**—If, in the opinion of the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G. S. 130-298, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court solicitor or by any superior court judge, having authority in the judicial district wherein such county lies, such autopsy or pathological study shall be made by the district pathologist or by a competent pathologist designated by the chairman of the committee for such purpose.

In any case of death under circumstances set forth in G. S. 130-298 where a body shall be buried without a medical examination being made as specified in G. S. 130-299, or in any case where a body shall be cremated except in compliance with the provisions of this article, G. S. 130-301 in particular, it shall be the duty of the medical examiner of the county in which the body is buried, was cremated, or the remains were found, upon being advised of such facts, to notify the superior court solicitor who shall communicate the same to any resident or assigned judge of the superior court, and such judge may order that the body or the remains be exhumed and an examination or autopsy performed thereon by the district pathologist, or by a pathologist appointed by the chairman of the committee. The pertinent facts disclosed by the examination or autopsy shall be communicated to the superior court judge who ordered it, for such action thereon as he, or the court of which he is judge, deems proper. A copy of the report of the examination or autopsy findings and interpretations shall be filed with the chairman of the committee and the superior court solicitor: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. (1955, c. 972, s. 1.)

§ 130-301. **When medical examiner's permission necessary before embalming, burial and cremation.**—(a) In any case where it is the duty of the county medical examiner to view the body and investigate the death of a deceased person as herein provided, it shall be unlawful to embalm the said body

(This chapter is effective through December 31, 1957.)

until the written permission of the county medical examiner has first been obtained, and such county medical examiner shall make the certificate of death required for a burial permit, stating thereon the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the undertaker, or the local registrar charged with the issuance of burial permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(c) No permit for cremation of a body shall be issued by the local registrar charged therewith and no cremation of a body shall be carried out until the county medical examiner shall have certified in writing that he has made inquiry into the cause and manner of death and is of the opinion that no further examination concerning the same is necessary.

(d) A fee to be fixed by the board of county commissioners, after consultation with the committee, shall be paid by the county medical examiner for permits provided for in this section by the person making application therefor, and copies of such permits shall be promptly filed by the county medical examiner in the office of the chairman of the committee.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (1955, c. 972, s. 1.)

§ 130-302. Coroner to hold inquests, etc.; post-mortem examinations and remains under control of chairman of committee.—Nothing in this article shall be construed as precluding a coroner from holding inquests or taking other steps as provided in G. S. 152-7 as hereby amended. All post-mortem examinations under this article shall be held and done under and subject to the control and direction of the chairman of the committee, who is hereby also vested with primary control over the remains, subject to the provisions of this article. (1955, c. 972, s. 1.)

§ 130-303. Election to adopt article.—This article shall not become effective until after its adoption by resolution of the board of county commissioners of the county desiring to come within the purview of this article. Any county having elected to come within the purview of this article may, at the end of any fiscal year of such county, by appropriate resolution exclude itself from the provisions of this article. (1955, c. 972, s. 1.)

ARTICLE 31.

Mental Health Outpatient Clinics.

§ 130-304. Designation of State Board of Health.—The State Board of Health is hereby designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina under the provisions of the National Mental Health Act and similar federal legislation pertaining to mental health activities. The State Board of Health is further designated as the State agency authorized to establish and administer minimum standards and requirements for mental health clinics as condition for participation in federal-State grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the State policy hereafter expressed: Provided, that nothing in this article shall be construed to prohibit the operation of outpatient mental clinics by the North Carolina Hospitals Board of Control

(This chapter is effective through December 31, 1957.)

under the provisions of G. S. 122-11.6, or the operation of an outpatient mental clinic at the North Carolina Memorial Hospital in Chapel Hill. (1955, c. 155, s. 1.)

§ 130-305. **State policy.**—It shall be the policy of the State to develop programs pertaining to mental health clinics and related activities in accordance with the traditional State-local partnership in health affairs. It shall be the policy of the State to promote the establishment of mental health outpatient clinics only in those localities which have shown a readiness to contribute to the financial support of such clinics, assisted by federal and State grants-in-aid to the extent available. (1955, c. 155, s. 1.)

§ 130-306. **Authority of local governmental units.**—The governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of outpatient mental clinics which serve such localities whether or not the facilities of the clinic are physically located within the boundaries of such cities, towns or counties, and whether or not such clinics are owned or operated by the local governmental units, and such support or partial support is hereby declared to be a necessary expense within the meaning of article VII, section 7 of the North Carolina Constitution. (1955, c. 155, s. 1.)

ARTICLE 32.

Mosquito Control in General.

Contents Codified in New Chapter 130. — Session Laws 1957, c. 832, effective July 1, 1957, has been codified as §§ 130-206 through 130-209 of Article 23 of new Chapter 130, relating to Public Health.

ARTICLE 33.

Mosquito Control Districts.

Contents Codified in New Chapter 130.—Session Laws 1957, c. 1247, effective July 1, 1957, has been codified as §§ 130-210 through 130-219 of Article 24 of new Chapter 130, relating to Public Health.

Chapter 130.

Public Health.

Article 1.

General Provisions.

- Sec.
- 130-1. Rules of construction.
- 130-2. Notice.
- 130-3. Definitions, as used in this article.

Article 2.

Administration of Public Health Law.

- 130-4. State Board of Health created; membership.
- 130-5. Terms of Board members; removal; filling vacancies.
- 130-6. Officers and executive committee of State Board; State Health Director; Assistant State Health Director.

Sec.

- 130-7. Election meetings.
- 130-8. Regular and special meetings.
- 130-9. Powers and duties of the State Board of Health.
- 130-10. Employees of State Board of Health.
- 130-11. Duties of the administrative staff of the State Board of Health.
- 130-12. Duties of the State Health Director.

Article 3.

Local Health Departments.

- 130-13. County health departments.
- 130-14. District health departments.
- 130-15. Removal of board members.
- 130-16. Compensation of board members.

1957 CUMULATIVE SUPPLEMENT

- Sec.
130-17. Powers and duties of local boards; expenditures.
130-18. Health director.
130-19. Powers and duties of health director.
130-20. Abatement of nuisances.
130-21. Special tax for health purposes.
130-22. Municipal health departments.
130-23. County physician.

Article 4.

Incorporation of Health Codes by Reference.

- 130-24. Adoption of health codes by reference.
130-25. Filing of codes adopted by reference.
130-26. Changes in codes adopted by reference.

Article 5.

Mental Health Outpatient Clinics.

- 130-27. Designation of State Board of Health.
130-28. State policy.
130-29. Authority of local governmental units.

Article 6.

State Laboratory of Hygiene.

- 130-30. Laboratory established.
130-31. To analyze potable waters.
130-32. Fees for analyzing waters.
130-33. Duty of seller to make reports and transmit samples.
130-34. Nonresidents' fees.
130-35. To make other examinations.

Article 7.

Vital Statistics.

- 130-36. State Board of Health to enforce regulations.
130-37. State Registrar.
130-38. Registration districts.
130-39. Control of State Registrar over local districts.
130-40. Appointment of local registrar.
130-41. Local health director may act as registrar.
130-42. Removal of local registrar.
130-43. Appointment of deputy and sub-registrars.
130-44. Burial-transit permit authorizing burial or other disposition of body.
130-45. Fetal deaths to be registered.
130-46. Contents of death certificate.
130-47. Death without medical attendance; duty of undertaker and officials.

- Sec.
130-48. Preparation of death certificates for members of the armed forces dying outside of the United States.
130-49. Undertaker to file death certificate and obtain burial-transit permit.
130-50. Sales of coffins or caskets regulated.
130-51. Contents of burial-transit permit.
130-52. Interment without burial-transit permit forbidden.
130-52.1. Registration of divorces and annulments; duty of clerk of court granting divorce, etc.; costs and fees; copies of record.
130-53. Registration of births.
130-54. Birth certificate to be filed within five days.
130-55. Registration of birth certificate more than five days and less than four years after birth.
130-56. Registration of birth certificate four years or more after birth.
130-57. Register of deeds may perform notarial acts.
130-58. Contents of birth certificate.
130-59. Validation of irregular registration of birth certificates.
130-60. Blank furnished for report of name.
130-61. Institutions to keep records of inmates.
130-62. Certificate of identification in lieu of birth certificate where parentage cannot be established.
130-63. Certificate of identification for child of foreign birth.
130-64. State Registrar to supply blanks; to perfect and preserve birth and death certificates.
130-64.1. Amendment of birth and death certificate.
130-65. To inform registrars as to dangerous diseases.
130-66. Birth certificate as evidence.
130-67. Church and other records filed and indexed; fees for transcript.
130-68. Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.
130-69. Duties of local registrar as to birth and death certificates; reports.
130-69.1. State Registrar to forward copies of certificates of nonresidents.
130-70. Register of deeds to preserve copies of birth and death records.
130-71. Delivery of data to local health director.
130-72. Pay of local registrars.
130-73. Certified or photocopies of records; fee.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

- 130-74. Information furnished to officers of American Legion or other veterans' organization.
- 130-75. Registrars of deeds to issue birth certificates without cost to persons entering military forces.
- 130-76. Violations of article; penalty.
- 130-77. Duties of registrars and others in enforcing this article.
- 130-78. Local systems abrogated.
- 130-79. Establishing fact of birth by person without certificate.

Article 8.

Infectious Diseases Generally.

- 130-80. Health director has quarantine authority.
- 130-81. Physicians to report certain diseases.
- 130-82. Parents and householders to report.
- 130-83. Local health directors to report cases to State Board of Health.
- 130-84. Duty of disinfection.
- 130-85. Examination and detention of infected travelers.
- 130-86. Transportation of bodies of persons dying of reportable diseases.

Article 9.

Immunization.

- 130-87. Immunization required.
- 130-88. Administering immunizing preparations.
- 130-89. Expenses of immunization.
- 130-90. Certificate of immunization.
- 130-91. School admittance.
- 130-92. Exemptions from immunization.
- 130-93. Rules and regulations.

Article 10.

Venereal Disease.

Part 1. Venereal Disease.

- 130-94. Venereal diseases; applicants for marriage license.
- 130-95. Physicians and others to report cases.
- 130-96. Examination and investigation of venereal disease.
- 130-97. Prisoners examined and treated.
- 130-98. Prisoners not released until treatment begun.
- 130-99. Board of Health to make rules and regulations.
- 130-100. [Omitted.]
- 130-101. Treatment except by physician or pursuant to prescription illegal.
- 130-102. Purchaser of remedies may be examined.
- 130-103. Pregnant women to have test for syphilis.

Sec.

- 130-104. [Omitted.]
- 130-105. Birth certificates to contain information as to tests.
Part 2. Inflammation of the Eyes of the Newborn.
- 130-106. Ophthalmia neonatorum described.
- 130-107. Inflammation of eyes of newborn to be reported.
- 130-108. Eyes of newborn to be treated; records.
- 130-109. Duties of local health director.
- 130-110. Duties of State Board of Health.
- 130-111. Violation of article.
- 130-112. Registration of midwives.

Article 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

- 130-113. Health directors to cause suspects to be examined.
- 130-114. Precautions necessary pending admission to the hospital.

Part 2. Tuberculous Prisoners.

- 130-115. Tuberculous county prisoners to be segregated.
- 130-116. Law enforcement officers to have prisoners suspected to be tuberculous examined and separated.
- 130-117. Tuberculous State prisoners to be segregated.
- 130-118. Separate cells for tuberculous prisoners.
- 130-119. Prison authorities to have prisoners suspected to be tuberculous examined.
- 130-120. Tuberculous prisoners not to be worked.
- 130-121. Examination of prisoners.
- 130-122. Food and work of tuberculous prisoners.

Article 12.

Sanitary Districts.

- 130-123. Creation by State Board of Health.
- 130-124. Procedure for incorporating district.
- 130-125. Declaration that district exists; status of industrial villages within boundaries of district.
- 130-126. Election and terms of office of sanitary district boards.
- 130-127. Vacancy appointments to district boards.
- 130-128. Corporate powers.
- 130-129. Organization of board.
- 130-130. Power to condemn property.

1957 CUMULATIVE SUPPLEMENT

- Sec.
130-131. Construction of systems by corporations or individuals.
130-132. Reports.
130-133. Consideration of reports and adoption of a plan.
130-134. Resolution authorizing bond issue and purposes for which bonds may be issued.
130-135. Limitation of action to set aside a bond resolution.
130-136. Publication of resolution, notice and statement.
130-137. Call for election.
130-138. Bonds.
130-139. Additional bonds.
130-140. Funding or refunding bonds.
130-141. Valuation of property; determining annual revenue needed.
130-142. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.
130-143. Engineers to provide plans and supervise work; bids.
130-144. Service charges and rates.
130-145. Removal of member of board.
130-146. Rights-of-way granted.
130-147. Returns of elections.
130-148. Procedure for extension of district.
130-149. District and municipality extending boundaries and corporate limits simultaneously.
130-150. Procedure for withdrawing from district.
130-151. Dissolution of certain sanitary districts.
130-152. Further validation of creation of districts.
130-152.1. Further validation of extension of boundaries of districts.
130-153. Further validation of dissolution of districts.
130-154. Further validation of bonds of districts.
130-155. Authorizing certain sanitary district boards to levy taxes.
130-156. Further validation of appointment or election of members of district boards.
- Article 13.**
- Water and Sewer Sanitation.**
- 130-157. Sanitary engineering and sanitation units.
130-158. Persons supplying water to protect its purity.
130-159. Board of Health to control and examine waters; rules.
130-160. Sanitary sewage disposal; rules.
130-161. Systems of water supply and sewerage; plans submitted.

- Sec.
130-162. Condemnation of lands for water supply.
130-163. Sanitation of watersheds; rules.
130-164. Defiling public water supply.
130-165. Discharge of sewage or industrial waste.
130-166. Sewage disposal on watersheds.

Article 14.

Meat Markets and Abattoirs.

- 130-167. Regulation of places selling meat.
130-168. Inspection reports to be filed with local health director.
130-169. Effect of article.

Article 15.

Private Hospitals and Educational Institutions.

- 130-170. Regulation of sanitation by State Board of Health.

Article 16.

Regulation of the Manufacture of Bedding.

- 130-171. Definitions.
130-172. Sanitizing.
130-173. Manufacture regulated.
130-174. Altering, etc., tags prohibited.
130-175. Selling regulated.
130-176. Registration numbers, licenses.
130-177. Enforcement funds.
130-178. Enforcement by State Board of Health.
130-179. Exemptions for blind persons and State institutions.

Article 17.

Cancer Control Program.

- 130-180. State Board of Health to administer program; rules.
130-181. Financial aid for diagnosis, hospitalization and treatment.
130-182. Cancer clinics.
130-183. Tabulation of records.
130-184. Reporting of cancer.
130-185. Assistance to hospitals and physicians.
130-186. Cancer committee of North Carolina Medical Society.

Article 18.

Midwives.

- 130-187. Regulation of midwives.

Article 19.

Loan Fund for Dental Students.

- 130-188. State Board of Health.

- Sec.
130-189. Conditions under which loans to be made.
130-190. Administration and custody of loan fund; selection of recipients; loans to minors.

Article 20.

Surgical Operations on Inmates of State Institutions.

- 130-191. Procedure when surgical operations on inmates are necessary.

Article 21.

Post-Mortem Medicolegal Examinations.

- 130-192. Committee created.
130-193. Powers and duties of the committee.
130-194. Powers and duties of the chairman of the committee.
130-195. Assistants and employees, salaries and expenses.
130-196. District pathologists.
130-197. County medical examiner.
130-198. Duties of county medical examiner.
130-199. When autopsies and other pathological examinations to be performed.
130-200. When medical examiner's permission necessary before embalming, burial and cremation.
130-201. Coroner to hold inquests, etc.; post-mortem examinations and remains under control of chairman of committee.
130-202. Election to adopt article.

Article 22.

Remedies.

- Sec.
130-203. Penalties.
130-204. Right of entry.
130-205. Injunction.

Article 23.

Mosquito Control in General.

- 130-206. Mosquito control units within State Board of Health.
130-207. Duties of State Board of Health.
130-208. Transfer of assets.
130-209. State Board of Health authorized to accept and administer funds.

Article 24.

Mosquito Control Districts.

- 130-210. Creation and purpose.
130-211. Nature of district; procedure for forming districts.
130-212. Governing bodies for mosquito control districts.
130-213. Corporate powers.
130-214. Adoption of plan of operation.
130-215. Resolution authorizing bond issue and purpose for which bonds may be issued.
130-216. Limitation of action to set aside bond resolution.
130-217. Publication of resolution.
130-218. Call for election.
130-219. Bonds.

ARTICLE 1.

General Provisions.

§ 130-1. **Rules of construction.**—(a) This chapter shall be known as the Public Health Law of North Carolina.

(b) All persons who, at the time this chapter takes effect, hold office under any of the statutes repealed or rewritten by this chapter, and whose offices are continued by this chapter, continue to hold them according to their former tenure unless otherwise specified.

(c) Any action or proceeding commenced before this chapter takes effect, and any right accrued, is not affected by this chapter, but all procedures thereafter shall conform, insofar as possible, with the provisions of this chapter.

(d) Whenever a duty is imposed upon a public officer, the duty may be performed unless this chapter expressly provides otherwise, by a deputy of the officer or by a person duly authorized by the State Board of Health.

(e) The operation and effect of any provision of this chapter conferring a general power upon the State Board of Health, local boards of health, local health departments, or local health directors, shall not be impaired or qualified

by the granting to said boards, departments or individuals by this chapter of a specific power or powers. (1957, c. 1357, s. 1.)

Editor's Note.—Session Laws 1957, c. 1357, s. 1, effective January 1, 1958, re-wrote, rearranged and renumbered the provisions of chapter 130 appearing in re-compiled volume 3B and the 1955 Supplement to read as set out in this chapter, to which have been added § 130-52.1 and articles 23 and 24, codified from other chapters of the 1957 Session Laws. The two articles mentioned became effective July 1, 1957, and all the rest of this chapter, is effective as of January 1, 1958.

§ 130-2. **Notice.**—Unless expressly otherwise provided, any notice required to be given to any person by any provision of this chapter or any regulations adopted pursuant thereto, may be given by mailing the notice, by registered mail or certified mail, postage prepaid, addressed to the person to be notified, at his last known residence or last known principal place of business in this State. (1957, c. 1357, s. 1.)

§ 130-3. **Definitions, as used in this article.**—(a) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(b) "Board" or "State Board" means "State Board of Health."

(c) "State Health Director" means the executive officer of the State Board of Health.

(d) "Local health department" includes district health department, county health department, city health department, and city-county health department.

(e) "Local board of health" includes district board of health, county board of health, city board of health, and city-county board of health.

(f) "Local health director" includes local health officer, county health officer, district health officer, city health officer, city-county health officer, county superintendent of health, county health director, or any other title by which the administrative head of a local health department is designated.

(g) "Licensed physician" means a physician licensed to practice medicine in North Carolina. (1957, c. 1357, s. 1.)

ARTICLE 2.

Administration of Public Health Law.

§ 130-4. **State Board of Health created; membership.** — There is hereby created a State Board of Health. The Board shall consist of nine members, four of whom shall be elected by the Medical Society of the State of North Carolina and five of whom shall be appointed by the Governor. One of the members appointed by the Governor shall be a licensed pharmacist, one a reputable dairyman, one a licensed dentist, and one a licensed veterinarian.

The members of the Board shall receive no pay, except that each member may receive ten dollars (\$10.00) per diem, unless the Biennial Appropriations Act specifically provides otherwise, and necessary traveling and subsistence expenses when on actual duty in attending the meetings of the Board or of the executive committee or in pursuing special investigations in the State; but when attending meetings beyond the limits of the State, only actual traveling and subsistence shall be allowed.

The executive office of the Board shall be in the capital city of the State of North Carolina. (1957, c. 1357, s. 1.)

§ 130-5. **Terms of Board members; removal; filling vacancies.**—The members of the State Board of Health shall serve four-year, staggered terms. The Medical Society of the State of North Carolina shall elect two members each odd-numbered year to fill the vacancies created by the expiration of the terms of two members. The Governor shall appoint two members on or before May first, 1959, and three members on or before May first, 1961, to

fill vacancies occurring in those years, such members to serve for a term of four years and their successors thereafter shall be appointed by the Governor.

The terms of all members of the State Board of Health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified.

The Medical Society of the State of North Carolina shall have the right to remove any member elected by it for cause, and the Governor shall have the right to remove any member appointed by him for cause. Vacancies on said Board among the membership elected by the Medical Society of the State of North Carolina shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Board among the membership appointed by the Governor shall be filled by the Governor for the unexpired term. (1879, c. 117, s. 3; Code, s. 2877; 1885, c. 237, s. 3; 1893, c. 214, s. 2; 1901, c. 245; Rev., s. 4436; 1911, c. 62, s. 2; C. S., s. 7049; 1931, c. 177, s. 2; 1957, c. 1357, s. 1.)

§ 130-6. Officers and executive committee of State Board; State Health Director; Assistant State Health Director.—The State Board of Health shall have a president, a vice president and an executive committee, said executive committee to have such powers and duties as may be assigned to it by the State Board of Health. The president shall be elected by and from the members of the Board and shall serve two years. The executive committee shall be composed of the president of the Board, ex officio, or his representative, and two other members of the Board to be elected by the Board from among its membership. The State Health Director shall serve as secretary and treasurer to the State Board of Health.

There is hereby created the position of the State Health Director. The State Health Director shall be elected by the Board, subject to the approval of the Governor, to serve for four years and until his successor has been elected and qualified. The State Health Director shall be licensed to practice medicine in the State of North Carolina, and shall be trained in, and shall have had experience in, public health work. The Board shall have the right to remove the State Health Director from office for cause. The State Health Director shall be the executive officer of the Board and shall devote his entire time to public health work as approved by the State Board of Health. He shall maintain an office in the capital city of the State of North Carolina. He shall perform such functions as may be designated by the State Board of Health or by law.

The Board may appoint a full-time Assistant State Health Director, subject to the approval of the Governor. The Assistant State Health Director shall serve at the pleasure of the Board. The Assistant State Health Director shall perform such functions as shall be designated by the State Board of Health or by the State Health Director. He shall be subject to the provisions of chapter 126 of the General Statutes of North Carolina. (1879, c. 117, ss. 5, 7; Code, ss. 2878, 2881; 1885, c. 237, s. 4; 1893, c. 214, s. 4; Rev., s. 4440; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2; C. S., s. 7053; 1921, c. 130; 1927, c. 143; 1931, c. 177, s. 3; 1957, c. 1357, s. 1.)

§ 130-7. Election meetings.—The meeting of the State Board of Health for the election of officers shall be at the first regular meeting after the conjoint session at the annual meeting of the Medical Society of the State of North Carolina in the year 1959 and every two years thereafter. (1901, c. 245, s. 4; Rev., s. 4441; 1911, c. 62, s. 7; C. S., s. 7054; 1957, c. 1357, s. 1.)

§ 130-8. **Regular and special meetings.**—Each year there shall be four regular meetings of the State Board of Health, one of which shall be held during the annual meeting and conjointly with a general session of the Medical Society of the State of North Carolina at a time and place designated by the State Board of Health and the program committee of the Medical Society of the State of North Carolina at which time and place the State Health Director's annual report shall be submitted. The other three meetings shall be at such times and places as the president of the Board shall designate. Special meetings of the State Board of Health may be called by the president, or by a majority of the members of the State Board of Health, through the State Health Director. The executive committee of the State Board of Health shall meet at such times and places as the president of the Board may determine to be necessary, and he may call such meetings through the State Health Director. (1893, c. 214, s. 27; Rev., s. 4442; 1911, c. 62, s. 8; C. S., s. 7055; 1957, c. 1357, s. 1.)

§ 130-9. **Powers and duties of the State Board of Health.**—(a) The State Board of Health shall have the power and duty to determine the administrative and general policies to be followed in the administration and conduct of the public health program to protect and promote public health, and shall have the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary to carry out the provisions and purposes of this article and to enable the Board and its administrative staff to administer and enforce the public health laws of this State. Every regulation adopted by the State Board of Health shall state the date on which it takes effect, and a copy thereof, duly signed with the signature or facsimile of the signature of the State Health Director, shall be filed as required by G. S. 143, article 18, and shall be filed as a public record in the State Board of Health and a copy thereof shall be sent to each local health department within the State, and shall be published in the State Board of Health Bulletin, and also shall be published in such additional manner as the State Health Director or State Board of Health may from time to time determine, and shall be published in such additional manner as may be required by law. Certified copies of such regulations and the amendments thereto shall be received in evidence in all courts or other official proceedings in the State. The Board is required to hold public hearings prior to the adoption of any rule or regulation. All rules and regulations heretofore adopted by the State Board of Health shall remain in full force and effect until repealed by the State Board of Health or superseded by rules and regulations duly adopted by the State Board of Health. All rules and regulations adopted by the State Board of Health shall be enforced according to the laws of this State by its administrative staff or local health departments under the authority of the State Board of Health. When the local health departments are required to enforce the rules and regulations of the State Board of Health, the Board may specify that they are to do so under the supervision of the State Board of Health.

(b) The State Board of Health is authorized to accept and allocate or expend any grants-in-aid for public health purposes which may be made available to the State by the federal government. This chapter is to be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. The Board is further authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for receiving such federal funds. Any monies so received are to be deposited with the State Treasurer and are to be expended by the State Board of Health for the public health purposes specified.

(c) The State Board of Health is authorized to establish and appoint as many special advisory committees as may be deemed necessary to advise and confer with the Board concerning the public health. Members of any special advisory committee shall serve without compensation but may be allowed actual and

necessary travel and subsistence expenses when in attendance at meetings away from their places of residence.

(d) The State Board of Health shall not have any power or authority to regulate or restrict the license to practice of any person licensed to practice under General Statutes chapter 90. (1957, c. 1357, s. 1.)

§ 130-10. Employees of State Board of Health.—In order that the rules, regulations and directives of the State Board of Health may be enforced, the employees of the State Board of Health shall perform such functions as shall be delegated to them by the State Board of Health or by law. The State Board of Health may employ such persons as are deemed necessary by the Board for the purpose of carrying out the provisions of this chapter and the public health programs established thereunder. All such employees must meet the qualifications and conform to the provisions of chapter 126 of the General Statutes of North Carolina. (1957, c. 1357, s. 1.)

§ 130-11. Duties of the administrative staff of the State Board of Health.—The administrative staff of the State Board of Health shall have and exercise such administrative duties and authority as may be assigned by the State Board of Health, including the following:

- (1) To enforce the State health laws and the rules and regulations established under and pursuant to the Public Health Law of North Carolina by the State Board of Health.
- (2) To investigate the causes of epidemics, and of infectious, communicable, and other diseases affecting the public health so as to prevent, insofar as possible, such diseases; and to provide, under the rules and regulations of the Board, for the detection, reporting, prevention, and control of communicable, infectious, occupational, or any other diseases or health hazards considered dangerous to the public health.
- (3) To develop and carry out, with the approval of the State Board of Health, reasonable health programs, not inconsistent with law, that may be necessary for the protection and promotion of the public health and the control of disease.
- (4) To make sanitary and health investigations and inspections authorized by this chapter or by regulations prepared pursuant to said chapter or authorized by other applicable provisions of law under the direction of the State Board of Health, including the making of such investigations and inspections in cooperation with local health departments.
- (5) To conduct studies and research concerning the prevention of disease, the promulgation of life and the promotion of physical health and mental efficiency of the people of the State; including occupational health hazards and occupational diseases arising in and out of the course of employment in industry; and to make recommendations for the elimination or the reduction of such occupational health hazards.
- (6) To receive gifts or donations of money, securities, equipment, supplies, realty, or any other property of any kind or description which may be used by the Board for the purpose of carrying out its public health programs. Any property so donated for such purposes is to be used in carrying out the public health programs.
- (7) To acquire by purchase, devise or otherwise, such equipment, supplies and other property, real or personal, as shall be necessary to carry out the public health programs.
- (8) To continue the use of the official seal, the impression and description of which are on file in the office of the Secretary of State. Copies of the records and proceedings and copies of documents and papers in the possession of the State Board may be authenticated with the

seal of the Board, attested by the signature or a facsimile of the signature of the State Health Director, and when so authenticated shall be received in evidence to the same extent and effect as the originals.

- (9) To disseminate to the general public, through any desirable and feasible means, information in all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of documents, reports, bulletins and health information materials shall remain in the Board to be used to replace said materials.
- (10) To be the health advisors of the State, and to advise State officials in regard to the location, sanitary construction, and health management of all State institutions, and to direct the attention of the State to such health matters as in their judgment affect the industries, property, health, and lives of the people of the State. The staff shall make or cause to be made an inspection at least once in each year, and may at such other times as it may be requested to do so by the State Board of Public Welfare or other State agency or institution, of public institutions and facilities including those subject to license or inspection by such State Board of Public Welfare or other State agency or institution. The staff shall make a report as to the health conditions of such agencies or institutions, with suggestions and recommendations, to their respective boards of directors or trustees and/or the licensing or inspecting authority; and it shall be the duty of the persons in immediate charge of said institutions or facilities to furnish all assistance necessary for a thorough inspection.
- (11) To be the nutrition advisors to the institutions owned and operated by the State, or any county, and to advise said institutions in regard to the nutritional adequacy of diets served to the patients or inmates therein.
- (12) To make a biennial report to the General Assembly through the Governor. (1957, c. 1357, s. 1.)

§ 130-12. Duties of the State Health Director.—The State Health Director shall have and exercise the following authorities and duties in addition to all other authorities and duties conferred upon him by the State Board of Health:

- (1) To be the secretary, treasurer, and executive officer of the State Board of Health.
- (2) With the approval of the State Board of Health, to establish such organizational units as he may deem necessary for the effective administration and enforcement of the public health laws, rules and regulations, and to abolish, change, or extend any organizational units so created or established.
- (3) To prescribe, with the approval of the State Board of Health, regulations not inconsistent with law for the government of the administrative staff, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of the records, papers, books, documents, and property pertaining to the proper functioning of the State Board of Health and its administrative staff.
- (4) By and with the approval of the State Board of Health, to hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon the Board.

Whenever the State Health Director is responsible for the performance of any

act, he may authorize a responsible employee of the State Board of Health or a local health director to perform the action for him; provided, that the delegation by the State Health Director of the performance of any such action to a responsible employee shall not relieve the State Health Director from any responsibility placed upon him by this chapter. (1957, c. 1357, s. 1.)

ARTICLE 3.

Local Health Departments.

§ 130-13. **County health departments.** — Each county is hereby authorized to operate a health department. The policy-making body for the county health department shall be a county board of health composed of three or more ex officio and four public members. The ex officio members are the chairman of the board of county commissioners; the mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county) and the mayors of all other incorporated cities within the jurisdiction of the county health department which have a population in excess of 15,000 according to the latest decennial census; and the county superintendent of schools. The public members, heretofore selected for staggered four-year terms by the ex officio members, are to include a licensed physician, a licensed pharmacist, a licensed dentist, and a public-spirited citizen. Beginning with January, 1958, the ex officio members shall hold a meeting the first week in January of each year for the purpose of electing or appointing a public member to fill the vacancy created by the expiration of the term of a public member. When any of the three specified public members, namely a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, such place shall be filled with a public-spirited citizen. The terms of all members of a county board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified.

Upon the formation of a new county health department, the ex officio members shall name the four public members; one of the public members of the county board of health shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years; thereafter, all appointments shall be for a term of four years. The county board of health shall elect its own chairman. The county health director shall act as secretary to the county board of health, and a majority of the members of the county board of health shall constitute a quorum.

Those counties which now have special city-county boards of health, as authorized by any Private, Local, or Public-Local Act of the General Assembly, for the purpose of carrying on a joint health program, shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State Health Director, in writing; in which event, the provisions of this section shall apply.

All vacancies in the membership of the public members of the county board of health shall be filled by the ex officio members at the next meeting of the county board of health following the creation of the vacancy. In case any public member is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Public members of any county board of health shall be eligible for reelection or reappointment. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7064; 1931, c. 149; 1941, c. 185; 1945, c. 99; 1945, c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1.)

§ 130-14. **District health departments.**—Under rules and regulations established by the State Board of Health, district health departments including more than one county may be formed in lieu of county health departments for each of the counties involved when the following condition or conditions exist:

- (1) When the funds derived from the tax levy made under the authority of G. S. 130-21 or such greater rate as the county may levy, plus available State and other funds, are insufficient to provide a minimum standard health department of one medical officer, two nurses, one sanitarian, one clerk, and a regular dental program, or
- (2) When, in the opinion of the State Board of Health, special problems or special projects arise which can be handled more advantageously on a district basis and the consolidation is approved by the State Board of Health and the board of health of each county involved.

Where two or more counties are combined into a district health department, the policy-making body for the district health department shall be a district board of health composed of three or more ex officio members and four public members. The ex officio members shall be selected by the State Health Director. At least one of the ex officio members must come from each participating county, and the ex officio members shall include at least one chairman of a board of county commissioners, one mayor of a town which is the county seat, and one county superintendent of schools. The ex officio members shall be appointed during the first week of each December following the general election in which members of the General Assembly are elected and shall serve for a period of two years from and after the date of appointment. The public members are to serve four-year, staggered terms, with one member being elected by the ex officio members at an annual meeting during the first week of January of each year. One of the public members shall be a licensed dentist, one a licensed physician, one a licensed pharmacist, and the other shall be a public-spirited citizen. At least one public member must reside in each county, but not more than one half of the public membership may come from one county. If more than four counties form a district, an additional public member may be added for each county in excess of four. Where any of the three specified public members, namely, a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the counties, such place shall be filled with a public-spirited citizen. The terms of all members of a district board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members, their successors shall be elected or appointed for the terms specified above and until their successors have been duly elected or appointed and have qualified.

Upon the formation of a new district health department, the public members shall be appointed by the chairmen of the boards of county commissioners of the counties within the district, meeting jointly; one for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. All appointments of the public members thereafter shall be made by the ex officio members and said appointments shall be for a term of four years. In cases where more than three counties are combined into a district, there shall be at least one ex officio member, who is a chairman of the board of county commissioners, a mayor of the town which is the county seat, or a county superintendent of schools from each county.

The district board of health shall elect its chairman. A majority of the members of the district board of health shall constitute a quorum and the district health director shall act as secretary to such board of health.

All vacancies in the ex officio membership of a district board of health caused by death, resignation, or any reason other than expiration of a term, shall be filled by appointments made by the State Health Director. Such appointments

shall be made from any of the public officers or officials specified above, and the duties of such public officials as members of said district board of health shall be ex officio duties. Appointments to fill vacancies of ex officio members shall be for the unexpired term of the member or members causing the vacancy or vacancies and shall extend until the time for the next regular appointments of ex officio members. All vacancies in membership of the public members of a district board of health shall be filled by the ex officio members at the next meeting of the district board of health following the creation of the vacancy. A member appointed to fill a vacancy of a public member shall be from the same county as the member causing the vacancy. In case any public member is a public officer or official, his membership and duties on the district board of health as a public member shall be deemed to be ex officio.

In lieu of district boards of health as herein described, upon approval of the board of commissioners of each county in the district, counties forming or which have formed district health departments may establish and maintain separate county boards of health, organized as prescribed in G. S. 130-13, to perform for their respective counties the functions in relation to the district health department which would have been performed by the district board of health had one been created, and each such board may maintain a separate budget. (1957, c. 1357, s. 1.)

§ 130-15. Removal of board members.—Any member of a local board of health may be removed from office by the local board of health for cause. (1957, c. 1357, s. 1.)

§ 130-16. Compensation of board members.—The members of a local board of health shall serve without compensation, except that they may receive eight dollars (\$8.00) per diem for each day in attendance at a meeting of said board, plus necessary travel expenses; provided that this article shall not repeal any local act or acts which authorize compensation to members of a local board of health in excess of eight dollars (\$8.00) per diem plus necessary travel expenses. (1957, c. 1357, s. 1.)

§ 130-17. Powers and duties of local boards; expenditures.—(a) The local boards of health shall have the immediate care and responsibility of the health interests of their city, county or district. They shall meet quarterly, and any three members of the board, or the chairman of the board, shall be authorized to call a special meeting of the board, through the local health director, whenever in their or his opinion the public health interests of the city, county or district require it. All expenditures shall be made in accordance with appropriations duly made under the provisions of the County Fiscal Control Act.

(b) The local boards of health shall make such rules and regulations, not inconsistent with law, as are necessary to protect and advance the public health. Where such rules and regulations deal with subject matter also covered by rules and regulations of the State Board of Health, and there is an emergency, or a peculiar local condition or circumstance, requiring such action in the interest of public health, the rules and regulations of the local boards may be more stringent, but not less stringent, than those of the State Board. In other instances where there is a conflict between the rules and regulations of the State Board and the local boards, the rules and regulations of the State Board shall prevail. All rules and regulations heretofore adopted by a local board of health shall remain in full force and effect until repealed by said local board of health or superseded by rules and regulations duly adopted by said local board of health.

(c) The rules and regulations of a local board of health shall apply to municipalities within the area over which the local board has jurisdiction, but the local board (other than a city board of health) shall not enact any rules and regulations applying to one municipality only, except where circumstances peculiar to

that municipality require more stringent rules and regulations. Where municipal ordinances deal with subject matter also covered by rules and regulations of a local board of health having jurisdiction over an area which includes the municipality, and there is an emergency, or a condition or circumstance peculiar to the municipality requiring such action in the interest of public health, the municipal ordinance may be more stringent, but not less stringent, than the rules and regulations of the local board of health. In other instances where there is a conflict between the rules and regulations of the local board and the municipal ordinance, the rules and regulations of the local board of health shall prevail.

(d) Before any rules and regulations of a local board of health, or any amendments or alterations thereof, hereafter adopted, amended, or altered, shall have the force and effect of law, they shall be posted at the courthouse door of each county within the jurisdiction of the board of health, and published at least once a week for two successive weeks in a newspaper having general circulation within the area over which the board of health has jurisdiction. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7065; 1957, c. 1357, s. 1.)

§ 130-18. **Health director.**—Each local board of health shall elect a health director meeting the qualifications set forth by the Merit System Council and subject to the provisions of chapter 126 of the General Statutes. Each local board of health may terminate the services of such local health director, subject to the provisions of chapter 126 of the General Statutes of North Carolina. Emergency and temporary appointments of a local health director may be made, when necessary, with the approval of the State Health Director. When, in the case of a vacancy, the local board of health fails for a period of sixty days or more to elect a health director, the State Health Director may appoint a health director to fill the vacancy. The health director so appointed shall serve until the local board of health elects a health director. (1957, c. 1357, s. 1.)

§ 130-19. **Powers and duties of health director.**—The local health director shall be the administrative head of the local health department, under the local board of health, and shall devote his full time to public health work, performing such duties as may be prescribed by law, by the local board of health, and by the State Board of Health. The local health director shall have general quarantine and sanitation authority, not inconsistent with State law, within the area which he serves. He shall disseminate public health information and promote the general public health. The county and city boards of education, the county and city superintendents of schools, the principals and teachers in the public schools, and the local health director shall cooperate to the end that better health will be promoted among the school children of the area served by such local health director. (1957, c. 1357, s. 1.)

§ 130-20. **Abatement of nuisances.**—Whenever and wherever a nuisance shall exist which in the opinion of the local health director is dangerous to the public health, it shall be his duty to notify in writing the person or persons responsible for its continuance, of the character of the nuisance and the means of abating it. The person or persons so notified shall proceed to abate the nuisance; provided that the person or persons so notified, within a reasonable time may appeal from the decision of the local health director to the local board of health. Upon receipt of notification of such appeal the local board of health shall grant a hearing, and if upon hearing of the matter, the local board of health finds that a nuisance does exist which is dangerous to the public health, then the person or persons responsible for the nuisance shall promptly proceed to abate it; provided that such person or persons may appeal from the decision of the local board of health to the superior court. If the person or persons responsible for the nuisance fails to abate it after notification by the local health director or after order to do so by the local board of health upon appeal to it or after order to do so by the superior court upon appeal to it, he shall be guilty of a misdemeanor.

Whenever and wherever a nuisance shall exist which is dangerous to the public health and such nuisance is of a character as to require in the interest of the public health immediate abatement or discontinuance the local health director may bring a proceeding in the superior court of the county in which the nuisance exists for the abatement of such nuisance and the superior court may upon hearing and for good cause shown enjoin the continuance of the condition creating the nuisance, irrespective of all other remedies at law. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C. S., ss. 7071, 7072; 1957, c. 1357, s. 1.)

§ 130-21. **Special tax for health purposes.**—The board of county commissioners of each county is hereby authorized to levy at any time a special tax for the preservation and promotion of the public health. This includes authority to appropriate annually and from time to time public monies for the maintenance and operation of a health department, and authority to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter a local health department; expenditures for all of these purposes are hereby declared to be necessary expenses, and the special approval of the General Assembly to levy special taxes therefor is hereby given. (1957, c. 1357, s. 1.)

§ 130-22. **Municipal health departments.** — The governing authorities of each city and town in North Carolina shall have the power and authority to appropriate annually and from time to time public monies for the maintenance and operation of a health department, including those which have heretofore been created and are existing as a joint city and county department of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such health department; expenditures for all of these purposes are hereby declared to be necessary expenses, and the special approval of the General Assembly to levy special taxes therefor is hereby given. (1957, c. 1357, s. 1.)

§ 130-23. **County physician.**—The county commissioners of each county are authorized to employ a county physician. The person employed to perform the duties of county physician shall not be required to take an oath, and shall not be required to post bond, shall serve at the will of the county commissioners, and shall not be deemed to be holding a public office within the meaning of article 14, § 7 of the Constitution of North Carolina. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and the county physician. The county physician shall have the right to employ any other regularly licensed physician of his county to perform any or all of the duties pertaining to his function when, in his judgment, it is desirable to do so; but the terms under which said physician is employed by the county physician shall be approved by the board of county commissioners. The board of county commissioners shall prescribe the duties, not inconsistent with law, the county physician is to perform. The person employed as county physician may be appointed as county medical examiner under the provisions of G. S. 130-197. The county commissioners of each county are authorized to require the local health director to serve as county physician. (1901, c. 245, s. 3; Rev., s. 4445; 1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S., s. 7069; 1955, c. 972, s. 3; 1957, c. 1357, s. 1.)

ARTICLE 4.

Incorporation of Health Codes by Reference.

§ 130-24. **Adoption of health codes by reference.**—The State Board of Health, or any local board of health may, in its rules and regulations promulgated under authority of this chapter, adopt by reference a code or any parts thereof, without setting forth in full the code or parts thereof, provided that copies of such code or such parts thereof and any related documents are filed in accordance with G. S. 130-25. The requirements of this chapter regarding the publication and posting of rules and regulations shall not apply to any code or parts of any code or related documents adopted by reference in any rules and regulations. For the purposes of this article, "code" means a printed code, regulation or set of regulations, standard or set of standards, or ordinances prepared as a model or standard concerning, affecting, or relating to a subject regulated in the interests of the public health. "Related documents", as herein used, means any printed document or part thereof adopted by reference in a code directly, or by successive adoptions by reference through other printed documents. "Printed" includes lithographing and any other method of duplicating. (1957, c. 1357, s. 1.)

§ 130-25. **Filing of codes adopted by reference.**—Copies of such code or such parts thereof and the related documents adopted by reference under the provisions of this article shall be filed by the State Board of Health with the Secretary of State as required by G. S. 143-195, or shall be filed by the local boards of health with the clerk of the superior court in the county, or counties, within the jurisdiction of the local board of health. (1957, c. 1357, s. 1.)

§ 130-26. **Changes in codes adopted by reference.** — Changes in any code or related documents incorporated by reference into the rules and regulations of the State Board of Health or local boards of health shall not alter or affect the rules and regulations until the change has been adopted by the State Board of Health or local board of health as a part of its rules and regulations. (1957, c. 1357, s. 1.)

ARTICLE 5.

Mental Health Outpatient Clinics.

§ 130-27. **Designation of State Board of Health.**—The State Board of Health is hereby designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina under the provisions of the National Mental Health Act and similar federal legislation pertaining to mental health activities. The State Board of Health is further designated as the State agency authorized to establish and administer minimum standards and requirements for mental health clinics as condition for participation in federal-State grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the State policy hereafter expressed: Provided, that nothing in this article shall be construed to prohibit the operation of outpatient mental clinics by the North Carolina Hospitals Board of Control under the provisions of G. S. 122-11.6, or the operation of an outpatient mental clinic at the North Carolina Memorial Hospital in Chapel Hill. (1955, c. 155, s. 1; 1957, c. 1357, s. 1.)

§ 130-28. **State policy.**—It shall be the policy of the State to develop programs pertaining to mental health clinics and related activities in accordance with the traditional State-local partnership in health affairs. It shall be the policy of the State to promote the establishment of mental health outpatient clinics only in those localities which have shown a readiness to contribute to the financial support of such clinics, assisted by federal and State grants-in-aid to the extent available. (1955, c. 155, s. 1; 1957, c. 1357, s. 1.)

§ 130-29. **Authority of local governmental units.**—The governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of outpatient mental clinics which serve such localities whether or not the facilities of the clinic are physically located within the boundaries of such cities, towns or counties, and whether or not such clinics are owned or operated by the local governmental units, and such support or partial support is hereby declared to be a necessary expense within the meaning of article VII, § 7 of the North Carolina Constitution. (1955, c. 155, s. 1; 1957, c. 1357, s. 1.)

ARTICLE 6.

State Laboratory of Hygiene.

§ 130-30. **Laboratory established.** — For the better protection of the public health there is established under the control and management of the State Board of Health a State Laboratory of Hygiene. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7056; 1957, c. 1357, s. 1.)

§ 130-31. **To analyze potable waters.**—The State Board of Health shall cause to be made monthly examinations of samples from all the public water supplies of the State. Any water supply furnishing potable water to ten or more residences or businesses or combination of residences or businesses, shall be deemed a public water supply. The laboratory shall also examine monthly samples of all waters sold within the State in bottle or other package, and of all spring waters maintained for human consumption in connection with any hotel, park, or resort within the State. However, such spring waters need be examined only during periods when such hotels, parks, or resorts are open for the accommodation of the public. The State Board of Health shall also examine any other waters when a specimen is sent to the State Laboratory of Hygiene by a local health director or a licensed physician.

When examinations made pursuant to this article disclose that any waters contain intestinal microorganisms or other evidence of contamination, immediate notice shall be given to the suppliers of such waters, and such waters shall thereafter be examined at least weekly until evidence of contamination is no longer present. The State Board of Health may order the cessation of the supplying of water found to be contaminated, when such action is necessary for the protection of the public health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7057; 1957, c. 1357, s. 1.)

§ 130-32. **Fees for analyzing waters.**—The State Board of Health shall collect from every supplier of water from a public water supply as defined in G. S. 130-31 and from every supplier of water in bottles or otherwise, an annual examination fee, payable quarterly, to be determined as follows: Where the gross sales for the previous year are two thousand dollars (\$2,000.00) or more, the annual fee is to be sixty-four dollars (\$64.00); where the gross sales for the previous year are one thousand five hundred dollars (\$1,500.00) or more but less than two thousand dollars (\$2,000.00), the annual fee is to be fifty dollars (\$50.00); where the gross sales for the previous year are one thousand dollars (\$1,000.00) or more but less than one thousand five hundred dollars (\$1,500.00), the annual fee is to be forty dollars (\$40.00); where the gross sales for the previous year are five hundred dollars (\$500.00) or more but less than one thousand dollars (\$1,000.00), the annual fee is to be thirty dollars (\$30.00); where the gross sales for the previous year are two hundred and fifty dollars (\$250.00) or more but less than five hundred dollars (\$500.00), the annual fee is to be twenty dollars (\$20.00); where the gross sales for the previous year are less than two hundred and fifty dollars (\$250.00), the annual fee is to be fifteen dollars (\$15.00). For any spring connected with a hotel, park or resort, an annual exam-

ination fee of fifteen dollars (\$15.00) shall be charged, in addition to the fees named above for spring water sold in bottle or otherwise.

In cases where water is supplied without charge, the fee for the water inspection shall be the same as if the supplier had charged each residence or business one dollar (\$1.00) per month for the water supplied.

When any person, firm or corporation is delinquent in the payment of the fees provided by this article, the State Health Director shall notify the Attorney General of such delinquency. The Attorney General may institute an action in the superior court of the county in which such delinquent person, firm or corporation resides or is situate for the collection of said delinquent fees. Any judgment rendered against a delinquent in such an action shall constitute a lien as provided by the terms of G. S. 1-234. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7059; 1935, c. 340; 1957, c. 1357, s. 1.)

§ 130-33. Duty of seller to make reports and transmit samples.—Every person, firm, or corporation supplying water, as set forth in G. S. 130-31, shall file with the treasurer of the State Board of Health annually in the month of January an affidavit as to the gross amount received from sales of water for the previous calendar year, unless such person, firm or corporation is paying the maximum fee for that year; or, if water were supplied without charge, the gross amount computed on the basis of the second paragraph of G. S. 130-32. Failure to file such affidavit within the time prescribed shall subject the person, firm or corporation to the maximum fee for the current year.

Samples shall be transmitted within five days of receipt of sterilized containers from the State Laboratory of Hygiene. Transportation charges shall be paid by the sender. In the case of bottled waters, the State Board of Health is authorized to examine samples purchased by it in the open market, in addition to those furnished the Board under the provisions of this article. (1911, c. 62, s. 36; C. S., s. 7060; 1957, c. 1357, s. 1.)

§ 130-34. Nonresidents' fees.—Any nonresident person or firm, or foreign corporation who shall sell or offer for sale any water for consumption in this State shall pay the same examination fees as are paid by resident sellers; provided, that satisfactory evidence of purity furnished by the state health laboratories of other states agreeing to reciprocate in the matter with this State shall be accepted in lieu of the license fees. (1911, c. 62, s. 36; C. S., s. 7061; 1957, c. 1357, s. 1.)

§ 130-35. To make other examinations.—The State Board of Health is authorized to make in its laboratory such other examinations as the public health may require. (1957, c. 1357, s. 1.)

ARTICLE 7.

Vital Statistics.

§ 130-36. State Board of Health to enforce regulations.—The State Board of Health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in the succeeding section, and in the Central Office of Vital Statistics at the capital of the State. The said Board shall be charged with the uniform and thorough enforcement of the provisions of this article throughout the State, and shall from time to time recommend to the General Assembly any additional legislation that may be necessary for this purpose. (1913, c. 109, s. 1; C. S., s. 7086; 1957, c. 1357, s. 1.)

§ 130-37. State Registrar. — The State Health Director shall be State Registrar of Vital Statistics, and shall have general supervision over the Central

Office of Vital Statistics, which is hereby established. (1913, c. 109, s. 2; C. S., s. 7087; 1941, c. 224; 1957, c. 1357, s. 1.)

§ 130-38. **Registration districts.**—For the purposes of this article, the State shall be divided into local registration districts as follows: Each city or incorporated town with a population of twenty-five hundred (2500) or over according to the latest decennial census, each township, each county, and each area served by a local health department, or any combination of the above governmental units, as designated by the State Registrar. (1913, c. 109, s. 3; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1.)

§ 130-39. **Control of State Registrar over local districts.**—The State Registrar shall have authority to abolish or consolidate existing registration districts, and/or create new districts when economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3; 1957, c. 1357, s. 1.)

§ 130-40. **Appointment of local registrar.**—Whenever the State Board of Health fails to exercise the authority granted to it under the provisions of G. S. 130-41 to designate and appoint the local health director as local registrar for a county, the chairman of the board of county commissioners of such county shall appoint a local registrar of vital statistics for each incorporated city or town of twenty-five hundred (2500) population and over and for each township or any combination thereof in his county, and shall notify the State Registrar in writing of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year for which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the chairman of the board of county commissioners, except where the local health director is appointed under the provisions of G. S. 130-41. On the making of such appointment, the chairman of the board of county commissioners shall notify the State Registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any local registrar appointed under the provisions of this section, a successor shall be appointed by the chairman of the board of county commissioners. Except for local health directors serving as local registrar, each local registrar shall be a bona fide resident of the local registration district for which he is appointed; and removal from the district shall terminate his appointment. (1913, c. 109, s. 4; 1915, c. 20; C. S., s. 7089; 1955, c. 951, s. 6; 1957, c. 1357, s. 1.)

§ 130-41. **Local health director may act as registrar.** — The State Board of Health shall have authority and power to designate and appoint the local health director as registrar for the area over which he has jurisdiction, or any fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the local health director under such appointment, shall be used by the local health department for health services. (1933, c. 9, s. 3; 1955, c. 951, s. 7; 1957, c. 1357, s. 1.)

§ 130-42. **Removal of local registrar.**—Any local registrar who, in the judgment of the State Registrar, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required by this article, shall be forthwith removed from his office by the State Registrar, and such other penalties may be imposed as are provided under the provisions of this article. (1913, c. 109, s. 4; C. S., s. 7090; 1957, c. 1357, s. 1.)

§ 130-43. **Appointment of deputy and sub-registrars.**— Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. When it may appear necessary, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial-transit permits in and for such portions of the district as may be designated; and each sub-registrar shall enter the date the certificate was received by him and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the State Registrar and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the State Registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S., s. 7091; 1955, c. 951, s. 8; 1957, c. 1357, s. 1.)

§ 130-44. **Burial-transit permit authorizing burial or other disposition of body.**—The body of any person whose death occurs in this State, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a burial-transit permit authorizing a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. No such burial-transit permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided unless otherwise authorized by the State Registrar. No dead body may be transported into a registration district in North Carolina for burial or other disposition unless accompanied by a burial-transit permit issued in accordance with the law and health regulations of the place where the death occurred. Such permit shall be authority for burial or other disposition of the body. No local registrar shall receive any fee for the issuance of burial-transit permits under this article. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1.)

§ 130-45. **Fetal deaths to be registered.**—A stillborn child shall be registered as a fetal death on a fetal death (stillbirth) certificate when the child has advanced to at least the twentieth (20th) week of uterogestation. The fetal death certificate shall contain such information as may be prescribed by the State Registrar. A burial-transit permit shall be required prior to any final disposition of the fetus, or prior to removing the fetus from or into any registration district. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of fetal death. When a fetal death is attended by a midwife, the midwife shall sign as the attendant, but shall not sign the medical certificate of fetal death; but such cases, and fetal deaths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance as provided for in G. S. 130-47. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1.)

§ 130-46. **Contents of death certificate.**—The certificate of death shall contain, as a minimum, those items prescribed and specified on the standard certificate of death as prepared by the national agency in charge of vital statistics except as the same may be changed or amended by the North Carolina State Registrar of Vital Statistics.

The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial-transit permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; C. S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1.)

§ 130-47. Death without medical attendance; duty of undertaker and officials.—In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the burial-transit permit, inform the local health director and refer the case to him for immediate investigation and certification; provided, the board of county commissioners of any county may designate the coroner to perform such duties in lieu of the local health director, if the coroner is a licensed physician, and when such designation is made by the board of county commissioners, the registrar shall, prior to the issuance of the burial-transit permit inform the coroner and refer the case to him for immediate investigation and certification. When any board of county commissioners designates the coroner to perform such duties in lieu of the local health director, the board of county commissioners may pay the coroner a fee or salary for such investigation, in an amount to be determined by the board of county commissioners. Nothing herein contained shall prevent any medical examiner appointed under the provisions of article 21 of this chapter from making such investigation and certification when required to do so under the provisions of said article. When there is no medical examiner, local health director or person acting as local health director, the registrar shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial-transit permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death. (1913, c. 109, s. 8; C. S., s. 7095; 1951, c. 1091, s. 2; 1955, c. 972, s. 4; 1957, c. 1357, s. 1.)

§ 130-48. Preparation of death certificates for members of the armed forces dying outside of the United States.—The State Registrar of Vital Statistics, upon presentation of an official notice of death from the United States government for a member of the armed forces dying outside of the United States, shall prepare a death certificate showing such facts pertaining to such death as may be available from the government notice. Such certificate shall be placed on file in the office of the State Registrar and shall be permanently preserved. The State Registrar of Vital Statistics shall forward a copy of such certificate to the register of deeds of the county of the last known residence of such deceased person. Certified copies of such certificates shall be prepared by the State Registrar or his duly authorized agent, upon request and such copies shall be accepted as prima facie evidence of the facts stated therein. (1949, c. 174; 1957, c. 1357, s. 1.)

§ 130-49. Undertaker to file death certificate and obtain burial-transit permit.—The undertaker or any other person disposing of or removing a dead body or the remains, shall file the certificate of death, or fetal death, with the local registrar of the district in which the death occurred. He shall obtain a burial-transit permit prior to any disposition or removal of the body or remains. He shall file the certificate of death or fetal death with the local registrar prior to obtaining the burial-transit permit unless otherwise authorized by the State Registrar. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, and if none to the medical examiner, local health director or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in G. S. 130-46 and 130-47. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a burial-transit permit for burial, removal or other disposition of the body. He shall deliver the burial-transit permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the burial-transit permit to the box containing the corpse, when shipped by any transportation company, this burial-transit permit to accompany the corpse to its destination, where, if within the State, it shall be delivered to the person in charge of the place of burial. (1913, c. 109, s. 9; C. S., s. 7096; 1955, c. 951, s. 12; 1957, c. 1357, s. 1.)

§ 130-50. Sales of coffins or caskets regulated.—Every person, firm, or corporation selling a coffin or casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the State Registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling coffins or caskets shall report to the State Registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling coffins or caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a coffin or casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the State Registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Board of Health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S., s. 7097; 1957, c. 1357, s. 1.)

§ 130-51. Contents of burial-transit permit.—The burial-transit permit shall contain, as a minimum, those items prescribed and specified by the national agency in charge of vital statistics except as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics. (1913, c. 109, s. 10; C. S., s. 7098; 1955, c. 951, s. 13; 1957, c. 1357, s. 1.)

§ 130-52. Interment without burial-transit permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment, disinterment, or other disposition of any body unless it is accompanied by a burial-transit permit, as herein provided. Such person shall endorse upon the burial-transit permit the date of interment, or disinterment over his signature, and shall return all burial-transit permits so endorsed to the local registrar of his district within ten days from the date of disposal. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and the name and address of the undertaker;

which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial-transit permit, giving the date of burial, and shall write across the face of the burial-transit permit the words "No person in charge," and file the burial-transit permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099; 1955, c. 951, s. 14; 1957, c. 1357, s. 1.)

§ 130-52.1. **Registration of divorces and annulments; duty of clerk of court granting divorce, etc.; costs and fees; copies of record.**—On or before the fifteenth day of each month the clerks of the superior courts of this State and the clerks of all other courts authorized by law to grant divorces or annulments of marriage shall transmit to the Office of Vital Statistics of the State Board of Health in Raleigh, on forms prescribed and furnished by it, a record of each and every decree of divorce or annulment granted by the said courts during the preceding calendar month, giving the names of the parties and such other data as may be required by such forms. The sum of one dollar (\$1.00) shall be taxed as a part of the costs in the cause in which the decree of divorce or annulment is granted and the same shall be collected by the clerk of the court as costs. With each monthly report, the clerk shall also transmit to the Office of Vital Statistics one half of the cost above provided for, to be used to recompense the State partially for the expense of filing and keeping such records. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee of one dollar (\$1.00), and such true copy shall be competent evidence in any court or other proceeding in this State with like force and effect as the original. The moneys received by the office pursuant to this section shall be turned over to the State Treasurer and paid into the General Fund of the State. The Office of Vital Statistics is hereby authorized and empowered to do all things necessary to implement and carry out the provisions of this section. (1957, c. 983.)

Editor's Note.—The act inserting this section is effective as of January 1, 1958.

§ 130-53. **Registration of births.**—The birth of every child born in this State shall be registered as hereinafter provided. (1913, c. 109, s. 12; C. S., s. 7100; 1957, c. 1357, s. 1.)

§ 130-54. **Birth certificate to be filed within five days.**—Within five days after the date of each live birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Board of Health, with a view of procuring a full and accurate report with respect to the contents prescribed in G. S. 130-58. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified on the certificate, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signa-

ture, when requested to do so by the local registrar. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7101; 1957, c. 1357, s. 1.)

§ 130-55. Registration of birth certificate more than five days and less than four years after birth.—Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G. S. 130-54. (1941, c. 126; 1957, c. 1357, s. 1.)

§ 130-56. Registration of birth certificate four years or more after birth.—The State Board of Health is authorized to promulgate rules and regulations under which any birth which has not been registered with the Office of Vital Statistics within four years after birth, as provided in G. S. 130-54 and 130-55, may be registered with the register of deeds of the county in which the birth occurred: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G. S. 130-54. Each such birth must be registered in duplicate on forms approved by the State Board of Health and furnished by the State Registrar. The register of deeds shall forward the original and duplicate certificate to the Office of Vital Statistics for final approval. If the certificate complies with the rules and regulations of the State Board of Health and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

Certificates registered with the register of deeds under this section shall contain the date of the delayed filing and be distinctly marked "Delayed" and those altered after being filed shall contain the date of alteration and be distinctly marked "Altered."

All copies of birth certificates registered under the provisions of this section, properly certified by the State Registrar, shall have the same evidentiary value as those registered within five days after birth.

The register of deeds shall be entitled to a fee of one dollar (\$1.00) for such registration, to include the issuance of one certified copy, and a fee of fifty cents (50¢) for each additional certified copy issued by him, to be paid by the applicant. (1941, c. 126; 1957, c. 1357, s. 1.)

§ 130-57. Register of deeds may perform notarial acts.—The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration of a birth certificate four years or more after the birth. The register of deeds shall be entitled to a fee of fifty cents (50¢) for each acknowledgment, oath, affirmation, or other notarial act performed by him, when such acknowledgment, oath, affirmation, or other notarial act is sealed with his official seal, such fee or fees to be paid by the applicant.

All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds, prior to the ratification of this section, relative to the registration of birth certificates four years or more after birth, are hereby validated. (1945, c. 100; 1957, c. 1357, s. 1.)

§ 130-58. Contents of birth certificate.—The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics, except as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics: Provided, that in case of a child born out of wedlock, the father's name shall not be shown on the certificate without his written consent under oath, and, provided, further, that in case of a child born out of

wedlock, the last name of the child shall be the same as that of the mother, or, if requested in writing and under oath, the name of the child shall be the same as the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, or her whereabouts shall have been unknown for a period of three years, then the person or persons caring for such child may make such a request for such change. Where it has been adjudicated in a court of competent jurisdiction that a mother has abandoned her child, then the consent required of the mother by this section shall not be necessary. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1.)

§ 130-59. Validation of irregular registration of birth certificates.

—The registration and filing with the Office of Vital Statistics of the birth certificate of any person whose birth has not been registered within five days of birth under G. S. 130-54 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by G. S. 130-54. (1941, c. 126; 1957, c. 1357, s. 1.)

§ 130-60. Blank furnished for report of name.—When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (1913, c. 109, s. 15; C. S., s. 7103; 1957, c. 1357, s. 1.)

§ 130-61. Institutions to keep records of inmates.—All superintendents or managers, or other persons in charge of hospitals, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates or patients in their institutions. Such records shall be in the form of the certificates provided for by this article, as directed by the State Registrar. This information must be obtained at the time of the inmate's or patient's admittance or as soon thereafter as practicable, but in any event prior to the discharge of said inmate or patient. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S., s. 7104; 1957, c. 1357, s. 1.)

§ 130-62. Certificate of identification in lieu of birth certificate where parentage cannot be established.—A certificate of identification for a foundling child whose parentage cannot be established shall be filed by the juvenile court which determines that the child is a foundling, with the local registrar of vital statistics of the district in which the child was found. This certificate of identification shall contain such information and be in such form as the State Board of Health may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3; 1957, c. 1357, s. 1.)

§ 130-63. Certificate of identification for child of foreign birth.—In the case of an adopted child born in a foreign country and having legal settlement in this State, the State Registrar shall, upon the presentation of a certified

copy of the original birth certificate from the country of birth and a copy of the final order of adoption signed by the clerk of court or other appropriate official prepare a certificate of identification for such child. The certificate shall contain the same information as is required by G. S. 48-29 (a) for children adopted in this State, except that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2; 1955, c. 951, s. 16; 1957, c. 1357, s. 1.)

§ 130-64. State Registrar to supply blanks; to perfect and preserve birth and death certificates.—The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificate received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar.

The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. Adequate fire-proof space in one of the State buildings for filing the birth and death records made and returned under this article shall be provided by the General Services Division. No persons other than those authorized by the State Registrar shall have access to any original birth and death records. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17; 1957, c. 1357, s. 1.)

§ 130-64.1. Amendment of birth and death certificate.—No certificate of birth or death, after its acceptance for registration by the State Registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendment requests properly dated, signed and witnessed: Provided, that the State Registrar may promulgate rules and regulations governing the type and amount of proof of the correctness of the change or amendment which must accompany the request for a change or amendment in the certificate of birth or death, or other record made in pursuance of this article: Provided, further, that a new certificate of birth shall be made by the State Registrar whenever:

- (1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;
- (2) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;
- (3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the State Registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall forward a copy of the new certificate to the register of deeds of the county of birth,

and the copy of the certificate of birth on file with the register of deeds, if any, shall be replaced with the new copy. The State Registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1.)

§ 130-65. **To inform registrars as to dangerous diseases.**—The State Registrar shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Board of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S., s. 7106; 1955, c. 951, s. 18; 1957, c. 1357, s. 1.)

§ 130-66. **Birth certificate as evidence.**—Certified copies of birth certificates shall be accepted by public school authorities in this State as prima facie evidence of the age of children registering for school attendance, and no other proof need be required. In addition, certified copies of birth certificates shall be required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof need be required. When, however, it is not possible to secure such certified copy of birth certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S., s. 7107; 1957, c. 1357, s. 1.)

§ 130-67. **Church and other records filed and indexed; fees for transcript.**—If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this State, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any vital information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the State Registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of fifty cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript or photocopy, and to a fee of fifty cents (50¢) for the certificate, which fees shall be paid by the applicant. (1913, c. 109, s. 17; C. S., s. 7108; 1957, c. 1357, s. 1.)

§ 130-68. **Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.**—Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the State Registrar of Vital Statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the said Registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner.

Upon receipt of said notification the State Registrar shall record the infor-

mation upon the birth certificate of the illegitimate child: Provided, however, that unless the judgment, order, or decree discloses that the child has been legitimated under the provisions of G. S. 49-10 or 49-12, the surname of said illegitimate child shall remain the same as the surname of its mother. (1941, c. 297, s. 1; 1955, c. 951, s. 19; 1957, c. 1357, s. 1.)

§ 130-69. Duties of local registrar as to birth and death certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the State Registrar; and if any certificate of death, or fetal death, is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and he may withhold the burial-transit permit until such defects are corrected. All certificates, either of birth or of death, shall be typed or written legibly, in permanent black or blue-black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, the local registrar shall then issue a burial-transit permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no burial-transit permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, or attendant, and require him to supply the missing items of information if they can be obtained. He may number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make two complete and accurate copies of each birth and each death certificate registered by him. Such copies may be made on blanks supplied by the State Registrar; or, in lieu thereof, subject to the approval of the register of deeds, he may cause photocopies to be made in such manner and form, and on paper of such standard grade and quality as the State Registrar may approve. The State Registrar shall not be responsible for any expenses incurred in preparing such photocopies. The local registrar shall, on the fifth day of each month, transmit to the State Registrar all original certificates registered by him for the preceding month and shall, at the same time, transmit to the register of deeds of the county or his agent a copy of each certificate of birth or death registered by him for the preceding month and shall retain one copy of each certificate for his own files. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the State Registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1955, c. 951, s. 20; 1957, c. 1357, s. 1.)

§ 130-69.1. State Registrar to forward copies of certificates of nonresidents.—Upon receipt of the original certificates of birth, death, and fetal death from the local registrars of vital statistics, the State Registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within ninety days, through the local health department, to the register of deeds of the county of residence. (1949, c. 133; 1955, c. 951, s. 21; 1957, c. 1357, s. 1.)

§ 130-70. **Register of deeds to preserve copies of birth and death records.**—The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished to him by the local registrar under the provisions of G. S. 130-69, and shall make and keep a proper index of such certificates. These records shall be open to public inspection. The register of deeds may make duplicates, copies or abstracts of such records, for which he shall be entitled to a fee of fifty cents (50¢) per copy. (1957, c. 1357, s. 1.)

§ 130-71. **Delivery of data to local health director.**—Each local registrar, other than a local health director who is serving as local registrar, shall, on or before the fifth day of each month, deliver by mail or in person to the local health director of his respective jurisdiction such data from birth, death, and fetal death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said local health director, and as authorized by the State Registrar of Vital Statistics.

All forms necessary for the use of local registrars in complying with this section shall be supplied, without charge, by the State Registrar of Vital Statistics. (1925, c. 53; 1955, c. 951, s. 22; 1957, c. 1357, s. 1.)

§ 130-72. **Pay of local registrars.**—Each local registrar shall be paid the sum of fifty cents (50¢) for each birth, death, and fetal death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the State Registrar, as required by this article. In case no births, deaths, or fetal deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents (50¢) for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers. The State Registrar shall certify every six months to the treasurers of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C. S., s. 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; 1957, c. 1357, s. 1.)

§ 130-73. **Certified or photocopies of records; fee.**—The State Registrar shall, upon request, supply to any authorized applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of one dollar (\$1.00), to be paid by the applicant. Such certified copy of the birth record shall be issued in the form of a birth registration card which shall include only the full name, birth date, city and county of birth, race, sex, date of filing, and birth certificate number: Provided, that a full and complete copy of the birth certificate shall be supplied upon request to the registrant, if of legal age; or to the parent or parents; or to public welfare or public health agencies; or to duly licensed private welfare agencies upon the approval of the State Registrar; or to any other person upon the order of a judge of the superior court. Such birth registration card, properly certified by the State Registrar or his duly authorized agent, shall be prima facie evidence of the facts stated therein. Any federal agency or bureau approved by the State Registrar may, however, obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of fees herein prescribed, and for transcripts so furnished the State Registrar may receive from such agency or bureau such compensation for this service as the State Board of Health may approve. Any copy of the record of a birth or death, properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of one dollar (\$1.00) for each hour or fractional part of an hour of time

of search, said fee to be paid by the applicant. The State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the Treasurer of the State of North Carolina for use by the State Board of Health for health purposes. Provided, that upon the receipt of a certificate of birth as provided in G. S. 130-69, unless said child was born out of wedlock, the State Registrar shall within three months forward a photocopy thereof for the child to the address of the mother, if living; and if not, to the father or person standing in loco parentis to said child. No fee shall be collected for supplying this certificate.

When issuing a certified copy of the record of any birth or death registered under the provisions of this article, the State Registrar may, upon request, supply to any applicant a photocopy of such record with a photocopy of the certificate of the State Registrar signed by a facsimile of his signature; and such photocopy of the record of a birth or death shall be prima facie evidence in all courts and places of the facts therein stated. The State Registrar shall have the power and authority to appoint employees or agents, and upon such appointment by the State Registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the State Registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or with the facsimile of the State Registrar affixed thereto shall be prima facie evidence in all courts and places of the facts therein stated. The provisions of this section shall not apply to copies of birth certificates of adopted children. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; C. S., s. 7111; 1941, c. 297, s. 4; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3; 1955, c. 951, s. 23; 1957, c. 1357, s. 1.)

§ 130-74. Information furnished to officers of American Legion or other veterans' organization.—Upon application to the Office of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, or by any officer of any other veterans' organization chartered by Congress or organized and operating on a Statewide or nationwide basis, it shall be the duty of the Office of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to records of persons who are members or former members of the armed forces of the United States and members of their families and/or beneficiaries under government insurance or adjusted compensation certificate issued to such member or former member of armed forces of the United States: Provided, that the State Registrar shall furnish to any American Legion Post in this State, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this article. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24; 1957, c. 1357, s. 1.)

§ 130-75. Registers of deeds to issue birth certificates without cost to persons entering military forces.—The several registers of deeds of the State of North Carolina are authorized and directed to issue, free of cost, birth certificates to persons about to enter the United States military forces. (1951, c. 1113; 1957, c. 1357, s. 1.)

§ 130-76. Violations of article; penalty.—(a) Felonies.—Any person, who for himself or as an officer, agent, or employee of any person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done without the authority of a burial-transit permit issued by the local registrar of the district in which the death occurred or in which the body was found, shall be deemed guilty

of a felony, and upon conviction thereof shall be punished by fine or imprisonment in the State's prison for a term of not more than ten years, or by both such fine and imprisonment, in the discretion of the court.

(b) Misdemeanors.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

- (1) Shall remove the dead body of a human being, or permit the same to be done, from the primary registration district in which the death occurred or the body was found without the authority of a burial-transit permit issued by the proper local registrar;
- (2) Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;
- (3) Wilfully alter, otherwise than as provided by G. S. 130-64, or falsify any certificate or record required by this article; or wilfully alter, falsify, or change any photocopy, certified copy, extract copy, or any document containing information obtained from an original, or copy, of any certificate or record required by this article, or wilfully make, create or use any altered, falsified, or changed record, reproduction, copy or document, for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;
- (4) Fail, neglect, or refuse to perform any act or duty as required by this article or by the instructions of the State Registrar prepared under authority of this article;

shall, upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25; 1957, c. 1357, s. 1.)

§ 130-77. Duties of registrars and others in enforcing this article.

—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the State Registrar. He shall make an immediate report to the State Registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The State Registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the State, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars. He shall see that all of the requirements of this article are uniformly complied with. The State Registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he deems it necessary, he shall report violations of the provisions of this article to the prosecuting attorney of the county, or to the solicitor of the district, with a statement of the facts and circumstances; and when any such violation is reported to him by the State Registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall also assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S., s. 7113; 1957, c. 1357, s. 1.)

§ 130-78. Local systems abrogated.—No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this State other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S., s. 7115; 1957, c. 1357, s. 1.)

§ 130-79. Establishing fact of birth by person without certificate.—(a) Any person born in the State of North Carolina not having a duly recorded certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his legal residence or place of birth, setting forth the date, place, and parentage of his birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon the filing of such a petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of his birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The clerk shall certify the same to the State Office of Vital Statistics and the same shall thereupon be recorded in the State Office of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(b) The record of birth established by a person under this section, when recorded, shall become a public record and shall be accepted as such by the courts and other agencies of this State in the same manner as other public records.

(c) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122; 1957, c. 1357, s. 1.)

ARTICLE 8.

Infectious Diseases Generally.

§ 130-80. Health director has quarantine authority.—The local health director is authorized to exercise quarantine authority within his jurisdiction. (1957, c. 1357, s. 1.)

§ 130-81. Physicians to report certain diseases.—Every physician who has reasonable cause to believe that a person about whom he has been consulted professionally is afflicted with a disease declared by the State Board of Health to be reportable, shall within twenty-four hours report the name and address of such person to the local health director of the county or district in which such person is living or residing at the time of consultation. If the afflicted person is a minor, the physician consulted professionally about him shall notify the local health director of the name and address of the parent or guardian of the minor in addition to the name and address of the minor himself. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C. S., s. 7151; 1921, c. 223, s. 1; 1957, c. 1357, s. 1.)

§ 130-82. Parents and householders to report.—It shall be the duty of every parent, guardian, or householder or person standing in loco parentis, in the order named, to notify the local health director of the name and address of any person in their family or household about whom no physician has been consulted but whom they have reason to suspect of being afflicted with a disease declared by the North Carolina State Board of Health to be reportable. (1917, c. 263, s. 8; C. S., s. 7152; 1921, c. 223, s. 2; 1957, c. 1357, s. 1.)

§ 130-83. Local health directors to report cases to State Board of Health.—It shall be the duty of the local health director to report all cases of diseases reported to him pursuant to G. S. 130-81 or 130-82, within twenty-four

hours of the receipt of such report, to the State Health Director, and to make this report on forms supplied him by the State Health Director and in accordance with the rules and regulations adopted by the State Board of Health. (1917, c. 263, s. 9; C. S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1.)

§ 130-84. **Duty of disinfection.**—Any householder in whose family or home there is a person sick with any disease declared by the regulations of the State Board of Health to be transmissible by water shall comply with instructions given to him by an attending physician or, if there be no attending physician, by the local health director, as to proper disinfection, and it shall be the duty of such attending physician or local health director to give such instructions. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C. S., s. 7158; 1957, c. 1357, s. 1.)

§ 130-85. **Examination and detention of infected travelers.**—Any local health department may examine travelers from epidemic areas in other states when such travelers are suspected of bringing any infection dangerous to the public health into the State of North Carolina. The local health department may restrain such persons from traveling until they are permitted to do so by the local health director or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such epidemic area who, without such permission, travels within this State, except to return by the most direct route to the state from whence he came, after he has been cautioned to depart shall be isolated or ejected, at the discretion of the local health director or the municipal health authorities. All common carriers bringing into this State any such person as that named above are hereby required to return him to some point without this State, if directed to do so by the local health director or municipal health authorities. Nothing in this section shall prevent the State Board of Health from appointing such examiners as it may deem necessary for the preservation and promotion of the public health. (1893, c. 214, s. 15; 1901, c. 245, s. 6; Rev., ss. 3454, 4506; C. S., s. 7159; 1957, c. 1357, s. 1.)

§ 130-86. **Transportation of bodies of persons dying of reportable diseases.**—No person shall convey or cause to be conveyed through or from any county, city, or town in this State the remains of any person who has died of any disease declared by the State Board of Health to be reportable until such body has been encased in such manner as shall be directed by the State Board of Health. No local registrar of vital statistics or other person shall give a permit for the removal of such body until the regulations of the State Board of Health concerning the removal of dead bodies have been complied with. (1893, c. 214, s. 16; Rev., s. 4459; C. S., s. 7161; 1953, c. 675, s. 16; 1957, c. 1357, s. 1.)

ARTICLE 9.

Immunization.

§ 130-87. **Immunization required.**—All children in North Carolina are required to be immunized against diphtheria, tetanus, and whooping cough before reaching the age of one year, and are required to be immunized against smallpox before attending any public, private, or parochial school. (1957, c. 1357, s. 1.)

§ 130-88. **Administering immunizing preparations.**—A parent, guardian, or person in loco parentis, of any child of any age, pursuant to the provisions of G. S. 130-87, shall present the child to a physician and request the physician to administer to such child preparations sufficient to immunize such child against the diseases specified in G. S. 130-87. If for any reason a child in North Carolina has passed the age or entered in attendance upon any school without having been immunized as required in G. S. 130-87, the parent, guardian or person in loco

parentis of such child shall immediately upon the effective date of this chapter or upon the coming into this State of such child present the child to a physician and request the physician to administer to such child preparations sufficient to immunize such child against the diseases specified in G. S. 130-87. All such preparations used in carrying out the provisions of this section must meet the standards required by the State Board of Health. The State Board of Health is authorized to maintain and to distribute, under rules and regulations prepared by the State Board of Health, sufficient preparations to carry out the provisions of this article. The State Board of Health is authorized to make charges for such preparations to cover the cost of maintaining and distributing them. If the local board of health so directs, the county health director shall administer preparations sufficient to immunize against the diseases specified in G. S. 130-87 to the children not previously immunized at preschool clinics within the jurisdiction of said local board of health at the times specified by the local board of health. (1957, c. 1357, s. 1.)

Cross Reference.—This chapter is effective as of January 1, 1958.

§ 130-89. **Expenses of immunization.**—If the person required to present a child for immunization as provided in G. S. 130-88 is unable to pay for the services of a private physician or for the immunizing preparation, the child may be taken to the local health director of the area in which the child resides, where such immunizing preparation shall be provided and administered free. The county appropriating body shall make available sufficient funds for purchase of such immunizing preparation for such cases. (1957, c. 1357, s. 1.)

§ 130-90. **Certificate of immunization.**—The physician administering the preparation shall submit a certificate of immunization, on forms furnished by the State Board of Health, to the local health director and give a copy to the parent, guardian, or person in loco parentis, of the child. (1957, c. 1357, s. 1.)

§ 130-91. **School admittance.**—No principal shall permit any child to enter a public, private, or parochial school without the certificate provided for in G. S. 130-90, or some other acceptable evidence of immunization against smallpox, diphtheria, tetanus and whooping cough. (1957, c. 1357, s. 1.)

§ 130-92. **Exemptions from immunization.**—(a) If any physician certifies that a preparation required to be administered under the provisions of this article is detrimental to the child's health, the requirements of this article with respect to such preparation shall be inapplicable until such preparation is found no longer to be detrimental.

(b) The provisions of this article shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private, or parochial school shall be required as to them. (1957, c. 1357, s. 1.)

§ 130-93. **Rules and regulations.**—In addition to the provisions contained in this article, a local board of health may make such reasonable rules and regulations for the immunization of persons within its jurisdiction as may be necessary to protect the public health. (1957, c. 1357, s. 1.)

ARTICLE 10.

Venereal Disease.

Part 1. Venereal Disease.

§ 130-94. **Venereal diseases; applicants for marriage license.**—Syphilis, gonorrhoea, chancroid, granuloma inguinale, lymphogranuloma venereum

are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for any person infected with any of the venereal diseases hereinabove enumerated to expose another person to infection. All applicants for a marriage license must obtain a health certificate in accordance with the provisions of chapter 51 of the General Statutes of North Carolina. (1919, c. 206, s. 1; C. S., s. 7191; 1957, c. 1357, s. 1.)

§ 130-95. **Physicians and others to report cases.**—Any physician or other person responsible for diagnosis or treatment of a patient with venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a patient or inmate with a venereal disease, shall make a report of such case to the local health director in such form and manner as the State Board of Health shall direct, and shall cooperate with the State Board of Health and local boards of health in preventing the spread of venereal diseases. (1919, c. 206, s. 2; C. S., s. 7192; 1957, c. 1357, s. 1.)

§ 130-96. **Examination and investigation of venereal disease.**—State and local health directors, or authorized agents under their supervision, within their respective jurisdictions are hereby empowered and directed, when it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known, and to isolate or quarantine persons infected with a venereal disease when it is necessary to protect the public health. Persons infected with a venereal disease shall report for treatment to a licensed physician and continue treatment until the disease is no longer communicable, or shall submit to treatment provided at public expense until the disease is no longer communicable. It shall be the duty of the State Health Director and all local health directors to interview or cause to be interviewed all persons infected or reasonably suspected of being infected with a venereal disease, and to investigate or cause to be investigated the sources of infection and the spread of venereal diseases, and to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution. No examination of any person for venereal disease under this section shall be made by anyone except a licensed physician or authorized agent under his immediate supervision. (1919, c. 206, s. 3; C. S., s. 7193; 1925, c. 217, s. 1; 1957, c. 1357, s. 1.)

§ 130-97. **Prisoners examined and treated.**—All persons confined or imprisoned in any State, county, or city prison or jail shall, within 48 hours after commitment, be examined for venereal diseases by the county physician or other authorized physician. If such person is infected with a venereal disease, he shall be treated by said county physician or other authorized physician as soon as practicable. The prison authorities of any State, county, or city prison or jail are directed to make available to examining physicians such portion of any State, county, or city prison as may be necessary for clinic or a hospital wherein all persons who are confined or imprisoned in the prison and who are infected with venereal disease may be treated for such disease. All persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of G. S. 130-96 shall be isolated at such clinic or hospital and treated at public expense until the disease is no longer communicable. In lieu of such isolation, the State Board of Health may require any such person to report for treatment to a licensed physician or to submit to treatment provided at public expense under the provisions of this article. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. No examination of any person for venereal disease under

this section shall be made by anyone except a licensed physician or authorized agent under his immediate supervision. (1919, c. 206, s. 4; C. S., s. 7194; 1925, c. 217, s. 2; 1957, c. 1357, s. 1.)

§ 130-98. Prisoners not released until treatment begun.—Whenever any person is confined or imprisoned in any State, county, or city prison or jail and, upon examination as provided by this article, he is found to be infected with a communicable venereal disease, such person shall not be set at liberty until treated for said disease in accordance with the provisions of this article, unless he has begun a course of treatment for venereal disease under the direction of an authorized physician and gives a bond with satisfactory surety to the clerk of the superior court of the county where he is imprisoned or confined, conditioned upon his making his personal appearance at a stated time and place before the county physician or other examining physician authorized by this article, and submitting to such examination as may be proper in the case, and satisfying said physician that he is undergoing, or has undergone, satisfactory treatment for his said disease. Upon the giving of the said bond, such person shall, from time to time, as required by the county physician or other physician authorized to give said examination, personally appear before him for examination, and when, in the judgment of the said physician the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said persons from further attendance and examination shall be made by the clerk of the superior court, upon certificate of the aforesaid physician authorized to make the examination. (1937, c. 230; 1957, c. 1357, s. 1.)

§ 130-99. Board of Health to make rules and regulations.—The State Board of Health is hereby empowered to make such rules and regulations as are necessary for the purpose of carrying out the provisions of this article, and for the purpose of controlling, treating, preventing and eradicating venereal disease. (1919, c. 206, s. 5; C. S., s. 7195; 1957, c. 1357, s. 1.)

§ 130-100: Omitted.

§ 130-101. Treatment except by physician or pursuant to prescription illegal.—It shall be unlawful for any person except a licensed physician to prescribe, and it shall be unlawful for any person except pursuant to the prescription of a licensed physician to sell or give away any medicine for the treatment of any person afflicted with venereal disease, and it shall be unlawful for any person who obtains a prescription from a physician for treatment of venereal disease or obtains drugs or remedies for the treatment of venereal disease to give a false or assumed name or address. (1919, c. 214, s. 1; C. S., s. 7199; 1957, c. 1357, s. 1.)

§ 130-102. Purchaser of remedies may be examined.—The State Board of Health or local health departments or their agents may require any purchaser of drugs or remedies which may be used in the treatment of venereal disease, when such person may be reasonably supposed to be infected with a venereal disease, to appear before a licensed physician for an examination for such disease. (1919, c. 214, s. 7; C. S., s. 7205; 1957, c. 1357, s. 1.)

§ 130-103. Pregnant women to have test for syphilis. — Every woman who becomes pregnant shall have a blood sample taken, and submitted to a laboratory approved by the State Board of Health for performing serological or other approved tests for syphilis. Every person attendant upon a pregnant woman shall be responsible for having said blood samples taken and submitted, and if the attendant is not permitted by law to take the blood samples, then said attendant shall refer the pregnant woman to a duly licensed physician or

health director who, in turn, shall take or cause to be taken such blood samples and submit the same to an approved laboratory as required by this article. (1939, c. 313, s. 1; 1957, c. 1357, s. 1.)

§ 130-104: Omitted.

§ 130-105. **Birth certificates to contain information as to tests.**—All persons required to report births and fetal deaths shall state on the birth or fetal death certificate whether the woman who bore the child was given a blood test for syphilis during pregnancy or at delivery. (1939, c. 313, s. 4; 1957, c. 1357, s. 1.)

Part 2. Inflammation of the Eyes of the Newborn.

§ 130-106. **Ophthalmia neonatorum described.**—Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as “inflammation of the eyes of the newborn” (ophthalmia neonatorum). (1917, c. 257, s. 1; C. S., s. 7180; 1957, c. 1357, s. 1.)

§ 130-107. **Inflammation of eyes of newborn to be reported.**—It shall be the duty of any person attending or assisting in any way whatsoever any newborn infant or the mother of any newborn infant, at childbirth or at any time within two weeks after childbirth, to report immediately to the local health director of the area in which the infant is born any inflammation of the eyes of the newborn infant. If there is no health director in the area in which the infant is born, the person attending or assisting at childbirth must immediately report the condition to a licensed physician. On receipt of such report, the health director, or the physician notified because of the nonexistence of a health director, shall immediately give to the parents or person having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the county, city, village or town. (1917, c. 257, s. 2; C. S., s. 7181; 1957, c. 1357, s. 1.)

§ 130-108. **Eyes of newborn to be treated; records.**—Any person in attendance upon a case of childbirth shall instill or have instilled immediately upon its birth, in the eyes of the newborn babe, a solution or medication prescribed and approved by the State Board of Health for the purpose of preventing infection of the eyes of the newborn. It shall be the duty of every person in attendance, or the duty of the institution in which the birth takes place, to prepare such records concerning inflammation of the eyes of the newborn as the State Board of Health shall direct. (1917, c. 257, s. 3; C. S., s. 7182; 1957, c. 1357, s. 1.)

§ 130-109. **Duties of local health director.**—It shall be the duty of the local health director:

- (1) To investigate or cause to be investigated each case filed with him in pursuance of this article, and all contacts necessary to trace the source of the infection in such case, and any other such cases as may come to his attention;
- (2) To report all cases of inflammation of the eyes of the newborn and the result of all such investigations, as the State Board of Health shall direct;
- (3) To conform to and carry out such other rules and regulations con-

cerning inflammation of the eyes of the newborn as the State Board of Health shall promulgate for his further guidance. (1917, c. 257, s. 4; C. S., s. 7183; 1957, c. 1357, s. 1.)

§ 130-110. **Duties of State Board of Health.**—It shall be the duty of the State Board of Health to promulgate such rules and regulations as are necessary in the interest of the public health for the carrying out of this article, to provide for the gratuitous distribution of the medication for preventing infection of the eyes of the newborn required by this article to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth, and to disseminate such information concerning inflammation of the eyes of the newborn as may be necessary in the interest of the public health. (1917, c. 257, s. 5; C. S., s. 7184; 1957, c. 1357, s. 1.)

§ 130-111. **Violation of article.**—A violation of any of the provisions of this article concerning the giving of notice that a child has inflammation of the eyes or the treating of a child which has inflammation of the eyes shall be deemed prima facie evidence of negligence in any civil suit. (1917, c. 257, s. 7; C. S., s. 7186; 1957, c. 1357, s. 1.)

§ 130-112. **Registration of midwives.**—No person shall practice midwifery in North Carolina without a permit as required by article 18 of this chapter, and until registered with the local health director of the area in which such person intends to practice midwifery. The local health director shall notify the State Board of Health of such registration, and the State Board of Health shall furnish to such registered persons the necessary directions and medications for compliance with this article and the rules and regulations of the State Board of Health. (1917, c. 257, s. 8; C. S., s. 7187; 1957, c. 1357, s. 1.)

ARTICLE 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

§ 130-113. **Health directors to cause suspects to be examined.**—When any local health director has reasonable grounds to believe that any person has tuberculosis in an active stage or in a communicable form, and such person will not voluntarily seek a medical examination, then it shall be the duty of such health director to order such person to undergo an examination by a physician qualified in chest diseases or at a State or county sanatorium for tuberculosis or at a clinic or hospital approved by the State Board of Health for such examinations. The health director and the person suspected of having tuberculosis shall, if possible, agree upon the time and place of examination, but if no satisfactory time and place can be arranged by agreement, then the health director shall fix a reasonable time and place for such examination, and it shall be the duty of such suspected person to present himself for examination at such time and place as is fixed by the health director. The examination shall include an X-ray of the chest, a sufficient number of laboratory examinations of sputum, and such other forms and types of examinations as shall be approved by the State Board of Health. If, upon such examination, it shall be determined that such person has tuberculosis in an active stage or in a communicable form, then it shall be the duty of such tuberculous person, as soon as he can reasonably do so, to arrange for admission of himself as a patient in one of the State sanatoriums for tuberculosis, or in a county sanatorium for tuberculosis or in a private hospital or in the ward of a private hospital maintained and operated for the treatment of tuberculous patients; provided, that when there is no danger to the public or to other individuals as determined by the health director, the tubercu-

lous person may receive treatment at home. (1943, c. 357; 1945, c. 583; 1951, c. 448; 1957, c. 1357, s. 1.)

§ 130-114. Precautions necessary pending admission to the hospital.—Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in a State sanatorium for tuberculosis, county sanatorium for tuberculosis or in a private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the local health director to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health director shall investigate from time to time to make certain that his instructions are being carried out in a reasonable and acceptable manner. It shall be unlawful for any person to:

- (1) Willfully fail and refuse to present himself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as is fixed by the health director or at such time and place agreed upon between such suspected person and the health director,
- (2) Willfully fail and refuse to present himself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health director to be necessary for the prevention of spread of the disease, in accordance with the provisions of G. S. 130-113,
- (3) Willfully fail or refuse to follow the instructions of the health director as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in paragraphs (2) and (3) of this section or shall enter a plea of guilty thereto when charged with such violations, such person shall be imprisoned in the prison division of the North Carolina Sanatorium; provided, the period of imprisonment shall be for two years. The associate superintendent-medical director of the North Carolina Sanatorium, located at McCain, North Carolina, upon signing and placing among the permanent records of the North Carolina Sanatorium a statement to the effect that a person imprisoned under this section may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health director serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Prison Department. The court in which a person is convicted of violating paragraph (2) or (3) of this section may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium or State sanatorium and shall remain there until discharged by the associate superintendent-medical director or controlling authority of such county sanatorium or State sanatorium. The superintendent-medical director of the North Carolina sanatorium system with the advice and consent of

the Commissioner of Paroles, where he finds that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to any State sanatorium, or Veterans Administration tuberculosis hospital.

The county of legal residence of such committed person shall be responsible for the regularly established fee for indigent or welfare patients and shall be responsible for this fee during the patient's period of hospitalization in the prison division of the North Carolina Sanatorium located at McCain, North Carolina.

The provisions of this section apply to minors as well as adults; provided, however, that persons under 16 years of age, upon conviction of a violation of the provisions of this section, shall not be imprisoned in the prison division of the North Carolina Sanatorium, but shall be placed in a State, county or private sanatorium for treatment. (1943, c. 357; 1951, c. 448; 1955, c. 89; 1957, c. 1357, s. 1.)

Part 2. Tuberculous Prisoners.

§ 130-115. **Tuberculous county prisoners to be segregated.**—The boards of county commissioners of the respective counties of North Carolina shall provide in the jail, camp or other place where county prisoners are committed for keeping, separate cells or rooms or other places in which any prisoner or prisoners who may be committed to said place of confinement and who has been examined by the county physician or local health director and pronounced to be infected with tuberculosis shall be confined. (1907, c. 567, s. 1; C. S., s. 7207; 1957, c. 1357, s. 1.)

§ 130-116. **Law enforcement officers to have prisoners suspected to be tuberculous examined and separated.**—When a prisoner is placed in the custody of a law enforcement officer for the purpose of being committed to jail or to any place where prisoners are kept, and the law enforcement officer has reason to believe or suspect that the prisoner is suffering with tuberculosis, it shall be the duty of the law enforcement officer to have such prisoner examined by the county physician or local health director and if upon examination the prisoner is pronounced tuberculous, then he shall be separated from other prisoners and confined in a separate cell or other place of confinement, and if the prisoner is under sentence of confinement, and is otherwise eligible for admission, he shall be transferred to the prison division of the North Carolina Sanatorium at McCain, North Carolina. (1907, c. 567, s. 2; C. S., s. 7208; 1957, c. 1357, s. 1.)

§ 130-117. **Tuberculous State prisoners to be segregated.**—It shall be the duty of the board of directors of the State's prison to provide separate cells or apartments for the confinement of prisoners sentenced to that institution for a term of imprisonment, who have been examined and pronounced by the physician in charge to be infected with tuberculosis, until said prisoners can be transferred to the prison division of the North Carolina Sanatorium at McCain, North Carolina. (1907, c. 567, s. 3; C. S., s. 7209; 1957, c. 1357, s. 1.)

§ 130-118. **Separate cells for tuberculous prisoners.**—Cells or places of confinement provided for prisoners infected with tuberculosis must be kept exclusively for such prisoners, and when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or the local health director or the physician in charge or the health authorities of the State's prison have been notified, and until such cells or places of confinement have been thoroughly disinfected under the supervision of such officials in the manner required by the State Board of Health. (1907, c. 567, s. 4; C. S., s. 7210; 1957, c. 1357, s. 1.)

§ 130-119. **Prison authorities to have prisoners suspected to be tuberculous examined.**—When a prisoner is committed to any prison or place of confinement designated in this article, and the law enforcement officers or prison officials know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of such officers or officials immediately upon receipt of such knowledge or the arousal of such suspicion to cause the prisoner to be examined by the county physician or the local health director or the physician in charge. (1907, c. 567, s. 5; C. S., s. 7211; 1957, c. 1357, s. 1.)

§ 130-120. **Tuberculous prisoners not to be worked.**—No prisoner suffering with active tuberculosis shall be worked on any public or private works. (1917, c. 262, s. 1; C. S., s. 7213; 1943, c. 543; 1957, c. 1357, s. 1.)

§ 130-121. **Examination of prisoners.**—It shall be the duty of every county or city physician or local health director, or other physician responsible for the medical care of city, county, or State prisoners, within his respective jurisdiction, to make a thorough physical examination of every prisoner within forty-eight hours after admission of such prisoner. Such examining physician shall be required to make reports concerning the health of the prisoners and the transference of prisoners, upon such forms as the State Board of Health may require. (1917, c. 262, s. 4; C. S., s. 7216; 1957, c. 1357, s. 1.)

§ 130-122. **Food and work of tuberculous prisoners.**—In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the warden or superintendent of any unit of the State Prison System and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. Prisoners suffering with tuberculosis shall be transferred promptly to the prison division of the North Carolina Sanatorium at McCain. When a prisoner has been discharged as an arrested case of tuberculosis from the prison division of the sanatorium and returned to the Central Prison or State farm, he shall only do such work as may be prescribed by the prison physician. (1917, c. 262, s. 7; C. S., s. 7219; 1957, c. 1357, s. 1.)

ARTICLE 12.

Sanitary Districts.

§ 130-123. **Creation by State Board of Health.**—For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation; provided further that if such municipal corporation shall not have levied any tax nor performed any official act nor held any elections within a period of four years next preceding the date of the petition for said sanitary district, as hereinafter provided, such a request of the governing board shall not be required. (1927, c. 100, s. 1; 1955, c. 1307; 1957, c. 1357, s. 1.)

§ 130-124. **Procedure for incorporating district.**—A sanitary district shall be incorporated as hereinafter set out. Fifty-one per cent (51%) or more of the freeholders within a proposed sanitary district may petition the board of county commissioners of the county in which all or the major portion of the petitioning freeholders of the proposed district are located, setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, through its chairman, shall notify the State Board of Health and the chairman

of the board of county commissioners of any other county or counties in which any portion of the proposed district lies, of the receipt of said petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place within the proposed district named by the representative of the State Board of Health. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1.)

§ 130-125. Declaration that district exists; status of industrial villages within boundaries of district.—If, after such hearing the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, and determine that a district for the purpose or purposes therein stated should be created and established, and State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a sanitary district; provided that the State Board of Health may make minor deviation, in defining the boundaries, from those prescribed in the petition when the Board determines that it is advisable in the interest of the public health; provided further that any industrial plant and its contiguous village shall be included within or excluded from the areas embraced within such sanitary district as expressed in the application of the person, persons or corporation owning or controlling such industrial plant and its contiguous village, said application to be filed with the State Board of Health on or before the date of the public hearing as hereinbefore provided. Each district when created shall be identified by a name or number assigned by the State Board of Health. (1927, c. 100, s. 5; 1957, c. 1357, s. 1.)

§ 130-126. Election and terms of office of sanitary district boards.—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, residents within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners, candidates for said district board shall be nominated in the primary and elected at the general election as are county officers, except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the three candidates receiving

the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidate in the primary or general election: Provided, that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more. The said board of elections shall canvass the returns from any primary or general election and within ten days thereafter certify the results thereof to the clerk of the superior court. The clerk of the superior court in each county is authorized, directed and empowered to take and file the oaths of office of those persons elected.

Prior to the appointment of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution determine that such sanitary district board shall consist of five members, residents within such district. In such case, when more than ten candidates for membership on such sanitary district board qualify for a primary, then the ten candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the next general election, and the five candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board; when ten or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without his name being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the greater portion of the qualified voters of the sanitary district are located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1.)

§ 130-127. Vacancy appointments to district boards.—Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled until the next general election by the county commissioners of the county in which said sanitary district may be situated. Provided, that if the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1.)

§ 130-128. Corporate powers.—When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

- (1) To acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant and such other utilities as may be necessary for the preservation and promotion of the public health and sanitary

welfare within the district, such utilities to be constructed, operated, and maintained in accordance with rules and regulations promulgated by the State Board of Health.

- (2) To issue certificates of indebtedness against the district in the manner hereinafter provided.
- (3) To issue bonds of the district in the manner hereinafter provided.
- (4) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district evidenced by bonds, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.
- (5) To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.
- (6) To employ such engineers, counsel and other persons as may be necessary to carry into effect any projects undertaken and to fix the compensation of such persons.
- (7) To negotiate and enter into agreements with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.
- (8) To formulate rules and regulations necessary for the proper functioning of the works of the district, but such rules and regulations shall not conflict with rules and regulations promulgated by the State Board of Health, or the local board of health having jurisdiction over the area.
- (9)
 - a. To contract with any person, firm, corporation, city, town, village or political subdivision of the State both within or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the State in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district when in the opinion of the sanitary district board and the State Board of Health, it will be for the best interest of the district.
 - b. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district to supply raw or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the State where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.
- (10) After adoption of a plan as provided in G. S. 130-133, the sanitary district board may, in its discretion, alter or modify such plan if, in the opinion of the State Board of Health, such alteration or modification does not constitute a material deviation from the objective of such plan. The alteration or modification must be approved by the State Board of Health and may provide among other things for the construction of a water line for the supply of any person, firm, cor-

poration, city, town, village or political subdivision of the State either within or without the corporate limits of the district instead of a sewage disposal line and other improvements, where such alteration or modification would permit the disposal of sewage at a point nearer the district either within or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the State to whom the water is to be supplied and would effect a saving to the district, and the sanitary district board may appropriate or reappropriate money of the district for carrying out such plans as altered or modified.

- (11) Subject to the approval of the State Board of Health, to engage in and undertake the prevention and eradication of diseases transmissible by mosquitoes by instituting programs for the eradication of the mosquito.
- (12) To collect and dispose of garbage, waste, and other refuse by contract or otherwise.
- (13) To establish a fire department for the protection of life and property within the district, or to contract with cities, counties or other governmental units to furnish fire-fighting apparatus and personnel for use in the district.
- (14) The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection.
- (15) To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, such taxes to be levied and collected at the same time and in the same manner as taxes for debt service as provided in G. S. 130-141.
- (16) To establish a capital reserve fund for the district in accordance with the following provisions:
 - a. The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district or from service charges and rates applied by the district board in accordance with law or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the Local Government Commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as ".....District, Capital Reserve Fund."
 - b. Upon adoption of a resolution by the district board providing therefor and with the approval of the Local Government Commission, the capital reserve fund may be increased at any time

with money from like source or sources as those stated in establishing resolution.

- c. Withdrawal from the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made:
 1. In anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and
 2. For investment or reinvestment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the State of North Carolina, in bonds of the district, or in bonds of any city, town or county in North Carolina.

Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the Local Government Commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the Commission shall be endorsed by the secretary of the Commission or by an assistant designated by him for that purpose: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater.

- d. All moneys stated in the establishing resolution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the Local Government Commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the Local Government Commission.

(17) To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:

- a. To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either or both, the water or sewerage systems

of the district, when the local health director, having jurisdiction over the area in which the greater portion of the residents of the district reside, determines that the health of the people residing within the district will be endangered by a failure to connect.

- b. To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewerage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations in accordance with the requirements of the State Board of Health.
 - c. To require any person, after notice and hearing, to abate any nuisance detrimental or injurious to the public health of the district. The person being ordered to abate the nuisance may appeal such order to the local board of health as provided in G. S. 130-20.
 - d. To abolish, or to regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet be within the corporate limits of some city or town.
 - e. Upon the noncompliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the sanitary district board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have a reasonable time, as determined by the local health director of the area within which the noncomplying person resides, from the service of such notice in which to comply with such rule and regulation.
- (18) For the purpose of promoting the public health, safety, morals, and the general welfare of the State, the sanitary district boards of the various sanitary districts of the State are hereby empowered, within the areas of said districts and not under the control of the United States or the State of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:
- a. No sanitary district board, under the provisions of this subsection, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two-thirds ($\frac{2}{3}$) of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two-thirds ($\frac{2}{3}$) of the owners of the real property in said area as shown by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after twenty days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for twenty days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.

- b. When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under article 14, chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.
- c. The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to cooperate fully with each other.
- d. The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subsection, and are authorized to enforce its rules and regulations in order to give effect to this subsection, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.
- e. None of the provisions of chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to G. S. 160-173), shall apply to any sanitary district.
- f. This subsection shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; 1949, cc. 1133, 1145; 1951, c. 17, s. 1; 1951, c. 1035, s. 1; 1957, c. 1357, s. 1.)

§ 130-129. Organization of board.—Upon election, a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation of eight dollars (\$8.00) when actually engaged in the business of the district, payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistants as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8; 1957, c. 1357, s. 1.)

§ 130-130. Power to condemn property.—When in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of Chapter 40 of the General Statutes of the State of North Carolina entitled "Eminent Domain" shall apply. Section 40-10 shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but

it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3; 1957, c. 1357, s. 1.)

§ 130-131. Construction of systems by corporations or individuals.—Whenever a corporation or the residents of any locality within the sanitary district shall desire a water supply, sewerage system or any part thereof and the sanitary district board shall deem it inadvisable or impracticable at that time, due to remoteness from its general system or other cause, for the sanitary district to build such system, such corporation or residents may nevertheless build and operate such system at its or their own expense but it shall be constructed and operated under plans, specifications and regulations approved by the district board, and by the State Board of Health. (1927, c. 100, s. 10; 1957, c. 1357, s. 1.)

§ 130-132. Reports.—Upon the election of any sanitary district board it shall become the duty of the board to employ competent engineers to make a report or reports on the problems of the sanitary district, which report or reports shall be prepared and filed with the sanitary district board. Such report or reports shall embrace the following:

- (1) Suitable comprehensive maps showing the boundaries of the sanitary district and in a general way the location of the various parts of the work that is proposed to be done and such information as may be useful for a thorough understanding of the proposed undertaking.
- (2) A general description of existing facilities for carrying out the objects of the district.
- (3) A general description of the various plans which might be adopted for accomplishment of the objects of the district.
- (4) General plans and specifications for such work.
- (5) General descriptions of property it is proposed to be acquired or which may be damaged in carrying out the work.
- (6) Comparative detail estimates of cost for the various construction plans.
- (7) Recommendations. (1927, c. 100, s. 11; 1957, c. 1357, s. 1.)

§ 130-133. Consideration of reports and adoption of a plan.—The report or reports filed by the engineers pursuant to G. S. 130-132 shall be given careful consideration by the sanitary district board, and said board shall adopt a plan, but before adopting such plan said board may, in its discretion, hold a public hearing, giving due notice of the time and place thereof, for the purpose of considering objections to such plan. The plan adopted as aforesaid shall be submitted by the sanitary district board to the State Board of Health and shall not become effective unless and until it is approved by the State Board of Health.

The provisions of this section and of G. S. 130-132 above shall apply when it shall have been determined by the sanitary district board that consummation of the plan is predicated upon the issuance of bonds of the district, except that such provisions shall not apply to a proposed purchase of firefighting equipment and apparatus. Failure to observe or comply with said provisions shall not, however, affect the validity of any bonds of a sanitary district which may be hereafter issued pursuant to this article. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-134. Resolution authorizing bond issue and purposes for which bonds may be issued.—Either before or after the adoption of the plan as aforesaid, the sanitary district board may pass a resolution or resolutions (hereinafter sometimes referred to as “bond resolution” or “bond resolutions”) authorizing the issuance of bonds of the sanitary district, but bonds for two or more unrelated purposes shall not be authorized by the same bond resolution; provided, however, that bonds for two or more improvements or

properties mentioned together in any one or more of the clauses of this section may be treated as being for a single purpose and may be authorized by the same bond resolution. The negotiable bonds of a sanitary district may be issued for any one or more of the following purposes, which purposes may include land, rights in land or other rights necessary for the establishment thereof:

- (1) Acquisition, construction, reconstruction, enlargement of, additions or extensions to a water system or systems, a water purification or treatment plant or plants, a sanitary sewer system or systems, or a sewage treatment plant or plants, including interest on the bonds during construction and for one year after completion of construction if deemed advisable by the sanitary district board.
- (2) Construction, reconstruction or acquisition of an incinerator or incinerators or other facilities for the disposal of garbage, waste and other refuse.
- (3) Purchase of firefighting equipment and apparatus.

Such resolution shall state:

- (1) In brief and general terms, the purpose for which the bonds are to be issued.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually divided and collected on all taxable property within the sanitary district.
- (4) That the resolution shall take effect when and if it is approved by the voters of the sanitary district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in G. S. 130-137. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the sanitary district board appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the sanitary district board of.....
.....Sanitary District on the day of, 19.....,
and was first published on theday of, 19.....
Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
Secretary, Sanitary
District Board.

(1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 1; 1957, c. 1357, s. 1.)

§ 130-135. Limitation of action to set aside a bond resolution.—Any action or proceeding in any court to set aside a bond resolution adopted pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in G. S. 130-134. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever. (1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-136. Publication of resolution, notice and statement.—A resolution or notice or statement required by this article to be published shall be published in a newspaper published in the county in which the district lies or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published

in such county in a newspaper which, in the opinion of the sanitary district board, has general circulation within the district. (1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-137. Call for election.—Following the adoption of a bond resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of affirmative votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located, if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are coterminous with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the district shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said district. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in G. S. 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places at which they 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.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19....., authorizing the issuance of not exceeding \$..... of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19, authorizing the issuance of not exceeding \$"

of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed. Two or more bond resolutions adopted by the sanitary district board, each for a separate purpose as provided in G. S. 130-134 may be submitted at the same election and each may be stated on the same ballot as a separate proposition. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in G. S. 130-145 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the sanitary district board and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior court of each such county. Such statement shall be published once. No right of action or defense founded upon the invalidity of such 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 thirty days after the publication of such statement. (1927, c. 100, s. 14; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-138. Bonds.—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, 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 of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by

the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been cancelled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district as provided in G. S. 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of G. S. 130-137. Such periods shall be for the purposes stated by clauses in G. S. 130-134 as follows: Clause (1), forty years; clause (2), twenty years; clause (3), ten years. Such bonds shall mature in annual installments or series, the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1927, c. 100, s. 15; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 2; 1957, c. 1357, s. 1.)

Editor's Note.—The clauses (1), (2) and (3) of G. S. 130-134, referred to in the second paragraph of this section, are those relating to the purposes for which bonds may be issued.

§ 130-139. Additional bonds.—Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to cause an election to be held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds of the sale of the bonds shall be in excess of the amount necessary for the purpose for which they were issued, such excess shall be applied to the payment of principal and interest of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-140. Funding or refunding bonds.—A sanitary district may issue its negotiable funding or refunding bonds for the purpose of funding or refunding valid indebtedness of the sanitary district if such debt be payable at the time of the passage of the bond resolution authorizing bonds to fund or refund such debt, or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The

word "indebtedness" or "debt" as used in this section includes the principal of bonds, certificates of indebtedness and revenue anticipation notes, and includes the principal of funding bonds, refunding bonds and other evidences of indebtedness heretofore or hereafter issued pursuant to this article.

All such funding or refunding bonds shall be authorized by a bond resolution passed by the sanitary district board, which bond resolution shall state:

- (1) In brief and general terms the purpose for which the bonds are to be issued, including a brief description of the indebtedness to be funded or refunded sufficiently to identify such indebtedness.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the sanitary district.
- (4) That the resolution shall take effect upon its passage and shall not be submitted to the voters.

Such bond resolution shall be published once a week for three successive weeks and a statement substantially in the form provided by G. S. 130-134 above shall be published with the bond resolution. Such funding or refunding bonds shall mature at any time or times, not later than forty years from their date. (1955, c. 705; 1957, c. 1357, s. 1.)

§ 130-141. Valuation of property; determining annual revenue needed.—Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 below to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per one hundred dollars (\$100.00) so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every month the amount of tax so collected shall be remitted to the sanitary district board and deposited by the said board in a bank in the State of North Carolina separately from other funds of the district. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G. S. 159-28.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located within the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount. The

said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred dollars (\$100.00) necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political subdivisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-142. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.—A sanitary district board may issue certificates of indebtedness in anticipation of the levying and collection of taxes to cover any or all expenses incurred by the board incident to the preparation of the engineers' report, holding of bond election or any other expenses incurred by the board. The amount of any certificates in indebtedness issued by the sanitary district board shall be included in the bond issue as hereinbefore provided. In the event that the election held within the district for the purpose of issuing bonds to provide funds for carrying out the objects of the district results in the defeat of said bonds the sanitary district board shall cause to be levied and collected a tax sufficient to pay such certificates of indebtedness or any other indebtedness incurred by the sanitary district board. Such tax shall be levied and collected in the same manner as provided in G. S. 130-141.

A sanitary district board may borrow money under the provisions of the Local Government Act, for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loans shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed fifty per cent (50%) of the amount of uncollected taxes and other revenue for the fiscal year in which the loan is made, as estimated by the chief financial officer and certified in writing by him to the governing body. (1927, c. 100, s. 18; 1935, c. 250; 1957, c. 1357, s. 1.)

§ 130-143. Engineers to provide plans and supervise work; bids.—The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

Any contract shall be let to the lowest responsible bidder submitting a sealed bid in response to a notice calling for such bid and published at least five times over a period of at least fifteen days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located.

Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars (\$1,000.00), shall be purchased from the lowest responsible bidder in the same manner as above provided.

All work done shall be in accordance with the plans and specifications pre-

pared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19; 1957, c. 1357, s. 1.)

§ 130-144. Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not thereby be made unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5; 1957, c. 1357, s. 1.)

§ 130-145. Removal of member of board.—A petition carrying the signatures of twenty-five per cent (25%) or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or nonfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of the legal voters of a sanitary district are located. Upon receipt of such petition the board of county commissioners or, in the event that the district is located in more than one county, a joint meeting of the boards of county commissioners shall be called, shall adopt a resolution calling an election, naming election officials, naming a date, and giving due notice thereof for the purpose of removing from office the member or members of the sanitary district board named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expenses of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21; 1957, c. 1357, s. 1.)

§ 130-146. Rights-of-way granted. — A right-of-way in, along, or across any county or State highway, street or property within a sanitary district is hereby granted to a sanitary district in case such right-of-way is found by the sanitary district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway shall be done in accordance with the rules and regulations of the State Highway Commission. (1927, c. 100, s. 22; 1933, c. 172, s 17; 1957, c. 1357, s. 1.)

§ 130-147. Returns of election.—In all elections provided for in this article the returns of such elections shall be made to the board or boards of county commissioners in which the sanitary district lies, and said board or boards of county commissioners shall canvass and declare the result of said election, and this determination of said board or boards of county commissioners upon the result of said election shall be by them certified to the sanitary district board for its action thereupon. (1927, c. 100, s. 23; 1957, c. 1357, s. 1.)

§ 130-148. Procedure for extension of district.—The boundaries of any sanitary district may, with the approval of the sanitary district board, be ex-

tended under the same procedure as herein provided for the creation of a sanitary district: Provided, that ten per cent (10%) of the freeholders resident in the district to be annexed are authorized to petition for an election upon the subject of annexation, and if such petition is filed with the sanitary district board, such election shall be held within the territory to be annexed under the rules and regulations hereinbefore provided. However, if the owners of all of the real property in the territory to be annexed petition any sanitary district board to include such real property within the boundaries of said district, then and in that event no election shall be necessary and such sanitary district board is authorized and empowered to enlarge its boundaries so as to include such property in the district upon the approval of its actions by the board of county commissioners of any county or counties within which said sanitary district lies, and with the further approval of the State Board of Health.

In any case where the boundaries of a sanitary district shall have been extended and the proposition of issuing bonds of the district as enlarged shall not be approved by the voters at an election held within one year subsequent to such extension, fifty-one per cent (51%) or more of the resident freeholders within the territory so annexed may, with the approval of the sanitary district board, petition the board of commissioners of the county in which the annexed territory is located, that the territory so annexed be disconnected and excluded from such sanitary district. Upon receipt of such petition the board of commissioners shall, through its chairman, transmit the petition to the State Board of Health requesting that the petition be granted. If, after a hearing, conducted under the same procedure as provided in G. S. 130-124 for the creation of sanitary districts, and after publication of notice thereof in the district, the State Board of Health shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, and shall define the boundaries of the district, which shall be the boundaries of the district as it existed before the extension. (1927, c. 100, s. 24; 1943, s. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1.)

§ 130-149. District and municipality extending boundaries and corporate limits simultaneously. — Whenever the boundaries of a sanitary district lie wholly within or are coterminous with the corporate limits of a city or town and such sanitary district provides the only public water supply and sewage disposal system for such city or town, the boundaries of such sanitary district and the corporate limits of such city or town may, if and when extended, be extended simultaneously in the following manner:

Twenty-five per cent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects it is proposed to accomplish, which petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of such petition the sanitary district board and the governing board of the city or town shall meet jointly, and before passing upon the petition shall hold a public hearing upon the same and shall give prior notice of such hearing by posting a notice at the courthouse door of their county and also by publishing a notice at least once a week for four successive weeks in a newspaper published in said county. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly and with the approval of the State Board of Health, shall each approve the petition, then the question shall be submitted to a vote of all of the qualified voters in the area or areas proposed to be annexed and in the sanitary district and in the city or town, voting as a whole. Such election to be held on date approved by the sanitary district board and by the governing board of the city or town.

At such election the qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension," and if at such election a majority of all the votes cast be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all debts, ordinances, and regulations in force in said sanitary district and in said city or town, and shall be entitled to the same privileges and benefits as other parts of said sanitary district and said city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of such annexation.

If at such election a majority of all the votes cast be "Against Extension" then there shall be no extension of either the boundaries of the sanitary district or the corporate limits of the city or town.

The costs of holding and conducting such election for annexation, as herein provided, shall be paid one-half ($\frac{1}{2}$) by the sanitary district and one-half ($\frac{1}{2}$) by the city or town.

Except as herein otherwise provided, when ordered by the sanitary district board and the governing board of the city or town acting jointly, the board of elections of the county in which the sanitary district and the city or town are located, shall call, hold, conduct and determine the result of such election, according to the provisions of § 160-448 of the General Statutes.

In any cases where the boundaries of a sanitary district and the corporate limits of a city or town are extended as herein provided, and the proposition of issuing bonds of the sanitary district as enlarged, in order to provide adequate facilities for the annexed area or areas, as may be determined by the sanitary district board, shall not be approved by the voters at an election held within one year subsequent to such extension, the territory so annexed may be disconnected and excluded from such sanitary district in the manner provided by G. S. 130-148; and if the territory so annexed is disconnected and excluded from such sanitary district it shall automatically and without any further procedure or action of any kind whatsoever be disconnected and excluded from such city or town, provided, however, if the petition also includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, such areas already within the corporate limits of the city or town shall not be disconnected or excluded from such city or town under the provisions of this section.

The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1.)

§ 130-150. Procedure for withdrawing from district. — In any sanitary district created under the provisions of this article which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders of a portion of any such sanitary district, with the approval of the sanitary district board, may petition the county commissioners of the county in which a major portion of the petitioners reside, that said portion of the district be disconnected and excluded from the said district and dissolved. If the board of county commissioners approves the petition, they shall submit to the residents of the entire district, at an election duly called for that purpose, the question of whether or not the portion of the district petitioning to be excluded shall be excluded. If a majority of those voting at said election vote to allow the petitioning portion of the district to be excluded, the county commissioners shall transmit that fact to the State Board of Health who shall exclude said portion of the district, dissolve said portion, and redefine the limits accordingly. (1957, c. 1357, s. 1.)

§ 130-151. **Dissolution of certain sanitary districts.** — In any sanitary district established under this chapter which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, the board of county commissioners through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the district lies, of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the said county commissioners concerning the dissolution of the district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If after such hearing, the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1943, c. 620; 1951, c. 178, s. 2; 1957, c. 1357, s. 1.)

§ 130-152. **Further validation of creation of districts.**—All actions prior to April 1, 1957, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation, of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1.)

§ 130-152.1. **Further validation of extension of boundaries of districts.**—All actions prior to April 1, 1957, had and taken by the State Board of Health, any board of county commissioners, and any sanitary district board for the purpose of extending the boundaries of any sanitary district where said territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of such sanitary district board that said territory be annexed to and be within the boundaries of such sanitary district, are hereby legalized and validated, notwithstanding any lack of power to perform such acts or to take such proceedings, notwithstanding any defect or irregularity in such acts or proceedings. (1957, c. 1357, s. 1.)

§ 130-153. **Further validation of dissolution of districts.** — All actions prior to April 1, 1957, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the dissolution of any sanitary district in the State, and the dissolution or attempted dissolution of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed. (1953, c. 596, s. 2; 1957, c. 1357, s. 1.)

§ 130-154. **Further validation of bonds of districts.**—All actions and proceedings prior to April 1, 1957, had and taken and all elections held in any sanitary district in the State or in any district purporting to be a legal sanitary district by virtue of the purported authority and acts of any county board of commissioners or the State Board of Health or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of any such sanitary district, and all such bonds at any time issued by or on behalf of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are hereby declared to be the legal and binding obligations of such sanitary district. (1953, c. 596, s. 3; 1957, c. 1357, s. 1.)

§ 130-155. **Authorizing certain sanitary district boards to levy taxes.**—The sanitary district board of any such sanitary district is hereby authorized to levy, or cause to be levied, annually a special tax ad valorem on all taxable property in such sanitary district for the special purpose of paying the principal of and interest on any such bonds, and such tax shall be sufficient for such purpose and shall be in addition to all other taxes which may be levied upon the taxable property in said sanitary district. (1945, c. 89, s. 3; 1957, c. 1357, s. 1.)

§ 130-156. **Further validation of appointment or election of members of district boards.**—All actions and proceedings prior to April 1, 1957, had and taken in the appointment or election of any members of any sanitary district board are hereby in all respects legalized, ratified, approved, validated and confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed by this article until their respective successors are elected and qualified: Provided, however, that any vacancy in any sanitary district board may be filled as provided in G. S. 130-127. (1953, c. 596, s. 4; 1957, c. 1357, s. 1.)

ARTICLE 13.

Water and Sewer Sanitation.

§ 130-157. **Sanitary engineering and sanitation units.**—For the purpose of promoting a safe and healthful environment, and developing such corrective measures as may be required to minimize environmental health hazards, the State Board of Health shall maintain appropriate units of sanitary engineering and sanitation. The State Health Director shall employ such sanitary engineers, sanitarians, and other scientific personnel as are necessary to carry out the provisions of this article and to make such other sanitary engineering and sanitation investigations and inspections as are required of the State Board of Health by law, or by regulations of the State Board of Health. (1957, c. 1357, s. 1.)

§ 130-158. **Persons supplying water to protect its purity.**—In the interest of the public health, every person, company, or municipal corporation or agency thereof supplying water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed. (1899, c. 670, s. 1; 1903, c. 159, s. 1; Rev., s. 3058; 1911, c. 62, s. 24; C. S., s. 7116; 1957, c. 1357, s. 1.)

§ 130-159. **Board of Health to control and examine waters; rules.**—The State Board of Health shall have the general oversight and care of all inland waters to cause examination of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to imperil the public health. The State Board of Health shall

make reasonable rules and regulations governing the location, construction, and operation of public water and sewer facilities. (1911, c. 62, s. 24; C. S., s. 7117; 1957, c. 1357, s. 1.)

§ 130-160. **Sanitary sewage disposal; rules.**—Any person owning or controlling any residence, place of business or place of public assembly shall provide a sanitary system of sewage disposal consisting of an approved privy, an approved septic tank, or a connection to a sewer system, under rules and regulation promulgated by the State Board of Health. (1957, c. 1357, s. 1.)

§ 130-161. **Systems of water supply and sewerage; plans submitted.**—The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, and persons already having or intending to introduce systems of water supply, drainage, or sewerage, or intending to make major alterations to existing systems of water supply, drainage, or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewerage, having regard to the present and prospective needs and interests of other cities, towns, and persons which may be affected thereby. All such boards of directors, authorities, and persons are hereby required to give notice to the State Board of Health of their intentions to introduce or alter a system of water supply, drainage or sewerage, and to submit to the Board such plans, surveys, and other information as may be required by rules and regulations promulgated by the State Board of Health. No such board of directors, authorities, or persons may enter into a contract for the introduction or alteration of a system of water supply, sewage disposal, or drainage until such plans and other information have been received, considered and approved by the State Board of Health. (1911, c. 62, s. 24; C. S., s. 7118; 1957, c. 1357, s. 1.)

§ 130-162. **Condemnation of lands for water supply.** — All municipalities operating water systems and sewerage systems, and all water companies operating under charter from the State or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants. Condemnation proceedings under this section shall be the same as prescribed by law under chapter 40 of the General Statutes of North Carolina. (1903, c. 159, s. 16; 1905, c. 287, s. 2; 1905, c. 544; Rev., s. 3060; 1911, c. 62, s. 25; C. S., s. 7119; 1957, c. 1357, s. 1.)

§ 130-163. **Sanitation of watersheds; rules.**—The State Board of Health is hereby authorized, empowered and directed to adopt rules and regulations governing the sanitation of watersheds from which public domestic or drinking water supplies are obtained. In promulgating such regulations the Board is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population, need for frequency of sampling of raw water, and particular needs for public health protection. The regulations shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

Any municipality or person furnishing water for domestic uses and human consumption, which secures its water from unfiltered surface supplies, shall have inspections made of the watershed area at least quarterly, and more often when, in the opinion of the State Board of Health, such inspections are necessary. (1899, c. 670; 1903, c. 159, s. 2; Rev., ss. 3045, 3046; 1911, c. 62, s. 28, 1919, c. 71, s. 14; C. S., s. 7121; Ex. Sess. 1921, c. 49, s. 1; 1957, c. 1357, s. 1.)

§ 130-164. **Defiling public water supply.**—No person shall willfully defile, corrupt, or make impure any public or private water supply. No person

shall willfully destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct. (1850, c. 104; R. C., c. 34, s. 97; Code, s. 1114; 1893, c. 214; 1903, c. 159, s. 12; Rev., ss. 3457, 3857; 1911, c. 62, s. 32; C. S., s. 7124; 1957, c. 1357, s. 1.)

§ 130-165. **Discharge of sewage or industrial waste.**—No person or municipality shall flow or discharge sewage above the intake into any source from which a public drinking water supply is taken, unless said sewage shall have been passed through some system of purification approved by the State Board of Health; and the continued flow and discharge of such sewage may be enjoined. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125; 1957, c. 1357, s. 1.)

§ 130-166. **Sewage disposal on watersheds.** — All schools, hamlets, villages, towns, or industrial settlements which are not provided with a sewer system, and which are now located or may be hereafter located on the watershed of any public water supply shall maintain and provide a reasonable system approved by the State Board of Health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. (1903, c. 159, s. 14; Rev., ss. 3052, 3860; 1907, c. 585; 1911, c. 62, s. 35; C. S., s. 7127; 1957, c. 1357, s. 1.)

ARTICLE 14.

Meat Markets and Abattoirs.

§ 130-167. **Regulation of places selling meat.**—For the better protection of the public health, the State Board of Health is hereby authorized, empowered, and directed to prepare rules and regulations governing the sanitation of meat markets, abattoirs, poultry processing plants, and other places where meat, meat products, or poultry products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No meat market, abattoir, or poultry processing plant which fails to meet minimum standards prescribed by said rules and regulations shall operate; provided, that this article shall not apply to persons who raise and butcher for their own use and marketing meat, meat products, or poultry products; provided further that this article shall not restrict the State Board of Agriculture in making rules and regulations governing the sanitation of meat plants, abattoirs, and poultry dressing or processing plants when a system of mandatory or voluntary meat, meat products, or poultry inspection is carried on in such plants by the North Carolina Department of Agriculture as provided by law. (1937, c. 244, s. 1; 1957, c. 1357, s. 1.)

§ 130-168. **Inspection reports to be filed with local health director.**—Where municipalities or counties have a system of meat or poultry inspection as provided by law, the person responsible for such inspection work shall file a copy of all inspection work, reports, and other official data with the local health director. (1937, c. 244, s. 2; 1957, c. 1357, s. 1.)

§ 130-169. **Effect of article.**—The provisions of this article shall be considered as additional to and not in conflict with authority granted the State Board of Agriculture and the Commissioner of Agriculture in §§ 106-159 to 106-166 of the General Statutes providing for the inspection of meat and meat products plants and the inspection of meat and meat products and in §§ 106-549.1 to 106-549.14 of the General Statutes providing for the voluntary inspection of poultry and poultry products. (1937, c. 244, s. 4; 1957, c. 1357, s. 1.)

ARTICLE 15.

Private Hospitals and Educational Institutions.

§ 130-170. **Regulation of sanitation by State Board of Health.**—To

safeguard the health of patients, residents, and students of private hospitals, nursing and convalescent abodes, sanitariums, sanatoriums and educational or other institutions in North Carolina, the State Board of Health is hereby authorized and empowered to make rules and regulations governing the sanitation of all such establishments and to provide a system of grading applicable thereto. For the purposes of this article the word "private" shall refer to all institutions other than those operated exclusively by the State of North Carolina. The "non-private" institutions are subject to sanitation inspections under the provisions of subdivision (10) of G. S. 130-11.

If any of the above-named establishments fails to meet the minimum standards set by the State Board of Health, a reasonable time shall be given by the State Board of Health in which to make the alterations necessary to meet those minimum standards. In cases where the public health or the health of the inmates will be threatened by continued operation of an institution which does not meet the minimum standards, the State Board of Health may apply to the superior court for injunctive relief pursuant to the provisions of G. S. 130-205. (1945, c. 829, s. 1; 1957, c. 1357, s. 1.)

ARTICLE 16.

Regulation of the Manufacture of Bedding.

§ 130-171. **Definitions.**—In addition to the definitions set out in article one of this chapter, as used in this article, or on the tags required by this article:

The word "bedding" means: Any mattress, upholstered spring, comforter, pad of a thickness of more than one inch, cushion or pillow used principally for sleeping, or like item of a thickness of more than one inch used principally for sleeping. Dual purpose furniture such as sofa beds and studio couches shall be included within this definition.

The term "secondhand bedding" means: Any bedding of which prior use has been made.

The term "new material" means: Any material or article that has not been used in the manufacture of another article or used for any other purpose: Provided this shall not exclude by-products of industry that have not been in human use, unless otherwise excluded in this article.

The term "previously used material" means:

- (1) Any material which has been used in the manufacture of another article or used for any other purpose,
- (2) Any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including jute.

The word "renovate" means: The reworking or remaking of used bedding and returning it to the owner for his personal use or the use of his immediate family.

The word "manufacture" means: Any making or remaking of bedding out of new or previously used materials, except for the maker's own personal use or the use of his immediate family, other than renovating.

The word "sanitize" means: Treatment of bedding or materials to be used in bedding for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, have to sell, give away in connection with a sale, delivery or consign in sale, or rent; or, possess with intent to sell, deliver, consign in sale, or rent.

The term "itinerant bedding vendor" means: Any person who sells bedding from a movable conveyance.

The terms "cotton", "virgin cotton" and "staple cotton" means: The staple fibrous growth as removed from cottonseed in the usual process of ginning.

The term "cotton by-products" means: Any by-products removed from cotton by the various machine operations necessary in the manufacture of cotton yarn.

The term "cotton linters" means: The fibrous growth removed from cottonseed subsequent to the usual process of ginning.

The word "felt" means: Material that has been carded in layers by a garnett machine and is inserted into the bedding in layers. (1937, c. 298, s. 1; 1957, c. 1357, s. 1.)

§ 130-172. Sanitizing.—No person shall renovate any mattress without first sanitizing it in accordance with rules and regulations adopted by the State Board of Health.

Any sanitizing apparatus or process used under this article must conform to rules and regulations adopted by the State Board of Health, and shall be inspected and approved by a representative of the State Board of Health according to the rules and regulations of the State Board of Health. If, in the opinion of such representatives, the apparatus or process does not meet the standards established by said rules and regulations, such apparatus or process may be condemned by the representative of the State Board of Health, in which event such apparatus or process shall not be used for sanitizing any bedding or material required to be sanitized under this article until the defects have been remedied and the apparatus or process complies with the rules and regulations of the State Board of Health.

Any person sanitizing bedding must attach to said bedding a yellow tag containing such information as the State Board of Health may require, and affix thereto the adhesive stamp prescribed by G. S. 130-177.

Any person sanitizing material or bedding for another person shall keep a complete record of the kind of material and bedding so sanitized, such record to be open to inspection by any representative of the State Board of Health.

Any person who receives bedding for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2; 1957, c. 1357, s. 1.)

§ 130-173. Manufacture regulated.—No person shall manufacture in this State any bedding containing previously used materials without first sanitizing the previously used materials in accordance with rules and regulations adopted by the State Board of Health.

No manufacturing establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by regulations of the State Board of Health.

All materials used in the manufacture of bedding in this State shall be reasonably clean and free from other trash, oil, grease, or other extraneous matter. No material known as "sweeps" or "oily sweeps" may be used unless washed by a process approved by the State Health Director.

No person shall manufacture any bedding to which, except as otherwise provided in this article, is not securely sewed a tag of durable material approved by the State Board of Health, which tag shall be at least two inches by three inches in size, and to which is affixed the adhesive stamp provided for in G. S. 130-177. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English:

- (1) The name and kind of material or materials (as defined by this article or by the regulations of the State Board of Health) used to fill such bedding;
- (2) The name and address of the maker or vendor of the bedding;

- (3) A registration number designated by the State Health Director;
- (4) In letters at least one-eighth inch high the words "made of new material", if such bedding contains no previously used material; or the words "made of previously used materials", if such bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or secondhand bedding.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the adhesive stamp required by this article, and shall be sewed to the outside covering of every piece of bedding being manufactured. Except in the case of dual purpose furniture, said tag must be sewed to the outside covering before the filling material has been inserted. No trade name or advertisement will be permitted on said tag. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1.)

§ 130-174. Altering, etc., tags prohibited.—No person, other than one purchasing bedding for his own use, or a representative of the State Board of Health, shall remove, deface, or alter the tag required by this article. (1937, c. 298, s. 4; 1957, c. 1357, s. 1.)

§ 130-175. Selling regulated.—No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, labeled, and stamped in the manner required by this article, and which does not otherwise comply with the provisions of this article.

No person shall sell any secondhand bedding or bedding containing any previously used material unless sanitized, since last used, in accordance with rules and regulations adopted by the State Board of Health: Provided, this article shall not apply to a mattress sold by the owner and previous user from his home directly to a purchaser for his own personal use unless such mattress has been exposed to an infectious or contagious disease.

Possession of any item covered by this article in any store, warehouse, itinerant vendor's conveyance, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the item so possessed is possessed with intent to sell. No secondhand bedding shall be so possessed for a period exceeding 60 days until sanitized. (1957, c. 1357, s. 1.)

§ 130-176. Registration numbers, licenses.—All persons manufacturing or sanitizing bedding in North Carolina, or manufacturing bedding to be sold in North Carolina, shall make an application, in such form as the State Health Director shall prescribe, for a registration number. Upon receipt of such application, the State Board of Health shall issue to the applicant a certificate of registration showing such person's name and address, registration number, and such other pertinent information as the State Board of Health may require.

For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the following license fees are to be paid to the State Board of Health, deposited in the "bedding law fund," and expended in accordance with the provisions of G. S. 130-177. No person shall sanitize any bedding, as required by G. S. 130-172, unless he is exempted by other provisions of this article, until he has secured a "sanitizer's license" from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year. No person shall manufacture any bedding in this State, unless he is exempted by other provisions of this article, until he has secured a "manufacturer's license" from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year.

The regular license period shall be from January 1 to December 31 of each

year. However, any license bought after July 1 of any year shall be valid for the remaining part of that calendar year and shall be furnished at half the regular license fee. If any establishment owned by the holder of any such license or licenses should be sold, the license or licenses may be transferred with the business, such transfer to be accomplished under rules prescribed by the State Board of Health.

All licenses required by this article shall, at all times, be kept conspicuously posted in the place of business of the licensee.

The State Health Director may revoke and void any of the aforesaid licenses of any person convicted twice within a twelve months' period for violating this article; provided, that the State Board of Health shall have authority, after 30 days from the date of revocation, to reinstate any revoked license upon the payment of the required fees. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1.)

§ 130-177. **Enforcement funds.**—The State Board of Health is hereby charged with the administration and enforcement of this article, and the Board shall provide specially designated adhesive stamps for use under the provisions of this article. Upon request the Board shall furnish no less than five hundred such stamps to any person paying in advance eight dollars (\$8.00) per five hundred stamps.

Any person who manufactures bedding in North Carolina or any person who manufactures bedding to be sold in North Carolina may, in lieu of purchasing and affixing the adhesive stamps provided for by this article, annually secure from the State Board of Health a "stamp exemption permit" upon compliance with the provisions of this section and the rules and regulations of the State Board of Health. The holder of a stamp exemption permit shall not be required to purchase or affix adhesive stamps to bedding manufactured or sold in North Carolina. The cost of a stamp exemption permit is to be determined annually by the total number of bedding items manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of eight dollars (\$8.00) for each five hundred (500) pieces of bedding or fraction thereof. A maximum charge of four hundred dollars (\$400.00) shall be made for pieces of bedding manufactured in North Carolina but not sold in North Carolina.

Applications for stamp exemption permits must be submitted in such form as the State Board of Health shall prescribe. No stamp exemption permit may be issued to any person unless he has done business in North Carolina throughout the preceding calendar year in compliance with the provisions of this article, and unless he complies with the rules and regulations of the State Board of Health governing the granting of stamp exemption permits.

The State Board of Health is hereby authorized and directed to prepare rules and regulations for the proper enforcement of this section. The rules and regulations shall include provisions governing the type and amount of proof which must be submitted by the applicant to the State Board of Health in order to establish the number of bedding items that were, during the preceding calendar year:

- (1) Manufactured in North Carolina and sold in North Carolina;
- (2) Manufactured outside of North Carolina and sold in North Carolina;
- and
- (3) Manufactured in North Carolina but not sold in North Carolina.

Because of the greater difficulty involved in auditing the records of out-of-State manufacturers, the State Board of Health is authorized to require a greater amount of proof from out-of-State manufacturers than from in-State manufacturers. The State Board of Health may provide in its regulations for additional proof of the number of bedding items sold during the preceding calendar year

when it has reason to believe that the proof submitted by the manufacturer (whether in-State or out-of-State) is incomplete, misleading, or incorrect.

All money collected under this article shall be paid to the State Health Director, who shall place all such money in a special "bedding law fund", which is hereby created and specifically appropriated to the State Board of Health, solely for expenses in furtherance of the enforcement of this article. The State Health Director shall semiannually render to the State Auditor a true statement of all receipts and disbursements under said fund, and the State Auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for:

- (1) Salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or
- (2) Expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the State Health Director without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the State Board of Health. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1.)

§ 130-178. Enforcement by State Board of Health.—The State Board of Health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this article. Any person who shall hinder any representative of the State Board of Health in the performance of his duty under the provisions of this article shall be guilty of a violation of this article.

Every place where bedding is made, remade, renovated, or sold, or where material which is to be used in the manufacture of bedding is mixed, worked, or stored, shall be inspected by duly authorized representatives of the State Board of Health.

Any representative of the State Board of Health may order off sale, and so tag, any bedding which is not made, sanitized, tagged, or stamped as required by this article, or which is tagged with a tag containing a statement false or misleading, and such bedding shall not be sold or otherwise removed except with the consent of a representative of the State Board of Health, until such defect is remedied and a representative of the State Board of Health has reinspected same and removed the "off-sale" tag.

Any person supplying material to a bedding manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The bedding manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the State Board of Health.

When an authorized representative of the State Board of Health has reason to believe that bedding is not tagged or filled as required by this article, he shall have authority to open a seam of such bedding to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such bedding, and he shall have power to seize and hold for evidence any such records and any bedding or bedding material which in his opinion is made, possessed or offered for sale contrary to this article, and shall have power to take a sample of any bedding or bedding material for the purpose of examination or for evidence. (1937, c. 298, s. 6; 1957, c. 1357, s. 1.)

§ 130-179. Exemptions for blind persons and State institutions.—In the cases where bedding is manufactured, sanitized, or renovated in a plant or place of business owned or operated by blind persons in which place of business

not more than one sewing assistant who is not blind is employed in the manufacture or renovation of mattresses, the bedding shall be inspected pursuant to this article, but it shall not be required that stamps be affixed or that a license tax be paid, and bedding made by such blind persons may be sold by any dealer without the stamps being affixed.

State institutions engaged in the manufacture, renovation, or sanitation of bedding for their own use or that of another State institution are exempted from all provisions of this article. (1937, c. 298, s. 11; 1957, c. 1357, s. 1.)

ARTICLE 17.

Cancer Control Program.

§ 130-180. **State Board of Health to administer program; rules.**—The State Board of Health shall administer a program for the prevention and treatment of cancer to the extent specified in this article and the State Board of Health is authorized to promulgate rules and regulations to carry out such program. (1945, c. 1050, s. 1; 1957, c. 1357, s. 1.)

§ 130-181. **Financial aid for diagnosis, hospitalization and treatment.**—The State Board of Health shall furnish to indigent citizens of North Carolina having or suspected of having cancer, and who comply with the rules and regulations specified by the State Board of Health, financial aid for diagnosis, hospitalization, and treatment, and the State Board of Health may furnish to all citizens facilities for diagnosis of cancer. Such diagnosis, hospitalization, and treatment shall be given said patients in any hospital in this State which meets the minimum requirements for cancer control established by the State Board of Health. In order to administer such financial aid in the manner which will afford the greatest benefit to said persons, the State Board of Health is hereby authorized to promulgate rules and regulations specifying the terms and conditions upon which the patients may receive such financial aid, and act upon such applications in the manner which will best effectuate the purposes of this article. The State Board of Health may develop with the State Board of Public Welfare procedures for determining the needs of indigent and other low-income applicants for financial aid in carrying out the purposes of this article. (1945, c. 1050, s. 2; 1957, c. 1357, s. 1.)

§ 130-182. **Cancer clinics.**—The State Board of Health is authorized to establish and designate minimum standards and requirements for the organization, equipment and conduct of State-sponsored cancer clinics or departments in hospitals or health departments in this State to the end that said hospitals or health departments may intelligently prepare and adequately equip their institutions to diagnose, prevent and treat cancer. (1945, c. 1050, s. 3; 1949, c. 1071; 1957, c. 1357, s. 1.)

§ 130-183. **Tabulation of records.**—The State Board of Health shall compile, tabulate and preserve statistical, clinical, and other records relating to the prevention and cure of cancer. The clinical records of individual patients shall be considered confidential matter and shall not be open to inspection, except as provided by this chapter and the regulations of the State Board of Health. (1945, c. 1050, s. 7; 1957, c. 1357, s. 1.)

§ 130-184. **Reporting of cancer.**—It shall be the duty of every physician to notify the local health director of the name, address and such other items as may be specified by the State Board of Health, of any person by whom such physician is consulted professionally and who is found to have cancer of any type. The report shall be made within five days after the diagnosis of cancer is established, or within five days after obtaining reasonable evidence for believing that

such person is so afflicted. The forms used for reporting shall be prepared and supplied by the State Board of Health. The local health director shall forward to the State Board of Health all report cards within five days of their receipt from the physician. (1949, c. 499; 1957, c. 1357, s. 1.)

§ 130-185. **Assistance to hospitals and physicians.**—The State Board of Health shall assist hospitals and local health departments in the State in organizing and conducting cancer clinics as a part of the cancer control program, and shall assist physicians and hospitals and local health departments in establishing the early diagnosis of cancer and in preparing themselves to render the most efficient service in the cancer and control program. (1945, c. 1050, s. 8; 1957, c. 1357, s. 1.)

§ 130-186. **Cancer committee of North Carolina Medical Society.**—In formulating the plans and policies of the program for the prevention and cure of cancer, the State Board of Health shall consult with the cancer committee of the North Carolina Medical Society, which shall consist of one physician from each congressional district, to the end that the cancer control program shall most effectively serve the welfare of the people of the State, and such plans and policies shall be presented to and approved by said cancer committee. (1945, c. 1050, s. 9; 1957, c. 1357, s. 1.)

ARTICLE 18.

Midwives.

§ 130-187. **Regulation of midwives.**—No person shall practice midwifery in this State without a permit granted by the State Board of Health or a local board of health, under rules and regulations adopted by the State Board of Health or local board of health. The State Board of Health and the local boards of health are authorized to promulgate rules and regulations governing the practice of midwifery. (1957, c. 1357, s. 1.)

ARTICLE 19.

Loan Fund for Dental Students.

§ 130-188. **State Board of Health.**—The State Board of Health is hereby authorized to establish a loan fund to be known as "The Little Jack Loan Fund" for junior and senior dental students by setting aside an amount, not to exceed twenty-two thousand, five hundred dollars (\$22,500.00), for such purpose from the special dental fund. (1953, c. 916, s. 1; 1957, c. 1357, s. 1.)

§ 130-189. **Conditions under which loans to be made.**—Loans are to be made upon agreement that the recipient will, upon graduation from dental school and the securing of license to practice dentistry in North Carolina, join the staff of the Division of Oral Hygiene of the North Carolina State Board of Health, and repay said Board of Health each month, from salary received, an amount to be agreed upon by the loan committee and the recipient, until said loan is paid in full. The loan is to be secured by approved notes, without interest. Should said borrower-employer relationship be severed, for any cause, the unpaid balance of the loan will become due immediately. (1953, c. 916, s. 2; 1957, c. 1357, s. 1.)

§ 130-190. **Administration and custody of loan fund; selection of recipients; loans to minors.**—Administration of the loan fund and selection of recipients are to be directed by a loan committee to be composed of the State Health Director, the dental member of the State Board of Health and the Director of the Division of Oral Hygiene. The budget officer of the State Board of Health is to be the custodian of the loan fund and will issue checks and receive

payments of loans. The loan committee herein established shall have the power and authority to formulate and negotiate all contracts involved in making loans under this article. It shall have the power and authority to impose such reasonable contractual conditions as may be necessary to safeguard the fund herein established and shall fix all conditions as to amounts, length of time loans shall run, conditions of repayment and any and all things necessary to carry out the intent and purpose of this article. The fact that a junior or a senior dental student is under twenty-one years of age shall not invalidate any obligation signed by such junior or senior dental student under the provisions of this article and all such contracts, notes, agreements and other papers and documents signed by any junior or senior dental student under twenty-one years of age shall be legal, valid, binding and enforceable to the same extent as if said junior or senior dental student had already attained the age of twenty-one years or more. (1953, c. 916, s. 3; 1957, c. 1357, s. 1.)

ARTICLE 20.

Surgical Operations on Inmates of State Institutions.

§ 130-191. Procedure when surgical operations on inmates are necessary.—The medical staff of any penal or charitable hospital or institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the mental or physical condition of the inmate. The decision to perform such operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of said institution. No such operation shall be performed without the consent of the inmate; or, if the inmate be a minor, without the consent of a responsible member of his family, a guardian, or one having legal custody of such minor; or, if the inmate be non compos mentis, then the consent of a responsible member of his family or of a guardian must be obtained. In any event in which a responsible member of the inmate's family, or a guardian for such inmate, cannot be found, as evidenced by the return of a registered letter to the last known address of the guardian or responsible relative, then the local health director of the area in which the hospital or institution is located shall be authorized to give or withhold, on behalf of the inmate, consent to the operation.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of his family, guardian, or one having legal custody of such inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this article, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for such operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed.

This article is not to be considered as affecting the provisions of article 7 of chapter 35 of the General Statutes dealing with eugenical sterilization. (1919, c. 281, ss. 1, 2; C. S., ss. 7221, 7222; 1947, c. 537, s. 24; 1951, c. 775; 1957, c. 1357, s. 1.)

ARTICLE 21.

Post-Mortem Medicolegal Examinations.

§ 130-192. **Committee created.**—For the purpose of administering this article, there is hereby created within the State Board of Health a committee to be known as the Committee on Post-Mortem Medicolegal Examinations, which committee shall consist of seven persons, six of which shall be ex officio members designated by notification in writing to the Governor as follows:

- (1) The State Health Director.
- (2) The Attorney General, or a member of his staff designated by him.
- (3) The Director of the State Bureau of Investigation or a member of his staff designated by him.
- (4) The head of the Department of Pathology of the Medical School of the University of North Carolina or his representative from said Department designated by such departmental head.
- (5) The head of the Department of Pathology of the Bowman Gray School of Medicine of Wake Forest College or his representative from said Department designated by such departmental head.
- (6) The head of the Department of Pathology of the School of Medicine of Duke University or his representative from said Department designated by such departmental head.
- (7) One member shall be a layman appointed by the Governor.

The State Health Director shall be the chairman of the committee.

Regular meetings shall be held at such times as may be determined by the committee, and special meetings may be called at any convenient time and place upon reasonable notice signed by any three members.

Four members shall constitute a quorum for the transaction of any business coming before the committee.

The ex officio members shall have all the privileges, rights, powers and duties of the appointed member and shall serve on the committee during the tenure of their respective offices or that of the officer they represent. The member appointed by the Governor shall serve for a period of four years. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-193. **Powers and duties of the committee.**—The committee shall have power subject to the approval of the State Board of Health:

- (1) To make, amend, repeal, and promulgate necessary rules and regulations for its own government and procedure and for the performance of its duties under this article, including the power to allocate the expenses of performing autopsies and to impose and allocate the expenses of performing toxicological studies.
- (2) To accept grants, contributions, gifts, devises and bequests which may be used for purposes not inconsistent with the said grants, gifts, contributions, devises and bequests and for any other purposes as deemed necessary by the committee.
- (3) To authorize the chairman of the committee and his employees to cooperate with all educational institutions and law enforcement agencies of the State for the purpose of furthering medicolegal education and training.
- (4) To establish and maintain a toxicological laboratory under the supervision of the State Board of Health or if the committee deems it advisable so to do, contract with other technical personnel or for the use of technical facilities for the purpose of providing toxicologic service. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-194. **Powers and duties of the chairman of the committee.**—It shall be the duty of the chairman of the committee to attend the meetings

of the committee, to keep a record of such meetings, to attend to the official correspondence of the committee, to act as custodian of the files and records of the committee, to receive reports directed to the committee, to cause to be performed and to supervise and control medicolegal post-mortem examinations, to furnish pertinent information and reports relating to such investigations as directed by the committee, and to perform all other duties delegated to him by the committee. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-195. **Assistants and employees, salaries and expenses.**—(a) The chairman of the committee may, with the approval of the committee, employ such professional, clerical, technical, and other assistants as are necessary to serve at the pleasure of the chairman of the committee and, subject to the provisions of the State personnel regulations and budgetary laws, fix the compensation and travel expenses of all persons so employed, such compensation and travel expenses to be in keeping with the compensation paid to persons employed to do similar work in other State departments, institutions, or commissions.

(b) No salary or other compensation for services shall be allowed members of the committee who already receive compensation as officials or employees of the State. Service on the committee is to be considered as part of the duties of such officials as representatives of their respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members of the committee who are not officials or employees of the State shall receive ten dollars (\$10.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting or when on official business of the committee.

(c) For the more efficient conduct of the fiscal affairs of the committee, as well as for the convenience of any State agency, officer or department that may hold or have appropriated to or the custody of funds for the use and benefit of the committee, all such funds shall be held in a separate or special account on the books and records of such State agency, officer or department with a separate financial designation or code number to be assigned by the Budget Bureau or its agent, and said funds shall be expended solely upon the proper authorization or order of the committee. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-196. **District pathologists.**—The committee shall have the power to divide the State into districts, and to alter such districts as from time to time the committee shall see fit, for the more effective administration of its duties under this article. The chairman of the committee shall be empowered, with the concurrence of the committee, to appoint district pathologists to serve at the pleasure of the committee. Any person holding the office of coroner may be appointed as district pathologist or as a member of the committee, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, § 7, of the Constitution of North Carolina.

It shall be the duty of each district pathologist with whatever aid, assistance, and guidance by the chairman of the committee as the circumstances may require, to perform a complete autopsy upon the body of the deceased in cases referred to him, under the provisions of G. S. 130-199 below, and to make pathological studies of such anatomical materials as may be submitted to him by any medical examiner in his district or by others empowered by this article to make such reference in the performance of their official duties.

The district pathologist shall prepare a report to the chairman of the committee on every post-mortem examination, and on every pathological anatomical study, in such form as may from time to time be prescribed by the committee, copies of which he shall deliver to the referring medical examiner or other re-

ferring person, to the solicitor of the superior court of the district, and to the coroner of the county wherein the body of the deceased or any part of a body examined by him was found: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown.

For each autopsy performed by reason of reference by a medical examiner or by others empowered by this article to make such references, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county of legal residence of the deceased or by the county wherein the body or remains of the deceased were first found, if the legal residence is unknown or is other than the State of North Carolina.

For each report made on pathological anatomical materials submitted to him for study, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county wherein the anatomical materials were first found.

Such fees shall constitute full compensation of the district pathologist for duties performed under this section. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-197. County medical examiner.—The chairman of the committee shall appoint, subject to the approval of the committee and of the board of county commissioners of each county of the State that elects to come under this article, a qualified and practicing physician as medical examiner for the county to serve at the pleasure of the board of county commissioners and until his successor has been appointed and qualified, and said person so appointed may be the county coroner, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, § 7 of the Constitution of North Carolina. Each county medical examiner may appoint one or more assistant county medical examiners, with the concurrence of the chairman of the committee, to serve at the pleasure of the county medical examiner who makes such appointment.

Upon the death of any person on or after January 1, 1956, apparently by the criminal act or default of another, or apparently by suicide, or suddenly when apparently in good health, or while an inmate of any penal or correctional institution, or under any suspicious, unusual or unnatural circumstances, the medical examiner of the county in which the body of the deceased is found shall be notified by the physician in attendance, by any law enforcement officer having knowledge of such death, by the undertaker, by a member of the family of the deceased, by any person present, or by any person having knowledge of such deaths, and no person shall disturb the body at the scene of death until authorized by the county medical examiner. In cases which come under G. S. 152-7, the medical examiner shall notify the coroner.

A similar procedure shall be followed upon discovery of anatomical material suspected of being or determined to be a part or parts of a human body. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-198. Duties of county medical examiner.—Upon receipt of notice as specified in G. S. 130-197, the county medical examiner shall in each case make a physical and medical examination of the body or parts of a body which may be found, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the coroner of the county in which the body or any part of a body was found, to the solicitor of the superior court of the district in which the body or any part of a body was found, to the chairman of the committee and may, upon request furnish a copy of his report to the head of the law enforcement agency charged with the responsibility for the investigation of the incident upon forms or in the manner prescribed by the committee: Provided that a copy of said report shall

be furnished to any other interested person upon order of a court of record after need therefor has been shown. The county medical examiner may delegate his duties in a particular case to one of his assistant county medical examiners, or may perform the same jointly with him.

For each investigation under this article, including the making of the required reports, the county medical examiner shall receive a fee to be fixed by the board of county commissioners, after consultation with the committee, which shall be paid by the county for which he is appointed. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-199. When autopsies and other pathological examinations to be performed.—If, in the opinion of the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G. S. 130-197, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court solicitor or by any superior court judge, having authority in the judicial district wherein such county lies, such autopsy or pathological study shall be made by the district pathologist or by a competent pathologist designated by the chairman of the committee for such purpose.

In any case of death under circumstances set forth in G. S. 130-197 where a body shall be buried without a medical examination being made as specified in G. S. 130-198, or in any case where a body shall be cremated except in compliance with the provisions of this article, G. S. 130-200 in particular, it shall be the duty of the medical examiner of the county in which the body is buried, was cremated, or the remains were found, upon being advised of such facts, to notify the superior court solicitor who shall communicate the same to any resident or assigned judge of the superior court, and such judge may order that the body or the remains be exhumed and an examination or autopsy performed thereon by the district pathologist, or by a pathologist appointed by the chairman of the committee. The pertinent facts disclosed by the examination or autopsy shall be communicated to the superior court judge who ordered it, for such action thereon as he, or the court of which he is judge, deems proper. A copy of the report of the examination or autopsy findings and interpretations shall be filed with the chairman of the committee and the superior court solicitor: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-200. When medical examiner's permission necessary before embalming, burial and cremation.—(a) In any case where it is the duty of the county medical examiner to view the body and investigate the death of a deceased person as herein provided, it shall be unlawful to embalm the said body until the written permission of the county medical examiner has first been obtained, and such county medical examiner shall make the certificate of death required for a burial-transit permit, stating thereon the name of the disease causing death; or, if from external causes,

(1) The means of death, and

(2) Whether (probably) accidental, suicidal, homicidal; and shall, in any case, furnish such information as may be required by the State Registrar of Vital Statistics in order properly to classify the death.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial-transit permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the undertaker, or the local registrar of vital statistics charged with the issuance of burial-transit permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(c) No burial-transit permit for cremation of a body shall be issued by the

local registrar charged therewith and no cremation of a body shall be carried out until the county medical examiner shall have certified in writing that he has made inquiry into the cause and manner of death and is of the opinion that no further examination concerning the same is necessary. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-201. **Coroner to hold inquests, etc.; post-mortem examinations and remains under control of chairman of committee.**—Nothing in this article shall be construed as precluding a coroner from holding inquests or taking other steps as provided in G. S. 152-7 as hereby amended. All post-mortem examinations under this article shall be held and done under and subject to the control and direction of the chairman of the committee, who is hereby also vested with primary control over the remains, subject to the provisions of this article. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-202. **Election to adopt article.**—This article shall not become effective until after its adoption by resolution of the board of county commissioners of the county desiring to come within the purview of this article. Any county having elected to come within the purview of this article may, at the end of any fiscal year of such county, by appropriate resolution exclude itself from the provisions of this article. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

ARTICLE 22.

Remedies.

§ 130-203. **Penalties.**—Except as otherwise provided in this chapter, any person who violates any provision of this chapter or who willfully fails to perform any act required, or who willfully does any act prohibited by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by imprisonment for a period not to exceed two years or by both such fine and imprisonment in the discretion of the court; provided, however, that any person who willfully violates any rules or regulations adopted by the State Board of Health or by any local board of health pursuant to this chapter or who willfully fails to perform any act required by, or who willfully does any act prohibited by, such rules and regulations shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed fifty dollars (\$50.00) or by imprisonment for a period not to exceed thirty days. (1957, c. 1357, s. 1.)

§ 130-204. **Right of entry.**—Authorized representatives of the State Board of Health or any local board of health shall have at all times the right of proper entry upon any and all parts of the premises of any place in which such entry is necessary to carry out the provisions of this chapter, or the rules and regulations adopted under the authority of this chapter; and it shall be unlawful for any person to resist a proper entry by such authorized representatives of the State Board of Health or local board of health upon any premises other than a private dwelling. (1957, c. 1357, s. 1.)

§ 130-205. **Injunction.**—If any person shall violate or threaten to violate the provisions of this chapter or any rules and regulations adopted pursuant thereto and such violation, if continued, or such threatened violation, if committed, is or may be dangerous to the public health or if any person shall hinder or interfere with the proper performance of duty of the State Health Director or his representative or any local health director or his representative and such hindrance or interference is or may be dangerous to the public health, the State Health Director or any local health director may institute an action in the superior court of the county in which such violation, threatened violation, hindrance or interference occurred for injunctive relief against such continued viola-

tion, threatened violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of article 37 of chapter 1 of the General Statutes. (1957, c. 1357, s. 1.)

ARTICLE 23.

Mosquito Control in General

§ 130-206. Mosquito control units within State Board of Health.—For the purpose of promoting a healthful environment and controlling the menace of swarming mosquitoes, the State Board of Health shall maintain appropriate units of mosquito control. The Board shall employ such qualified personnel as may be necessary to carry out the provisions of this article; provided, that if personnel employed under this article have been performing satisfactorily their duties as employees of the Salt Marsh Mosquito Study Commission under the provisions of chapter 1197, Session Laws of 1955, for a period of one year or more, such employees shall be deemed qualified to hold equivalent positions under the State Board of Health and Merit System Council as they have held under the Salt Marsh Mosquito Study Commission. (1957, c. 832, s. 1.)

Editor's Note.—The act from which this article was codified became effective July 1, 1957.

§ 130-207. Duties of State Board of Health. — The State Board of Health is authorized to engage in research, conduct investigations, develop programs, and do such other things as may be necessary to carry out the provisions and purposes of this article and to control the mosquito menace in this State, within the limits of appropriations, funds, or personnel which are or which may become available from any source for this purpose. (1957, c. 832, s. 2.)

§ 130-208. Transfer of assets.—All funds, facilities, and property allocated to the Salt Marsh Mosquito Study Commission created by chapter 1197, Session Laws of 1955, shall be transferred to the State Board of Health on July 1, 1957. The State Board of Health shall accept such funds and facilities and administer them, together with any further funds or property made available to the State Board of Health for mosquito control purposes. (1957, c. 832, s. 3.)

§ 130-209. State Board of Health authorized to accept and administer funds.—The State Board of Health is authorized to accept and allocate or expend any grants-in-aid for mosquito control purposes which may be made available to the State by the federal government. This article is to be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. The Board is authorized to make such rules and regulations, not inconsistent with the laws of this State, as may be necessary to accomplish the purpose of this article. Any monies so received are to be deposited with the State Treasurer and are to be allocated or expended by the State Board of Health for the mosquito control purpose specified.

Funds received as grants-in-aid, funds appropriated by the State, and any other funds received by the State Board of Health for mosquito control purposes may be utilized to aid mosquito control districts or other local governmental units engaged in mosquito control undertakings, in accordance with rules and regulations adopted by the State Board of Health. In no case shall the monetary value of such aid provided with State funds exceed funds or the monetary value of other facilities provided locally for temporary control measures such as larviciding or adulticiding, nor twice the local funds or other facilities provided for improvements such as drainage, filling, and dyking. State aid shall not be given to mosquito control districts or other local governmental units until proof has been received by the State Board of Health that the required local

funds are available and will be used for mosquito control, in accordance with a plan approved by the State Board of Health or its duly authorized representative.

In emergency situations where proved outbreaks of mosquito-borne diseases occur, the State Health Officer is authorized to utilize the appropriated State funds to suppress such outbreaks. (1957, c. 832, s. 4.)

ARTICLE 24.

Mosquito Control Districts.

§ 130-210. Creation and purpose.—For the purpose of preserving and promoting the public health and welfare by providing for the control of mosquitoes and other arthropods of public health significance, the creation of mosquito control districts, as hereinafter provided, is hereby authorized. A mosquito control district may be comprised of one or more contiguous counties or contiguous parts of one or more counties. (1957, c. 1247, s. 1.)

Editor's Note.—The act from which this article was codified became effective July 1, 1957.

§ 130-211. Nature of district; procedure for forming districts.—(a) A mosquito control district may be formed as hereinafter set out and when so formed, it shall be a body politic and corporate, and a political subdivision of the State of North Carolina and may sue and be sued in its corporate name.

(b) If the proposed district lies wholly within a single county, ten per cent (10%) or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. Upon receipt of such petition, the board of county commissioners shall consider it and if the formation of the district appears feasible and in the interest of public health, it shall forward said petition or a copy thereof to the State Board of Health which shall consider the advisability of the formation of such district. If the State Board of Health deems the formation of such district advisable and in the interest of public health, it shall so notify the board of county commissioners whereupon said board shall give notice of a public hearing upon the question of the formation of such district by advertising the time, place and purpose of the hearing once each week for four (4) successive weeks prior to such hearing in some newspaper either published in the county or having a general circulation therein. The public hearing shall be presided over by the chairman of the board of county commissioners and shall be attended by a representative of the State Board of Health, and said hearing may be continued from time to time as may be necessary to hear the proponents and opponents of the formation of such district. If, after such hearing and after consultation with the representative of the State Board of Health, the board of county commissioners deems it advisable that such district should be created and established, it shall submit to the qualified voters residing within the proposed district at an election called for that purpose, the question of whether or not the district shall be created.

Prior to the submission of the question of the formation of the district to the voters within the proposed district, the board of county commissioners may make minor deviations in defining the boundaries of the proposed district upon a determination that such minor deviation from the boundaries described in the petition is in the interest of public health, provided that ten per cent (10%) of the resident freeholders within the revised boundaries shall have signed the petition proposing the creation of said district or additional resident freeholders within the revised boundaries of the proposed district shall sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten per cent (10%) of the qualified electors therein.

At the election provided for herein, the board of county commissioners shall provide one or more polling places within the proposed district, shall provide for a registrar and for judges of election at the polling places, shall provide for the registration of all qualified voters residing in said proposed district, shall cause to be prepared the necessary ballots, shall fix the time for holding the election, and shall conduct said election in every other respect according to the provisions of the laws governing general elections, so far as same may be applicable. The cost of holding the election shall be paid from the general or health fund of the county or from both as may be determined by the board of county commissioners. Notice of the time and purpose of the election and of the location of the polling place or places shall be published in some newspaper published or circulated within the proposed district at least three (3) times, the first of such notices to be published not less than thirty (30) days preceding the election.

The form of the question to be stated on the ballot shall be in substantially the following words:

FOR creation of the (here insert name) Mosquito Control District and the levy of a special tax for mosquito control purposes.

AGAINST creation of the (here insert name) Mosquito Control District and the levy of a special tax for mosquito control purposes."

Such affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an "X" in one of the squares preceding the form.

If a majority of the qualified voters voting at the election vote in favor of creation of the district and the levy of the special tax, the board of county commissioners shall declare that such district exists, and shall adopt a resolution to that effect.

(c) In the event the proposed mosquito control district shall embrace lands lying in two or more counties, the petition signed by the requisite number of resident freeholders within the proposed district shall be addressed to the State Board of Health. If the State Board of Health deems the formation of the proposed district to be in the public interest and in the interest of public health, it shall hold a public hearing or hearings within the proposed district after first giving notice of the time and place of such hearing or hearings by publication once each week for four (4) successive weeks in some newspaper published or circulated in said proposed district. Public hearings shall be held in the courthouse of each of the counties in which any part of the proposed district is situated and may be held by any representative designated by the State Board of Health. After such hearing, if the State Board of Health deems the formation of the district to be in the public interest and beneficial to the public health, it shall order an election to be held upon the question of the formation of the district after first advertising the time of said election in the manner provided in subsection (b) hereof. At the request of the State Board of Health, the several counties in which any of the proposed district lies shall provide one or more polling places in the proposed district, shall provide for a registrar or registrars and judges of election at the polling places, and shall provide for the registration of all qualified voters residing within said district and within their respective counties. The State Board of Health shall provide for the printing and distribution of the ballots which shall be printed in substantially the same form as set out in subsection (b) hereof but which shall bear the facsimile signature of the secretary of the State Board of Health. The costs of printing and distributing said ballots and any other incidental costs shall be borne by and prorated among the several counties in which any of the district lies in accordance with each county's pro rata portion of the total number of acres within the district. Such pro rata portion shall be ascertained by the State Board of Health and certified to each county and shall be conclusive with respect to the pro rata part of expenses to be borne by each county. If the majority of the qualified voters voting at the election vote in favor of the creation of the district and the levy of the spe-

cial tax, the State Board of Health shall declare that such district has been formed and created and shall certify such fact to the board of county commissioners of each county wherein any part of said district lies and each board of county commissioners shall insert such certification in its minutes. (1957, c. 1247, s. 2.)

§ 130-212. **Governing bodies for mosquito control districts.**—Each mosquito control district shall be governed by a board of commissioners. In the case of a district lying wholly within a single county, the board shall be composed of five (5) members, all of whom shall be residents of the district. Three (3) of the members shall be appointed by the board of county commissioners, one for an initial term of one (1) year, one for an initial term of two (2) years, and one for an initial term of three (3) years, and thereafter all appointments made by the board of county commissioners shall be for terms of three (3) years. One member shall be appointed by the State Health Officer and one member by the Director of the Wildlife Resources Commission, these two appointees to serve at the pleasure of the appointing authority. All vacancies shall be filled by the appointing authority.

In the case of a district lying in two or more counties, the board of commissioners of each county in which any part of the district lies shall appoint one member. The State Health Officer shall appoint one member and the Director of the Wildlife Resources Commission shall appoint one member. In the event the district lies in only two counties, the board of commissioners of the county in which a majority of the acreage of the district lies shall appoint two members, one for an initial term of one (1) year and the other for an initial term of two (2) years, and the other county shall appoint one member for an initial term of three (3) years. All succeeding terms of county appointees shall be for three (3) years. All vacancies shall be filled by the authority which appointed the member creating the vacancy, and the appointees of the State Health Officer and the Director of the Wildlife Resources Commission shall hold office at the pleasure of the appointing authority.

At its first meeting, the board shall elect a chairman, a vice-chairman, a secretary, and a treasurer, the last of which two officers may be combined in the same member. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary. The board shall meet in regular meeting at least quarterly and may meet in a special meeting at any time upon call of the chairman or any two members, and upon notice of the time, place and purpose of the meeting of not less than three (3) days. Before entering upon the discharge of their duties, each member shall take and subscribe an oath of office as follows which oath shall be entered in the minute book:

“I....., do solemnly swear that I will well and truly perform my duties as a Commissioner of the Mosquito Control District, so help me God.

.....Signature
Sworn to and subscribed before me this day of, 19.....
.....Signature of Officer Administering Oath”.
(1957, c. 1247, s. 3.)

§ 130-213. **Corporate powers.**—A mosquito control district created in conformity with the provisions of this article shall have and exercise through its board of commissioners the following corporate powers in addition to such incidental powers as may be necessary in order to discharge its corporate functions:

- (1) To levy ad valorem taxes upon all the taxable property within the district at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation.

In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district as the basis for its tax assessment and the

mosquito control district shall certify its tax rate to the county tax collector or supervisor in time to have such rate and the amount of tax due thereupon entered upon the official county tax receipts and stubs or duplicates. It shall be the duty of the county tax collector to collect said taxes at the same time as county taxes are collected and deposit same to the credit of the mosquito control district in a depository or depositories designated by the governing board of said district.

In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in the several counties in which the district lies by adjusting the ratio of assessed valuation in the several counties to the true values of the taxable property in the several counties. From such adjusted and equalized valuations, any board of commissioners of any county may appeal to the State Board of Assessment as in the case of an appeal by a property owner from a county board of equalization and review to the State Board of Assessment as provided in chapter 310 of the Public Laws of 1939 as amended. Upon such equalized assessed valuations, the board of commissioners of the mosquito control district shall levy its tax and shall certify the amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of such mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates, and it shall be the duty of the several county tax collectors to collect said tax and deposit same to the credit of the mosquito control district in some depository or depositories designated by the commissioners of said district.

The taxes levied by virtue of this article shall become due, shall be subject to the same discounts and penalties and interest, and shall have the same remedies for the collection of the taxes and for the refund of such taxes as provided for county and municipal ad valorem taxation by chapter 310 of the Public Laws of 1939 as amended. Said taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with said taxes. Such taxes shall be deemed to be for a special purpose and for a necessary expense for which the special approval of the General Assembly is hereby given.

- (2) To accept gifts or endowments, and to receive federal and State grants-in-aid. All money or property acquired under this section or subsection (1) of this section, or any other source, shall be deposited in a separate fund to be used solely for the purpose of carrying out the provisions of this article. Funds so deposited shall be withdrawn by warrants signed by the chairman of the governing board of the district, and countersigned by the secretary.
- (3) To take all necessary and proper steps to prevent the breeding of mosquitoes and other arthropods of public health significance within the district, and to destroy adult mosquitoes and other arthropods of public health significance found within the district.
- (4) To conduct arthropod control measures in cooperation with individuals, firms, corporations, and federal, State, and local governmental agencies.
- (5) To enter all places within the district for the purpose of inspection and survey, whether on privately owned land or not, and to treat with proper means all places, wherever situated, that are breeding mosquitoes or other arthropods of public health importance, and to do all things necessary or incidental to the power herein granted.

- (6) To acquire, either by purchase, condemnation, or otherwise, and to hold real and personal property, easements, rights-of-way, or other property necessary or convenient for the accomplishing of the purpose of this article. Any land which has been acquired by the board and improved by drainage, filling, dyking, or other treatment, and other real property held by the board may be sold or leased by the board through the process of competitive bidding. All condemnation proceedings are to be in accordance with the provisions of chapter 40 of the General Statutes of North Carolina.
- (7) To employ necessary personnel, fix salaries, purchase equipment, supplies and materials, make contracts, rent office or storage space, and perform other administrative functions necessary for the purpose of carrying out this article.
- (8) To borrow money in anticipation of tax collection in gross amounts not to exceed the anticipated tax receipts for the fiscal year and to execute and deliver its notes or bonds therefor.
- (9) To reimburse members and employees of the board for actual expenditures incurred in authorized travel.
- (10) To employ a district superintendent who is an engineer, entomologist, or otherwise qualified as an arthropod control specialist. The professional qualifications of the superintendent must be approved by an authorized representative of the State Health Officer. (1957, c. 1247, s. 4.)

§ 130-214. **Adoption of plan of operation.**—Sixty (60) days prior to the initiation of operations, the governing board of each mosquito control district must submit to the State Health Officer, in such detail as may be required by the State Health Officer, a plan of procedure and operation. The State Health Officer, through his authorized representative, shall have authority to approve, modify, or take other appropriate action in regard to such plans. No contract may be entered into, program embarked upon, or work begun prior to the approval of the plan by the State Health Officer or his authorized representative.

In addition, the governing board of each mosquito control district must submit to the State Health Officer at least sixty (60) days prior to the expiration of each fiscal year, in such detail as the State Health Officer may require, a plan of procedure and operation for the ensuing fiscal year. The State Health Officer, through his authorized representative, shall have authority to approve, modify, or take other appropriate actions in regard to such plans for the ensuing fiscal year. No contract may be entered into, program embarked upon, or work begun or continued prior to the approval of said plan by the State Health Officer or his authorized representative. (1957, c. 1247, s. 5.)

§ 130-215. **Resolution authorizing bond issue and purpose for which bonds may be issued.**—Either before or after the adoption of the plan as aforesaid, the governing board of any mosquito control district may pass a resolution (hereinafter sometimes referred to as “bond resolution”) authorizing the issuance of bonds of the district. The negotiable bonds or a mosquito control district may be issued for the purchase of land and equipment, or any other property, real, personal, or mixed, to be used in carrying out the functions of the district, or for any other purpose consistent with the control of mosquitoes and other arthropods of public health significance.

Such resolution shall state:

- (1) In brief and general terms, the purpose for which the bonds are to be issued.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the district.

(4) That the resolution shall take effect when and if it is approved by the voters of the mosquito control district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in § 130-218. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the governing board of the district appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the governing board of Mosquito Control District on the day of, 19....., and was first published on the day of, 19..... Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
Secretary,.....
Mosquito Control District.

(1957, c. 1247, s. 6.)

§ 130-216. Limitation of action to set aside bond resolution.—Any action or proceeding in any court to set aside a bond resolution adopted pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in § 130-215. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever. (1957, c. 1247, s. 7.)

§ 130-217. Publication of resolution.—The resolution required by § 130-215 to be published shall be published in a newspaper published in the county in which the district lies, or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published in such county, in a newspaper which, in the opinion of the governing board of the district, has general circulation within the district. (1957, c. 1247, s. 8.)

§ 130-218. Call for election.—Following the adoption of a bond resolution by the governing board of the district, the said board shall call upon the board or boards of county commissioners in the county or counties in which the district, or any portion thereof is located, to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of affirmative votes, the governing board of the district may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes, or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the mosquito control district.

The board of commissioners of the county in which said mosquito control district is located, if wholly located in a single county, may in its discretion at any special election held under the provisions of this article make the whole district a voting precinct, or may create therein one or more voting precincts, as to it seems best to suit the convenience of voters, the said precinct not to be the general election precinct, unless the boundaries of the mosquito district are cotermi-

nous with one or more general election precincts. If said district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the mosquito district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the mosquito control district, the cost of the same to be paid by the mosquito control district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the mosquito control district, a new registration of the qualified voters within the district shall be ordered, and notice of such new registration shall be deemed to be sufficiently given, if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said district. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections, as provided in G. S. 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters, and the place or places at which they will be open on Saturday. The books of such new registration shall close on the second Saturday before the election. The Saturdays 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.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the Board of Mosquito Control Commissioners of District on the day of, 19...., authorizing the issuance of not exceeding \$ of bonds of said district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the Board of Mosquito Control Commissioners of District on the day of, 19...., authorizing the issuance of not exceeding \$..... of bonds of said district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of a ballot is not prescribed. After the election and after the vote has been counted, canvassed, and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court having the greatest number of acres within the district as polling books for the particular mosquito control district involved. At any subsequent election, a new registration may or may not be ordered, as may be determined by the governing board of the mosquito control district.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the governing board of the district, and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior court of each of such counties. Such statement shall be published once. No right of action or defense founded upon the invalidity of such 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 thirty days after the publication of such statement. (1957, c. 1247, s. 9.)

§ 130-219. **Bonds.**—The governing board of the district shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, 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 of North Carolina. The bonds shall not be sold at less than par and accrued interest, nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the governing board of the district, and the seal of the governing board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said governing board in office at the date of the bonds, or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the governing board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer, unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A mosquito control district may keep in the office of the secretary of the governing board, or in the office of a bank or trust company appointed by said governing board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered, except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration, a bond may be transferred on such register by the registered owner in person, or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A mosquito control district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest, at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest, the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been canceled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the governing board of the district, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the governing board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district, as provided in G. S. 159-28. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1957, c. 1247, s. 10.)

Chapter 131.
Public Hospitals.

Article 3.

County Tuberculosis Hospitals.

Sec.

131-33.1. Discontinuance of hospitals.

Article 11.

Sanatorium for Tubercular Prisoners.

131-88. Nursing, guarding and disciplining of prisoners.

Article 13.

Medical Care Commission and Program of Hospital Care.

131-121.1. Graduate students in sociology and psychology; loan fund.

Article 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

131-126.21. Board of managers; county hospital authority.

Article 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

Sec.

131-126.32. Result of hearing; name of district; limitation of actions.

131-126.38a. Counties authorized to borrow money on behalf of hospital districts to pay certain appropriations and bonds.

131-126.40a. Governing body of district; powers.

Article 14.

Cerebral Palsy Hospital.

131-133. Aims of hospital; application for admission.

131-134. Rules, regulations and conditions of admission; payment for treatment.

ARTICLE 2A.

The County Hospital Act.

§ 131-28.3. Counties authorized to erect, purchase and operate hospitals.

Expenditure of Tax Funds for Construction of Hospital Is for Public Purpose.—The expenditure of tax funds for the construction of a general county hospital in accordance with this section is for a public purpose, and a county, when authorized by the General Assembly and with the approval of a majority of the voters as pro-

vided by § 131-28.4, has as much right to issue its bonds to provide hospital facilities for those citizens who are able to pay for the services rendered to them as it does to provide such facilities for the sick and afflicted poor. *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

ARTICLE 3.

County Tuberculosis Hospitals.

§ 131-31. **Board of managers; term of office; compensation.**

Local Modification.—By virtue of Ses-

Wake County in the recompiled volume should be deleted.

§ 131-33.1. **Discontinuance of hospitals.**—Whenever the governing body operating a hospital as provided in this article determines that it is unnecessary to continue the operation of such hospital because the need for it ceases to exist, the governing body may adopt a resolution to such effect and thereupon discontinue operating such county tuberculosis hospital. Upon discontinuing the operation of such hospital, the board of county commissioners is authorized to make such use or disposition of the hospital properties as, in the opinion of the board of county commissioners, would best serve the public interests of the county. (1957, c. 1353.)

ARTICLE 7.

State Sanatorium for Tuberculosis.

§ 131-54. **Indigent patients; recovery of charges from those able to pay.**—The said directors in determining the qualifications for admission for those applying as patients to the institution and in making bylaws and regulations for the governing therein shall not provide or make any bylaw, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patients, shall be received without regard to their indigent condition; but the directors of said institution shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such bylaws and regulations as shall most equitably carry out the directions contained in § 131-53. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said directors are authorized and empowered to institute an action in the name of the said Sanatorium in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars (\$200), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the provisions contained in § 131-60. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332; 1955, c. 287, ss. 1, 2; 1957, c. 1246.)

Editor's Note.—

The 1955 amendment changed parts of the section now deleted.

The 1957 amendment deleted a provision relating to acquiring a settlement in

the State as a prerequisite to the admission of indigent patients. It also deleted a provision as to the admission on a cost basis of persons living on property under federal jurisdiction.

ARTICLE 8.

Western North Carolina Sanatorium.

§ 131-63. **Terms of directors; ex officio director.**—The said board of directors shall be divided into three classes of four directors each, the first class to serve for a period of two years, the second class for a period of four years and the third class for a period of six years, and at the expiration of the terms of the several classes, shall be appointed for a period of six years. The State Health Director shall be ex officio a member of the board of directors. (1935, c. 91, s. 3; 1935, c. 138, s. 2; 1957, c. 1357, s. 19.)

Editor's Note.—The 1957 amendment, “secretary of the North Carolina State effective January 1, 1958, substituted in the Board of Health.” last sentence “State Health Director” for

ARTICLE 11.

Sanatorium for Tubercular Prisoners.

§ 131-88. **Nursing, guarding and disciplining of prisoners.** — The prison division of the State Prison Department for tuberculous prisoners of McCain, North Carolina, or any other place where a prison division for tuberculous prisoners may be established, shall have the same powers, duties, and responsibilities in the nursing, guarding and disciplining of tuberculous prisoners and convicts as it now has as to other prisoners and inmates under its supervision

and control. (1923, c. 127, s. 6; C. S., s. 7220(e); 1949, c. 1136; 1955, c. 968, s. 1; 1957, c. 349, s. 10.)

Editor's Note.—

The 1955 amendment rewrote this section and made it applicable to "nursing."

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 131-89. Feeding prison staff; medical and dietetic treatment and care of convicts.—The North Carolina Sanatorium for the Treatment of Tuberculosis shall provide food for the prison staff, on the same basis it provides food for its own employees, and have the same duties and responsibilities in providing medical and dietetic treatment and care of the inmates of said Sanatorium for the treatment of tuberculous prisoners or convicts as it had prior to the passage of this section. (1923, c. 127, s. 1; C. S., s. 7220(f); 1949, c. 1136; 1955, c. 968, s. 2.)

Editor's Note.—

The 1955 amendment inserted the words "on the same basis it provides food for its

own employees," and substituted "tuberculous" for "tubercular."

ARTICLE 12.

Hospital Authorities Law.

§ 131-114. Appropriations by city and county.

Local Modification.—City of Charlotte: 1955, c. 1114.

ARTICLE 13.

Medical Care Commission and Program of Hospital Care.

§ 131-117. North Carolina Medical Care Commission.—There is hereby created a State agency to be known as "The North Carolina Medical Care Commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the Medical Society of the State of North Carolina; one member by the North Carolina Hospital Association; one member by the North Carolina Dental Society; one member by the North Carolina Nurses' Association; one member by the North Carolina Pharmaceutical Association, and one member by the Duke Foundation, for appointment by the Governor.

Ten members of said Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said Commission, the Governor shall designate the term for which each member is appointed. Four of said members shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the Governor for the unexpired term. The Commissioner of Public Welfare, and the State Health Director shall be ex officio members of the Commission, without voting power.

The Commission shall elect, with the approval of the Governor, a chairman and a vice-chairman. All members, except the Commissioner of Public Welfare, and the State Health Director shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses. (1945, c. 1096; 1957, c. 1357, s. 17.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, substituted "State Health Director" for "secretary of the State Board of Health" in the third and fourth paragraphs.

§ 131-121. Medical and other students; loan fund.—The North Carolina Medical Care Commission is hereby authorized and empowered, in accord-

ance with such rules as it may promulgate, to make loans to students who may wish to become physicians, dentists, pharmacists, or nurses and who are accepted for enrollment in any standard school or college giving approved courses in medicine, dentistry, pharmacy or nursing, and is approved by the Commission provided such student or students shall agree, that upon graduation and being duly licensed, to practice medicine, dentistry, pharmacy or nursing in some rural area of North Carolina for at least four years. Rural area, for the purpose of this section, shall mean any town or village having less than 2,500 population according to the last decennial census, or area outside and around such towns or villages. Such loans shall bear such rate of interest as may be fixed by the Commission, not to exceed four per cent (4%) per annum.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, to the North Carolina Medical Care Commission the sum of fifty thousand dollars (\$50,000.00). The State Treasurer shall set up on his records an account to which shall be deposited said amount, and from which withdrawals shall be made upon vouchers made by the State Auditor upon request of the North Carolina Medical Care Commission. This appropriation shall not lapse at the end of any biennium, but shall remain available for the purposes herein stated.

For the purpose of encouraging medical students and student nurses to specialize in psychiatry, and to extend the provisions of this section and to provide sufficient funds to accomplish the purposes of this paragraph, there is hereby allocated out of the appropriations contained in chapter 1165 of the 1953 Session Laws for Student Loan Fund in section 1 under Title VI-16(2), for each year of the 1953-1955 biennium, the sum of fifty thousand dollars (\$50,000.00). Loans provided for in this paragraph shall be made only to students in the Schools of Medicine and Nursing who are specializing in psychiatry upon the following express conditions and limitations:

1. Loans shall be made only to medical students specializing in psychiatry and student nurses who are specializing in psychiatry and who are enrolled in or engaged in training at the Duke University Medical School, Durham, North Carolina; the Bowman Gray Medical School at Winston-Salem, North Carolina; or at the Medical School of the University of North Carolina at Chapel Hill. Loans shall be made only to bona fide residents of this State.

2. No loan shall be made to any one person in excess of two thousand dollars (\$2,000.00) for each scholastic year, not to exceed four years.

3. Under rules promulgated by the North Carolina Medical Care Commission, any loans made hereunder shall be canceled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of Staff of the State Hospital at Butner, the State Hospital at Goldsboro, the State Hospital at Morganton, or the State Hospital at Raleigh. Loans or any parts thereof not so canceled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum.

The North Carolina Medical Care Commission is hereby authorized and empowered to establish and promulgate rules and regulations fixing fair and reasonable standards, systems and plans whereby physicians, dentists, pharmacists, and nurses receiving loans under this section shall receive a credit on the principal and/or interest of such loan in an amount fixed by such Commission for each year, or other period of time as fixed by regulation, of practicing his or her profession in a rural area as defined in this section. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019; 1953, c. 1222.)

Editor's Note.—

The 1953 amendment inserted the pro-

visions as to loans to students specializing in psychiatry.

§ 131-121.1. **Graduate students in sociology and psychology; loan fund.**—The North Carolina Medical Care Commission is hereby authorized and

empowered in accordance with such rules as it may promulgate to make loans to students who wish to do graduate work in the field of sociology or psychology and who are enrolled in or accepted for enrollment in the appropriate graduate school of Duke University, Durham, North Carolina; Wake Forest College, Winston-Salem, North Carolina; or the University of North Carolina at Chapel Hill, North Carolina. Loans shall be made only to bona fide residents of this State and no loan shall be made to any one student in excess of two thousand dollars (\$2,000.00) for each scholastic year. Under rules promulgated by the North Carolina Medical Care Commission any loan made hereunder shall be cancelled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of the Staff of the State Hospital at Butner, the State Hospital at Goldsboro, the State Hospital at Morganton, or the State Hospital at Raleigh. Loans or any part thereof not so cancelled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum. Any appropriation made in furtherance of the program set forth in G. S. 131-121 shall likewise be used for the purpose of providing loans made pursuant to the provisions of this section. (1957, c. 1425.)

ARTICLE 13A.

Hospital Licensing Act.

§ 131-126.1. Definitions.—As used in this article:

(a) "Hospital" means an institution devoted primarily to the rendering of medical, surgical, obstetrical, or nursing care, which maintains and operates facilities for the diagnosis, treatment or care of two or more nonrelated individuals suffering from illness, injury or deformity, or where obstetrical or other medical or nursing care is rendered over a period exceeding twenty-four hours.

The term "hospital" for clarification purposes, includes, but not by way of limitation, an institution that receives patients and renders for them diagnostic, medical, surgical and nursing care; and "hospital" means also an allied institution that provides for patients diagnostic, medical, surgical and nursing care in branches of medicine such as obstetric, pediatric, orthopedic, and eye, ear, nose, and throat and cardiac services, and in the diagnosis and treatment of mental and neurological ailments, and in the diagnosis and treatment and care of chronic diseases and transmissible diseases.

The term "hospital" as used in this article does not apply to a welfare institution, the primary purpose of which is to provide domiciliary and/or custodial care to its residents, and it does not apply to an infirmary which such institution may maintain to provide medical and nursing care for its residents.

Further to distinguish a "hospital" from a "welfare institution," as the term is used in this article the latter means orphanages; penal and correctional institutions; homes for the county or city poor, aged, and infirm; nursing homes for the mentally and physically infirm; homes for the aged; and convalescent and rest homes; and homes for pregnant women who require public assistance and/or custodial care or obstetrical and nursing care in such home, or nursing care prior to or subsequent to delivery in a "hospital".

The Commission shall have all of the power and authority to license a (nursing) convalescent home as the same is hereinafter defined, and all of the powers, duties and provisions of this article, with respect to hospitals, shall apply equally and to the same effect with respect to a (nursing) convalescent home, but nothing in this article shall be construed as identifying, defining or classifying a (nursing) convalescent home as a hospital or the equivalent of a hospital. For the purpose of this article, a "convalescent home" is defined as an institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more unrelated persons. A "convalescent home" is a home for chronic or convalescent patients who, on admission, are not as a rule, acutely ill and who do not usually require special fa-

cilities, such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "convalescent home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care is indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

A "home for the aged and infirm," usually designated as a boarding home, as distinguished from a "convalescent home" is a place for the care of aged and infirm persons whose principal need is a home with such sheltered, custodial, and nursing care as their age and infirmities require. In such homes, medical care is only occasional or incidental, such as may be required in the home of any individual or family for persons who are aged and infirm. The residents of such homes will not, as a rule, have remedial ailments or other ailments for which continuing skilled planned medical and nursing care is indicated. A major factor which distinguishes these homes is that the residents may be given congregate services as distinguished from the individualization of medical care required in "patient" care. A person may be accepted for sheltered or custodial care because of a disability which does not require continuing planned medical care, but which does make him unable to maintain himself in individual living arrangements.

In further distinguishing between a "convalescent home" on the one hand and a "home for the aged and infirm" on the other, it is recognized that a "convalescent home" is not a place for the care of aged and infirm persons whose principal need is a home with such custodial and sheltered care as their age and infirmities require. In such convalescent homes medical care is not merely occasional and incidental, such as may be required in the home of any individual or family. The residents of these convalescent homes will, as a rule, have remedial ailments, or other ailments, for which continuing planned medical and skilled nursing care is indicated. A major factor which distinguishes these convalescent homes is that the residents will require the individualization of medical care required in "patient" care.

(b) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

(c) "Governmental unit" means the State or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

(d) "Commission" means the North Carolina Medical Care Commission as established by §§ 131-117 to 131-126, as amended, and as the same may be hereafter amended. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369.)

Editor's Note.—The 1955 amendment added the last three paragraphs of subsection (a).

§ 131-126.10. Hospital advisory council. — The Commission may appoint a hospital advisory council which shall consist of the executive secretary of the Commission who shall serve as chairman ex officio, the Commissioner of the State Board of Public Welfare, ex officio, the State Health Director, ex officio, the Superintendent of Mental Hygiene, ex officio, and the following: One or more individuals of recognized ability in the field of hospital administration; one or more individuals of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health; one or more individuals with broad civic interests representing consumers of hospital services.

(1957, c. 1357, s. 18.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, substituted "State Health Director" for "State health officer" in the first paragraph. As the second paragraph was not changed it is not set out.

ARTICLE 13B.

*Additional Authority of Subdivisions of Government to Finance Hospital Facilities.***§ 131-126.18. Definitions.**

Applied in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.20. General powers of municipalities in the construction, acquisition, operation and maintenance of hospital facilities.

Applied in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.21. Board of managers; county hospital authority.—Any authority vested by this article in the municipality for the planning, establishment, construction, maintenance or operation of hospital facilities may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers, duties, compensation, and tenure shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, construction, maintenance or operation shall be a responsibility of the municipality.

(1) Board of County Commissioners May Establish Hospital Authority in Any County with Membership Representation from Town or City.—The board of county commissioners of any county may elect to establish a county hospital authority which shall be designated by the title or name of: "..... County Hospital Authority," which shall consist of seven members, six of whom shall be appointed by the board of county commissioners and shall be composed of men and women representing the various dominant or primary interests of the county. Two of said members shall be appointed for a term of three years, two for a term of four years and two for a term of five years, and thereafter the term of office of each successor member shall be five years. In making said appointments the board of county commissioners of any county electing to establish a hospital authority under this subsection shall appoint three members of the said authority, who shall be residents of a town or city of said county, and three members who shall be residents of said county, or of cities or towns in said county other than the cities or towns in which the three other members appointed under this subsection reside. The seventh member of said authority shall be a member of the board of county commissioners of said county who shall serve in the capacity of a member at large, and whose term of office shall be commensurate with his term of office as a member of the board of county commissioners, and said member shall serve ex officio and because of his position as a member of the board of county commissioners. All vacancies in the office or position of member of said hospital authority by death, resignation or otherwise shall be filled by appointments made by the board of county commissioners of said county and shall be for the unexpired term of the member causing said vacancy. No member of said hospital authority shall be eligible to succeed himself or herself except in cases where the appointment is made for an unexpired term. Any authority vested in a county by virtue of article 13B of chapter 131 of Volume 3B of the General Statutes or any authority or power that may be exercised by a hospital authority under G. S. 131-98 of article 12 of chapter 131, and as described and granted in said section, may be vested by resolution of the board of county commissioners of such county in the county hospital authority herein authorized, which such power and authority shall be applicable to the whole area of the county, and in addition to the purposes described in the statutes and articles heretofore referred to such power and authority shall also be exercised and delegated for the planning, establishment, construction, maintenance or operation of hospital

facilities, clinics, public health centers, housing or quarters for local public health departments and centers, laboratories, outpatient departments and clinics, nurses' home and training facilities, and any and all services, including central service facilities operated in connection with such hospitals, clinics, laboratories and other facilities. The said county hospital authority, however, shall exercise only such powers and duties as are prescribed in the resolution of the board of county commissioners granting and vesting such authority and powers in said county hospital authority, and the said board of county commissioners of said county shall fix in said resolution the compensation, travelling and other expenses, if any, which shall be paid to each member of said county hospital authority; provided, however, that the expenses of such planning, establishment, construction or operation of all the hospital facilities named and mentioned in this subsection shall be a responsibility of said county. (1947, c. 933, s. 6; 1955, c. 710, s. 1; c. 1363.)

Editor's Note.—The first 1955 amendment added subsection (1), and the second 1955 amendment made changes in the third sentence of the subsection.

Session Laws 1955, c. 710, s. 2, provided: "This act, authorizing the establishment of a county hospital authority, shall not be construed to repeal any other legislation or laws which authorize the appointment of a governing authority of a hospital by some other manner and by different proc-

esses of machinery than herein provided, and this act shall be construed to be enabling legislation, auxiliary to and supplementary to, as well as in addition to, any and all other legislation providing for the management of the appointment of managers or trustees or other forms of governing authorities of hospitals and clinics."

Cited in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.23. Financing cost of construction, acquisition and improvement; bond issues.

The enlargement of a county hospital is a public purpose for which a county ordinarily may expend unallocated nontax

moneys on hand without vote of the people. *Rider v. Lenoir County*, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 131-126.26. Municipal aid.

Cited in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

ARTICLE 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

§ 131-126.31. Petition for formation of hospital district; hearing.

—Upon receipt of a petition, signed by at least five hundred of the qualified voters of the territory described in such petition, praying that such territory be created into a hospital district, the North Carolina Medical Care Commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such proposed hospital district, that on a date to be named in such notice, which shall not be earlier than twenty days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice.

Such petition shall set forth (1) a description of the territory to be embraced within the proposed district, (2) the names of all municipalities or parts thereof

located within the area, (3) the names of all publicly owned hospitals located within the area, (4) the purpose or purposes sought to be accomplished by the creation of the proposed district, and (5) the name of the proposed district.

At the time and place set forth in the notice of hearing on such petition, the North Carolina Medical Care Commission, or its duly authorized representative, shall hear all interested persons and may adjourn the hearing from time to time. (1949, c. 766, s. 5; 1953, c. 1045, s. 1.)

Editor's Note.—The 1953 amendment changed the required signers of the petition from "not less than one hundred citizens" to "at least five hundred of the qualified voters", inserted the second paragraph and made other changes.

This article as amended is constitutional. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

Article Does Not Unlawfully Delegate Legislative Power to Commission.—To

clothe the Medical Care Commission with the power to hear and determine whether a hospital is needed in a particular area and whether it is advisable to create a hospital district in the manner prescribed and authorized by this article, as amended, in order to meet such need, is not an unlawful delegation of legislative power. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.32. Result of hearing; name of district; limitation of actions.—If, after such hearing, the North Carolina Medical Care Commission shall deem it advisable to create such hospital district, it shall adopt a resolution creating such district, determining that the residents of all the territory to be included in such district will be benefited by the creation of such district; and defining the territory comprising such district, which shall be either the territory described in such petition or a part of such territory; provided, however, that all the territory embraced in a hospital district shall be located in one county; and provided, further, that no municipality or part thereof shall be included in any hospital district unless the governing body of such municipality shall have approved thereof by resolution and shall have filed with the North Carolina Medical Care Commission a certified copy of such resolution. Each hospital district so created shall be designated by the North Carolina Medical Care Commission as the "..... Hospital District of County," inserting in the blank spaces some name identifying the locality and the name of the county.

Notice of the creation of such hospital district shall be given by publication of the resolution of the North Carolina Medical Care Commission creating such district, once in each of two successive weeks after the adoption of such resolution, in the newspaper in which the notice of hearing mentioned above in § 131-126.31 of this article was published. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the executive secretary of the commission appended thereto, shall be published with the resolution:

The foregoing resolution was passed by the North Carolina Medical Care Commission on the day of, 19.., and was first published on the day of, 19...

Any action or proceeding questioning the validity of said resolution or the creation of said Hospital District of County or the inclusion in said district of any of the territory described in said resolution, must be commenced within thirty days after the first publication of said resolution.

.....
Executive Secretary of the North Carolina Medical Care Commission.

Any action or proceeding in any court to set aside a resolution of the North Carolina Medical Care Commission creating any hospital district, or questioning the validity of any such resolution or the creation of any hospital district or the inclusion in any such district of any of the territory described in the resolution

creating such district, must be commenced within thirty days after the first publication of such resolution and such notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such resolution or the creation of such district or the inclusion of any territory in such district shall be asserted, nor shall the validity of such resolution or the creation of such district or the inclusion of such territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1949, c. 766, s. 5; 1951, c. 805; 1953, c. 1045, s. 2.)

Editor's Note.—

The 1953 amendment rewrote this section.

Resolution of Commission.—The provision in this section requiring the adoption of a resolution “determining that the residents of all the territory to be included in such district will be benefited by the crea-

tion of such district” is nothing more than a requirement that the Medical Care Commission, before creating a hospital district, shall determine that a hospital is needed in the area included within the boundaries of such proposed hospital district. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.33. Election for bond issue; method of election.—Whenever five hundred or more qualified voters residing in such hospital district shall file with the board of county commissioners of the county in which such hospital district is located a petition requesting an election, the board of county commissioners shall order a special election to be held in any such hospital district for the purpose of voting upon the question of issuing bonds and levying a sufficient tax for the payment thereof for the purpose of paying all or a part of the cost of planning and acquiring, establishing, developing, constructing, enlarging, improving or equipping any type of hospital, clinic or public health center, including relating facilities such as laboratories, outpatient departments, nurses' homes and training facilities operated in connection with hospitals and purchasing sites in such district for any one or more of said purposes, including any public or nonprofit hospital facility. In all such elections, the board of county commissioners of such county shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of the election upon filing with it of the election returns by the officers holding the election and shall record such determination on their records. The notice of election shall be given by publication at least three times in some newspaper published or circulating in such hospital district. The notice shall state the date of the election, the place or places at which the election will be held, the boundary lines of such hospital district unless the hospital district is coterminous with a township in said county (in which event the notice shall so state), the maximum amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued, and the fact that a sufficient tax will be levied on all taxable property within the hospital district for the payment of the principal and interest of the bonds. The first publication of the notice shall be at least thirty days before the election. A new registration of the qualified voters of such hospital district shall be ordered and notice of such new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in such hospital district at least thirty days before the close of the registration books. This notice of registration may be considered one of 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 the voters and the place or places at which they 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 laws governing the general elections. The form of the question, as stated on the ballot or ballots, shall be in substantially the words: “For the issuance of \$..... Hospital Bonds and the levying of a sufficient tax for the payment thereof”, and “Against the issuance of \$..... Hospital Bonds and the levying of a

sufficient tax for the payment thereof", with squares in front of each proposition, in one of which squares the voter may make a cross (X) mark; but any other form of ballot properly stating the question to be voted upon shall be construed as being in compliance with this section. (1949, c. 766, s. 5; 1953, c. 1045, s. 3.)

Editor's Note.—The 1953 amendment substituted in line two the words "qualified voters residing in" for the words "adult residents of", deleted the words "and/or notes", added the part of the last

sentence following the semicolon, and made other changes.

Cited in *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.35. Limitation of actions.—No right of action or defense founded upon the invalidity of such election or of any proceedings or steps taken in connection therewith shall be asserted, nor shall the validity of such election or the right or duty to levy sufficient tax for the payment of the principal and interest of such bonds, be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of results as provided in the preceding section. (1949, c. 766, s. 5; 1953, c. 1045, s. 4.)

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

§ 131-126.36. Issuance of bonds and levy of taxes.—If a majority of the votes cast shall be in favor of the issuance of such bonds and the levy of such tax, then the board of county commissioners may provide by resolution, which resolution may be finally passed at the same meeting at which it is introduced, for the issuance of such bonds, which bonds shall be issued in the name of the hospital district and shall be payable exclusively out of taxes to be levied in such hospital district. They shall be issued in such form and denominations, and with such provisions as to the time, place and medium of payment of principal and interest as the said board of county commissioners may determine, subject to the limitations and restrictions of this article. They may be issued as one issue, or divided into two or more separate issues, and in either case may be issued at one time or in blocks from time to time. When bonds are to be issued, they shall be serial bonds and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. The bonds shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, and may have interest coupons attached, and may be made registerable as to principal or as to both principal and interest under such terms and conditions as may be prescribed by said board. They shall be signed by the chairman of the board of county commissioners, and the seal of the county shall be affixed to or impressed upon each bond and attested by the register of deeds of the county or by the clerk of said board; and the interest coupons shall bear the printed, lithographed or facsimile signature of such chairman. The delivery of bonds, signed as aforesaid by officers in office at the time of such signing, shall be valid, notwithstanding any changes in office occurring after such signing. (1949, c. 766, s. 5; 1953, c. 1045, s. 5.)

Editor's Note.—The 1953 amendment deleted "and/or notes" from several places in the section and made other changes.

§ 131-126.37. Collection and application of tax.—The board of county commissioners is hereby authorized and directed to levy annually a special tax, ad valorem, on all taxable property in the hospital district in which the election

was held, sufficient to pay the principal and interest of the bonds as such principal and interest become due. Such special tax shall be in addition to all other taxes authorized to be levied in such district or in such unit. The taxes provided for in this section shall be collected by the county officer collecting other taxes and be applied solely to the payment of principal and interest of such bonds. (1949, c. 766, s. 5; 1953, c. 1045, s. 8.)

Editor's Note.—The 1953 amendment deleted the words “and/or notes” formerly appearing after the word “bonds” in lines four and eight.

Tax Is General Tax and Not Special Assessment.—A tax levied pursuant to the approval of the voters in a hospital district for the purpose of establishing and maintaining a public hospital in the district is

a general tax levied for a special purpose as distinguished from a special assessment, and therefore a hearing on the benefits to be conferred upon the property within the district, and the exclusion from the tax of property not benefited, are not required. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.38. Tax levy for operation, equipment and maintenance.

—The board of county commissioners of the county in which such hospital district is located may cause to be levied a tax for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article, including any public or nonprofit hospital facility: Provided, that the levy of such tax is approved by a majority of the qualified voters of the hospital district who shall vote thereon in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the board of county commissioners of such county; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words “For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information),” and “Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information),” with squares 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 section. Such election may be held at any time fixed by the board of county commissioners of such county, and the question of levying a tax for the operation and maintenance of hospital facilities, as provided by this section, may be submitted at the same time the question of issuing bonds is submitted, as provided in this article, or the question of levying a tax for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the board of county commissioners of the county in which the hospital district is located. Such election for the approval of a levy of taxes for costs of operation, equipment and maintenance of any hospital facility, as authorized by this article, shall be held and conducted in the same manner as elections are held and conducted to determine the question of the issuance of bonds as provided in this article. (1949, c. 766, s. 5; 1953, c. 1045, s. 6.)

Editor's Note.—The 1953 amendment deleted the provision relating to petition for bond issue formerly appearing at the

beginning of this section, and substituted the word “may” in line two for the word “shall”.

§ 131-126.38a. Counties authorized to borrow money on behalf of hospital districts to pay certain appropriations and bonds.—Counties may borrow money on behalf of hospital districts for the following purposes:

- (1) Paying appropriations made for the current fiscal year in anticipation of the collection of the tax of such fiscal year levied under authority of § 131-126.38, but no such loan shall be made for a district if the amount thereof, together with the amount of similar previous loans for the district remaining unpaid, shall exceed fifty per centum (50%) of the amount of uncollected taxes levied upon property of the district under the authority of § 131-126.38 for the fiscal year in

which the loan is made, as determined by the chief financial officer of the county and certified by him in writing to the board of commissioners of the county, and no such loan shall be payable later than thirty days after the expiration of such fiscal year.

- (2) Paying the principal or interest of bonds of a district due or to become due within four months, and not otherwise adequately provided for, in anticipation of the collection of the tax levied upon property of the district under authority of § 131-126.37 either in the fiscal year in which the loan is made or in the next ensuing fiscal year, but no such loan shall be payable later than the end of such next ensuing fiscal year: Provided, if such loan, or any renewal thereof, shall not be paid within the fiscal year in which the same is made such tax shall be levied on property of the district in such next ensuing fiscal year sufficient to pay the same.

Negotiable notes shall be issued for moneys borrowed pursuant to this section, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. All such notes shall be issued in the name of the district and shall be authorized by resolution of the board of commissioners of the county, which resolution shall fix the face amount of the notes, their date and maturity date, and the actual or maximum interest rate thereon not exceeding the maximum rate permitted by law. A resolution authorizing notes for money borrowed for the purpose stated in clause (2) of this section shall contain a description of the bonds the principal or interest of which is to be paid with the proceeds of the notes, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. All such notes shall be executed under the seal of the county by the chairman and clerk of the board of commissioners, or by any two officers designated by said board for that purpose. No such notes shall be valid unless, in the case of notes issued for the purpose stated in clause (1) of this section, each such note contains a statement written or printed on the face or reverse thereof and signed by the chief financial officer of the county in the words "This note and all other similar tax anticipation notes of the district amount to less than fifty per centum (50%) of the uncollected tax levied in the district in the current fiscal year," and, in the case of notes issued for the purpose stated in clause (2) of this section, each such note contains a statement written or printed on the face or reverse thereof and signed by said chief financial officer in the words "This note is issued for the payment of principal or interest of bonds of the district." (1957, c. 869, s. 1.)

§ 131-126.39. **Article supplemental to other grants of authority.**—The powers conferred by this article shall be regarded as supplemental and in addition to powers conferred by other laws and shall not supplant or repeal any existing powers for the issuance of bonds, or any provisions of law for the payment of bonds issued under such powers, or for the custody of moneys provided for such payment. (1949, c. 766, s. 5; 1953, c. 1045, s. 8.)

Editor's Note.—The 1953 amendment appearing after the word "bonds" in lines deleted the words "and/or notes" formerly three and four.

§ 131-126.40. **Approval of Local Government Commission.**—This article shall constitute full authority for the things herein authorized and no proceedings, publications, notices, consents or approvals shall be required for the doing of the things herein authorized, except such as are herein prescribed and required, and except that the provisions of the Local Government Act then in force as to the approval of the issuance of bonds or notes and endorsements of such approval upon such bonds or notes and as to the sale of bonds or notes and the disposition of the proceeds, shall be applicable to the bonds or notes authorized by

this article. The proceeds shall be paid out only upon order of the board of county commissioners. (1949, c. 766, s. 5; 1953, c. 1045, s. 8; 1957, c. 869, s. 2.)

Editor's Note.—The 1953 amendment deleted the words "and/or notes" formerly appearing after the word "bonds" in lines six, seven and eight. The 1957 amendment inserted the words "or notes" in lines six, seven and eight.

§ 131-126.40a. **Governing body of district; powers.**—The board of county commissioners of the county in which a hospital district is created under the provisions of this article shall be the governing body of such district, and all of the provisions of the Municipal Hospital Facilities Act shall apply to such hospital district and to such board of county commissioners as the governing body thereof. (1953, c. 1045, s. 7.)

Stated in *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

ARTICLE 14.

Cerebral Palsy Hospital.

§ 131-127. **Creation of hospital; powers.**—An institution, to be known and designated as "The North Carolina Cerebral Palsy Hospital" is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 504, s. 1; 1953, c. 893, s. 1.)

Editor's Note.—The 1953 amendment changed the name of the institution from "the North Carolina Hospital for Treatment of Spastic Children" to "The North Carolina Cerebral Palsy Hospital."

§ 131-130. **Operation pending establishment of permanent quarters.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary use of any State owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of The North Carolina Cerebral Palsy Hospital upon such terms as may be mutually agreed upon. (1945, c. 504, s. 4; 1953, c. 893, s. 2.)

Editor's Note.—The 1953 amendment substituted "The North Carolina Cerebral Palsy Hospital" for "the North Carolina Hospital for Treatment of Spastic Children."

§ 131-133. **Aims of hospital; application for admission.**—The prime purpose and aim of the North Carolina Cerebral Palsy Hospital is to treat, care for, train, and educate as their condition will permit all cerebral palsied children of training age in the State who are capable of being rehabilitated; to disseminate knowledge concerning the extent, nature, and prevention of such disabling ailments, and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said hospital, cerebral palsied children under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. The hospital may be made available for the treatment of patients with other neuromuscular and skeletal disabilities who are in need of rehabilitation so long as doing so does not in any way deprive a cerebral palsied child qualified as their condition will permit for admission for treatment, care, training and education.

Application for the admission of a child must be made by a parent or person

standing in loco parentis or by the person, institution or agency having legal custody of the child. (1945, c. 504, s. 7; 1953, c. 893, s. 2; 1957, c. 170, s. 1.)

Editor's Note.—The 1953 amendment substituted "The North Carolina Cerebral Palsy Hospital" for "the North Carolina Hospital for Treatment of Spastic Children."

The 1957 amendment substituted the

words "cerebral palsied children" for "spastic children" and made other changes in the first sentence, inserted the second sentence and rewrote the former second sentence which was made the second paragraph.

§ 131-134. Rules, regulations and conditions of admission; payment for treatment.—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of patients to the hospital, but in so doing shall not exclude any patient otherwise qualified for admission because of an inability to pay for examination and treatment, and all indigent patients otherwise qualified for admission shall be received without regard to their indigent condition when there is space and accommodation available for such patients. The board of directors shall require all patients who are able, including those persons who are able and who are legally responsible for patients, and agencies or organizations including employers who are legally responsible for their care and insurance carriers which have issued policies of insurance covering such treatment and care of such patients, within the limits of insurance coverage, to pay the reasonable cost of treatment and care and upon their refusal to do so, the said board of directors is authorized and empowered to institute action in the name of the hospital in the county in which it is located for the collection thereof: Provided, that if the amount is less than two hundred dollars (\$200.00) the said action shall be instituted in the county where the defendant resides. (1945, c. 504, s. 8; 1957, c. 170, s. 2.)

Editor's Note.—The 1957 amendment rewrote the second sentence.

Chapter 132.

Public Records.

§ 132-3. Destruction of records regulated.—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with § 121-5, without the consent of the State Department of Archives and History. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars nor more than five hundred dollars. (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2.)

Editor's Note.—

The 1953 amendment substituted "§ 121-6" for "§ 121-4" in line three.

The 1957 amendment substituted "§ 121-5" for "§ 121-6" in line three.

Chapter 133.

Public Works.

133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.—(a) In the interest of public health, safety and economy, every officer, board department or commission charged with the

duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of twenty thousand dollars (\$20,000.00) for the construction or repair of public buildings, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of chapter 89 of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(b) On all projects requiring the services of an architect or engineer, or both, the architect or engineer or both whose names and seals appear on plans or specifications, shall inspect the construction, or repairs or installations, and based upon said inspection shall issue a signed and sealed certificate of compliance to the awarding authority that the contractor has fulfilled all obligations of such plans, specifications, and contract. No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled all obligations of such plans, specifications, and contract.

(c) The following shall be excepted from the requirements of subsection (a) of this section:

- (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
- (2) Apartment buildings used exclusively as the residence of not more than two families.
- (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
- (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding twenty feet in any direction, and not used for living quarters.

(d) On construction or repair projects involving the expenditures of public funds in an amount of twenty thousand dollars (\$20,000.00) or less, and on which no registered architect or engineer is employed, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority. (1953, c. 1339; 1957, c. 994.)

Editor's Note.—The 1957 amendment rewrote this section.

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1. Retirement System for Teachers and State Employees.	Sec.
Sec.	135-18.2. Supplementary payments.
135-14. Pensions of certain teachers and State employees.	135-18.3. Conditions under which amendments void.
135-14.1. Certain school superintendents and assistant superintendents.	135-18.4. Reservation of power to change.
	135-18.5. Provision for emergency expenses of integration of system.

Article 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

Sec.

135-27. Transfers from State to certain association service.

Sec.

135-28. Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.

135-29. Referenda and certification.

ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

(6) "Member" shall mean any teacher or State employee included in the membership of the system as provided in §§ 135-3 and 135-4.

(15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8; provided that accumulated contributions shall for the purposes of § 135-5 (2) (b) and (c) of § 135-5 (4) (b) be computed as though the member had contributed on the basis that a maximum limit of six thousand five hundred dollars (\$6,500.00) on annual compensation had applied during any period of his membership service prior to July 1, 1953; and further provided that it shall include for all other purposes such contributions as the member may, under rules prescribed by the board of trustees, elect to make to the extent of contributions he was prevented from making during any portion of his membership service prior to July 1, 1953, by reason of the maximum limit or limits actually in effect during such service, on any part of his compensation between (i) such maximum limit or limits and (ii) six thousand five hundred dollars (\$6,500.00). After July 1, 1953, each member shall contribute on the basis of the part of his annual compensation up to six thousand five hundred dollars (\$6,500.00). On and after July 1, 1955, each member shall contribute on the basis of his total annual compensation. For the purpose of computing benefits on account of creditable prior service, a maximum limit of six thousand five hundred dollars (\$6,500.00) on annual compensation shall apply.

(25) "Year" as used in this article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the board of trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 8½.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, deleted the former proviso of subsection (6) and rewrote subsection (15). The first 1955 amendment added subsection

(25), and the second 1955 amendment inserted the next to last sentence of subsection (15). As the rest of the section was not changed only these subsections are set out.

§ 135-3. Membership.

(1) All persons who shall become teachers or state employees after the date as of which the Retirement System is established. On and after July 1st, 1947, membership in the Retirement System shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this chapter.

(1955, c. 1155, s. 9½.)

Editor's Note.—

The 1955 amendment added the third sentence to subsection (1). As the rest of the section was not changed only this subsection is set out.

Teachers at Fort Bragg Schools Who

Have Taught in State Public Schools.—

Session Laws 1953, c. 792, authorizes the board of trustees of the Teachers' and State Employees' Retirement System, in its discretion, to contract with the Fort Bragg School Board, the United States

Office of Education, or the United States Commissioner of Education or his officers and agents, whereby teachers in the schools controlled and operated by the Fort Bragg School Board, who have pre-

viously taught in State public schools and accumulated creditable service of some type under the Teachers' and State Employees' Retirement Act, shall be covered under the provisions of the Act.

§ 135-4. Creditable service.

(6) Teachers and other State employees who entered the armed services of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who returned to the service of the State within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. Teachers and other State employees who entered the armed services of the United States on or after February 17th, 1941 and who returned to the service of the State prior to July 1st, 1950 after they have been honorably discharged from such armed services shall be entitled to full credit for all prior service, and, in addition, they shall receive membership service credit for the period of service in such armed services occurring after the date of establishment. Teachers and other State employees who enter the Armed Services of the United States on or after July 1, 1950 but prior to July 1, 1955 and who return to the service of the State within a period of two years after becoming entitled to honorable discharge from such Armed Services shall be entitled to full membership service credit for the period of service in such Armed Services. Under such rules as the board of trustees shall adopt, the employer to which each such teacher or other State employee returned shall make contributions with respect to such member in the amounts that he would have paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by paragraph (e) of subsection (1) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments.

(1953, c. 1050, s. 3.)

Editor's Note.—

The 1953 amendment inserted the third sentence of subsection (6). As the rest

of the section was not affected by the amendment only this subsection is set out.

§ 135-5. Benefits.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation; and

(c) With respect to any member covered under the Social Security Act in accordance with the provisions of article 2 of chapter 135 of the General Statutes, Volume 3B, as amended, a pension at the rate of nine dollars (\$9.00) per year

for each full year of membership service for which credit would be allowed under paragraph (b) of this subsection and during which he is so covered, including the prospective period to age sixty (60): Provided, however, that notwithstanding any provisions to the contrary the pension provided in this paragraph shall not be payable after the retired member attains the age of sixty-five (65) years and shall not be subject to the provisions of subsection (7) of this section.

(6) Return of Accumulated Contributions.—Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this chapter, he shall be paid such part as he shall demand of the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of accumulated regular interest thereon. Upon receipt of proof satisfactory to the board of trustees of the death, prior to retirement, of a member or former member there shall be paid to his legal representatives or to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, the amount of his accumulated contributions at the time of his death. Notwithstanding any other provision of chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary, provided that such agency or subdivision shall have notified the board of trustees of any amount so due and that the retirement system shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the retirement system for any reason to make such deductions.

(7) Election of Optional Allowance. — With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement and prior to his attainment of age sixty-five or within thirty days after the date such election is made if such date is after his attainment of age sixty-five, until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such optional election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option 1. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement.

(a) Adjustment of Retirement Allowances for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that, with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and

after he attains age sixty-five (65). A member who makes an election in accordance with this paragraph (a) shall be deemed to have made a further election of Option one above.

(1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8.)

Editor's Note.—The 1955 amendment added paragraph (c) to subsection (4). It also added paragraph (a) at the end of subsection (7).

The 1957 amendment rewrote the second sentence of subsection (6) and added the third sentence thereto. The amend-

ment also rewrote the portion of subsection (7) preceding "Option 1", and added the second sentence of paragraph (a) thereof.

As the rest of the section was not changed, only subsections (4), (6) and (7) are set out.

§ 135-6. Administration.

(7) Officers and Other Employees; Salaries and Expenses.—The State Treasurer shall be ex officio chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The salary of the secretary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons, other than the secretary, engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the Director of the Budget.

(1957, c. 541, s. 15.)

Editor's Note.—

The 1957 amendment changed subsection (7) by inserting the third sentence and the words "other than the secretary"

in the fifth sentence. As only subsection (7) was changed the rest of the section is not set out.

§ 135-7. Management of funds.—(a) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in G. S. 135-8, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Cooperatives, and Federal Land Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the two highest ratings of at least two nationally recognized rating services; and
- (7) Obligations of any corporation incorporated in North Carolina if such obligations bear either of the three highest ratings of at least two nationally recognized rating services.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(b) Regular Interest Allowance.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of

trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the System for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three per centum and a maximum of four per centum, with the latter rate applicable during the first year of operation of the Retirement System.

(c) Custodian of Funds; Disbursements; Bond of Secretary. — The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(d) Deposits to Meet Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer of North Carolina.

(e) Personal Profit or Acting as Surety Prohibited. — Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1941, c. 25, s. 7; 1957, c. 846, s. 2.)

Editor's Note.—The 1957 amendment rewrote subsection (a).

§ 135-8. Method of financing.

(1) Annuity Savings Fund.

(a) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of earnable compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his earnable compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the

member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2, chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if a teacher or State employee was not a member on the first day of the payroll period.

(3) Pension Accumulation Fund.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the board of trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the board of trustees may cause the accrued liability contribution rate to be reduced.

(d) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that, subject to the provisions of paragraph (c) of this subsection the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(1955, c. 1155, ss. 3-5.)

Editor's Note.—The 1955 amendment rewrote paragraph (a) of subsection (1) and paragraphs (c) and (d) of subsection (3). As the rest of the section was not changed by the amendment, only the three paragraphs mentioned are set out.

§ 135-11. Application of other pension laws.—Subject to the provisions of article 2, chapter 135 of the General Statutes, Volume 3B, as amended, no other provisions of law in any other statute which provides wholly or partly at the expense of the State of North Carolina for pensions or retirement benefits for teachers or State employees of the said State, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this chapter, their widows or other dependents. (1941, c. 25, s. 11; 1955, c. 1155, s. 6.)

Editor's Note.—The 1955 amendment added at the beginning of this section the clause relating to article 2.

§ 135-14. Pensions of certain teachers and State employees.—Any person who has been a teacher or employee of North Carolina, as defined in G. S. 135-1, for a total of twenty (20) or more years and whose separation from service as a teacher or employee was not due to any dishonorable cause, shall be entitled to receive benefits in the same manner and to the same extent as such

twenty (20) years of prior service would have entitled such teacher or employee had he or she been teaching or employed on the effective date of the act establishing the Teachers' and State Employees' Retirement System, the same being this chapter: Provided that such teacher or employee was a resident of the State of North Carolina and was sixty-five (65) years old or more on the first day of July, 1957, or is now by reason of physical disability unable to work; and provided, further, that, effective from and after July 1, 1957 the monthly benefit paid to such former teacher or employee shall be equal to at least sixty dollars (\$60.00).

There is hereby appropriated from the General Fund of the State for each fiscal year such sum or sums as may be necessary to carry out the provisions of this section: Provided, further, that such benefits shall be payable only in the event that such applicant has not become eligible to receive federal old age and survivors insurance benefits as a result of the coordination of the Teachers' and State Employees' Retirement System with social security coverage pursuant to article 2 of chapter 135 of the General Statutes.

This section shall be administered by the board of trustees of Teachers' and State Employees' Retirement System of North Carolina created under the provisions of G. S. 135-2 and the provisions of this chapter shall be controlling in the administration of this section in all respects or provisions except as they may be modified by this section for the purposes of this section. (1943, c. 785; 1953, c. 1132, s. 1; 1955, c. 1199, ss. 1, 2; 1957, cc. 852, 1408, 1412.)

Editor's Note.—The 1953 and 1955 amendments made changes in the first paragraph.

The third 1957 amendment rewrote the first paragraph as changed by the first and

second 1957 amendments, and made it applicable to State employees as well as to State teachers. The amendment also added the proviso to the second paragraph.

§ 135-14.1. Certain school superintendents and assistant superintendents.—Any person who has been a superintendent or assistant superintendent in the public schools of North Carolina for a total of twenty years or more and who was not a superintendent or assistant superintendent in the public schools of this State at the time of the enactment of the Teachers' and State Employees' Retirement System Act, the same being this chapter, and whose cessation of employment as a superintendent or assistant superintendent was not due to any dishonorable cause shall be entitled to receive benefits under said Retirement Act for such services in the same manner and to the same extent as such twenty years of prior service would have entitled such superintendent or assistant superintendent had he or she been a superintendent or assistant superintendent in the public schools at the time said Retirement Act became effective, and had chosen to become a member of the Retirement System, provided that such former superintendent or assistant superintendent has returned to State service and been employed for at least five years and has reached the age of sixty-five before July 1, 1957; provided, further, the monthly benefit to such former superintendent or assistant superintendent shall be equal to the minimum provided with respect to teachers under the provisions of G. S. 135-14, as amended. (1957, c. 1431.)

§ 135-18.2. Supplementary payments.—(1) The following words and phrases, as used in this section, unless a different meaning is plainly required by the context, shall have the following meanings:

"Retired member" shall mean a retired teacher or employee who shall be receiving, or who may hereafter retire and receive, a service or disability retirement benefit as provided in § 135-5 of Volume 3B of the General Statutes.

"Regular retirement allowance" shall mean the monthly service or disability retirement allowance to which a retired member is entitled, or the monthly service retirement allowance to which a member hereafter retiring will be entitled, com-

puted as provided in § 135-5 of Volume 3B of the General Statutes, including the amount of any adjustment as provided in subsection 8 of § 135-5 of Volume 3B of the General Statutes, but prior to any reduction resulting from an election of an optional allowance as provided in subsection 7 of § 135-5 of Volume 3B of the General Statutes.

“Qualified retired member” shall mean a retired member who has rendered, or who may hereafter render, twenty (20) or more years of creditable service.

“Supplementary payment” shall mean any payment computed as provided in subsection 2 of this section.

(2) Effective from and after July 1, 1953, any qualified retired member, or any member who hereafter becomes a qualified retired member shall be entitled to receive a supplementary payment each month equal to the excess, if any, of sixty dollars (\$60.00) over his regular retirement allowance; provided that, if at any time the appropriations provided to carry out the provisions of this section are discontinued, all such supplementary payments shall be discontinued; provided further, that if in any month the available sum theretofore appropriated is insufficient to provide in full for the payment of the total of all supplementary payments payable within such month, the amount of each such supplementary payment shall be reduced in the proportion which such available sum bears to such total.

(3) This section shall be administered by the Board of Trustees of the Teachers' and State Employees' Retirement System created under the provisions of § 135-2. Such board of trustees may, and is hereby authorized to, establish such rules as it may deem necessary for the proper administration of this section. In no event shall such system be responsible for making any of the supplementary payments herein provided, nor shall any of the moneys of such system be used directly or indirectly for such payments. The board of trustees, however, may, and is hereby authorized to, make such use of the personnel, equipment or other facilities of such system, and to hire such additional personnel, as such board shall deem proper for the administration of this section, and to determine the amount of any and all expenses incurred in such administration, and to reimburse such system for such expenses from the appropriations provided to carry out the provisions of this section or from any similar subsequent appropriations. (1953, c. 1132, s. 2; 1955, c. 1206; 1957, c. 1408.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, extended the supplementary payments provided for in subsection (1) to members receiving disability retirement allowances. The 1957 amendment increased the amount in subsection (2) from \$50.00 to \$60.00.

§ 135-18.3. Conditions under which amendments void.—If for any reason the Federal-State agreement provided in article 2 of chapter 135 of the General Statutes, Volume 3B, as amended, is not entered upon, or the referendum authorized therein with respect to positions covered by the Teachers' and State Employees' Retirement System of North Carolina is not held, or the conditions specified in § 218(d) (3) of the Social Security Act with respect to such referendum if held are not met, this act shall be null and void. (1955, c. 1155, s. 7.)

Editor's Note.—The act referred to in this section, Session Laws 1955, c. 1155, amended the following: §§ 135-1, 135-3, 135-5, 135-8 and 135-11.

§ 135-18.4. Reservation of power to change.—The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes, in the benefit and other provisions of the Social Security Act made after January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the Teachers' and State Employees' Retirement System of North Carolina. (1955, c. 1155, s. 8.)

§ 135-18.5. **Provision for emergency expenses of integration of system.**—For the purpose of meeting the expenses involved in administering the provisions of this act to June 30, 1959, and in holding the referendum described herein with respect to positions covered under the Teachers' and State Employees' Retirement System of North Carolina as established by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended, any funds not otherwise provided for such purpose by action of the General Assembly during the session of 1955 or 1957 may be borrowed from the Pension Accumulation Fund of such system; provided, however, that the amount so borrowed and the expenditure thereof shall be subject to the approval of the board of trustees of such system and the assistant director of the budget, and that such amounts so borrowed shall be repaid as soon as practicable. (1955, c. 1155, s. 9; 1957, c. 855, s. 9.)

Editor's Note.—The 1957 amendment substituted "1959" for "1957" in line two and inserted "or 1957" in line seven.

ARTICLE 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

§ 135-19. Declaration of policy.

It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof. (1951, c. 562, s. 3; 1955, c. 1154, s. 1.)

Editor's Note.—The 1955 amendment the section. As the rest of the section was added the above paragraph at the end of not changed it is not set out.

§ 135-20. Definitions.

(b) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the State and the Secretary of Health, Education and Welfare entered into under this article. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with § 218(d) (3) of that Act shall be included in the term "employment" if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to § 135-29.

(e) The term "Secretary of Health, Education and Welfare" includes any individual to whom the Secretary of Health, Education and Welfare has delegated any of his functions under the Social Security Act with respect to coverage under such Act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such Administrator has delegated any such function.

(h) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by § 1400 of such Code of 1939 and § 3101 of such Code of 1954. (1951, c. 562, s. 3; 1955, c. 1154, ss. 2-4, 12.)

Editor's Note.—The 1955 amendment tion (b) the term "Secretary of Health, Education and Welfare" for "Federal Se-

curity Administrator," and added the second sentence of the subsection. The amendment also rewrote subsections (e) and (h). As only subsections (b), (c) and (h) were changed the rest of the section is not set out.

§ 135-21. Federal-State agreement; interstate instrumentalities.—

(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Secretary of Health, Education and Welfare, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in § 135-20. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State agency and Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that—

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

(2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in § 135-20), equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but shall in no event cover any such services performed prior to January 1, 1951.

(4) All services which constitute employment as defined in § 135-20 and are performed in the employ of the State by employees of the State, shall be covered by the agreement.

(5) All services which (A) constitute employment as defined in § 135-20, (B) are performed in the employ of a political subdivision of the State, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under § 135-23, shall be covered by the agreement.

(6) As modified, the agreement shall include all services described in either paragraph (4) or paragraph (5) of this subsection and performed by individuals to whom § 218(c) (3) (C) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either paragraph (4) or paragraph (5) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education and Welfare pursuant to § 135-29.

(b) Any instrumentality jointly created by this State and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the Secretary of Health, Education and Welfare whereby the benefits of the federal old age and survivors insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under § 135-22 (a) if they were covered by an agreement made pursuant to subsection (a) of this section, and (3) to make payments to the Secretary of the Treasury

in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (a) and other provisions of this article.

(c) Pursuant to § 218(d) (6) of the Social Security Act, the Teachers' and State Employees' Retirement System of North Carolina as established by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, shall for the purposes of this article, be deemed to constitute a single retirement system; and, the North Carolina Local Governmental Employees' Retirement System as established by article 3 of chapter 128 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, shall be deemed to constitute a single retirement system with respect to each political subdivision having positions covered thereby. (1951, c. 562, s. 3; 1953, c. 52; 1955, c. 1154, ss. 5-7, 12.)

Editor's Note.—The 1953 amendment rewrote paragraph (3) of subsection (a).

The 1955 amendment substituted the term "Secretary of Health, Education and Welfare" for "Federal Security Administrator" in the preliminary paragraph of subsection (a) and also in subsection (b).

The amendment deleted "§§ 1400 and 1410 of" referring to the Federal Insurance Contributions Act in paragraph (2) of subsection (a) and added paragraphs (6) and (7) of the subsection. It also added subsection (c).

§ 135-22. Contributions by State employees.—(a) Every employee of the State whose services are covered by an agreement entered into under § 135-21 shall be required to pay for the period of such coverage, into the contribution fund established by § 135-24, contributions, with respect to wages (as defined in § 135-20), equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this article.

(1955, c. 1154, s. 8.)

Editor's Note.—The 1955 amendment changed subsection (a) by deleting "the amount of tax which would be imposed by § 1400 of" and inserting in lieu thereof the

words "the amount of the employee tax which would be imposed by." As the rest of the section was not changed only subsection (a) is set out.

§ 135-23. Plans for coverage of employees of political subdivisions.—(a) Each political subdivision of the State is hereby authorized to submit for approval by the State agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agency, except that no such plan shall be approved unless—

(1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under § 135-21.

(2) It provides that all services which constitute employment as defined in § 135-20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom § 218(c) (3) (C) of the Social Security Act is applicable.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.

(4) It provides for such methods of administration of the plan by the political

subdivision as are found by the State agency to be necessary for the proper and efficient administration of the plan.

(5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agency may from time to time require, and comply with such provisions as the State agency or the Secretary of Health, Education and Welfare may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the State agency to terminate the plan in its entirety, in the discretion of the State agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State agency and may be consistent with the provisions of the Social Security Act.

(b) The State agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in § 135-20), at such time or times as the State agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State agency under § 135-21.

(2) Each political subdivision required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in § 135-20), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in the Superior Court of Wake County against the political subdivision liable therefor or may, at the request of the State agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State. (1951, c. 562, s. 3; 1955, c. 1154, ss. 9, 10, 12.)

Local Modification.—Rowan, as to paragraph (2) of subsection (c): 1957, c. 408; city of Raleigh, as to subsection (c) (2): 1957, c. 4.

Editor's Note.—The 1955 amendment added the exception clause at the end of paragraph (2) of subsection (a), and substituted the term "Secretary of Health,

Education and Welfare" for "Federal Security Administrator" in paragraph (5). It also changed paragraph (2) of subsection (c) by substituting in line six the words "the employee tax which would be imposed by" for "tax which would be imposed by § 1400 of."

§ 135-27. Transfers from State to certain association service.—(1) Any member whose service as a teacher or State employee is terminated because of acceptance of a position with the North Carolina Education Association, the North Carolina State Employees' Association or the North Carolina State Highway Employees Association or North Carolina Teachers' Association may elect to leave his total accumulated contributions in this retirement system during the period he is in such association employment, by filing with the board of trustees at the time of such termination the form provided by it for that purpose.

(2) Any member who files such an election shall remain a member of the retirement system during the time he is in such association employment and does not withdraw his contributions. Such a member shall be entitled to all the rights and benefits of the retirement system as though remaining in State service, on the basis of the funds accumulated for his credit at the time of such transfer plus any additional accruals on account of future contributions made as hereinafter provided.

(3) Under such rules as the board of trustees shall adopt, the association to which the member has been transferred may agree to contribute to the retirement system on behalf of such member such current service contributions as would have been made by his employer had he remained in State service with earnable compensation equal to the remuneration received from such association; provided the member continues to contribute to the retirement system. Any period of such association employment on account of which contributions are made by both the association and the member as herein provided shall be credited as membership service under the retirement system. (1953, c. 1050, s. 1.)

§ 135-28. Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.—

(1) Any member whose services as a teacher or State employee are terminated because of acceptance of a position with an employer then participating in the North Carolina Local Governmental Employees' Retirement System, hereinafter referred to as the "Local System", may elect to leave his total accumulated contributions in this retirement system during the period he is in such employment, by filing with the board of trustees at the time of such termination the form provided by it for that purpose.

(2) Any member who files such an election shall retain all the rights, credits and benefits obtaining to him under this retirement system at the time of such transfer while he is a member of the Local System and does not withdraw his contributions hereunder and, in addition, he shall be granted membership service credits under this retirement system on account of the period of his membership in the Local System for the purpose of increasing his years of creditable service hereunder in order to meet any service requirements of any retirement benefit under this retirement system and, if he is a member in service under the Local System, he shall be deemed to be a member in service under this retirement system if so required by such benefit. (1953, c. 1050, s. 2.)

§ 135-29. Referenda and certification. — (a) With respect to employees of the State and any other individuals covered by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended and as may be hereafter amended, the Governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision covered by article 3 of chapter 128 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, or by some other retirement system established either by the State or by the political subdivision; and in either case the referendum shall be conducted, and the Governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of § 218(d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the State or by a political subdivision thereof should be excluded from or included under an agreement under this article. The notice of referendum required by § 218(d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or the individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this article.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in § 218(d) (3) of the Social Security Act have been met, the Governor shall so certify to the Secretary of Health, Education and Welfare. (1955, c. 1154, s. 11.)

Editor's Note.—This section is designated in the 1955 Session Laws as § 135-27.

Chapter 136.

Roads and Highways.

Article 1.

Organization of State Highway Commission.

- Sec.
 136-1. State Highway Commission created.
 136-1.1. Change of name in General Statutes.
 136-4. Director of Highways.
 136-4.1. Controller.
 136-4.2. Chief Engineer.
 136-6 to 136-9. [Repealed.]
 136-14.1. Highway engineering divisions; division engineers.

Article 2.

Powers and Duties of Commission.

- 136-17.1. Succeeding to powers, duties, rights, etc., of State Highway and Public Works Commission.
 136-18.2. Seed planted by Commission to be approved by Department of Agriculture.
 136-32.1. Misleading signs prohibited.
 136-33.2. Signs marking beginning and ending of speed zones.
 136-43. Historical marker program.

Article 3.

State Highway System.

Part. 3. Power to Make Changes in Highway System.

- 136-55.1. Notice to property owners.
 136-61. Plans for secondary roads; duties of State Highway Commission and boards of county commissioners.
 136-62. Right of petition.
 136-63. Change or abandonment of roads.

Article 6A.

Carolina-Virginia Turnpike Authority.

- 136-89.1. Turnpike projects.
 136-89.2. Credit of State not pledged.

Sec.

- 136-89.3. Carolina-Virginia Turnpike Authority.
 136-89.4. Definitions.
 136-89.5. General grant of powers.
 136-89.6. Acquisition of property.
 136-89.7. Incidental powers.
 136-89.8. Turnpike revenue bonds.
 136-89.9. Trust agreement.
 136-89.10. Revenues.
 136-89.11. Trust funds.
 136-89.11a. Remedies.
 136-89.11b. Exemption from taxation.
 136-89.11c. Miscellaneous.
 136-89.11d. Turnpike revenue refunding bonds.
 136-89.11e. Transfer to State.
 136-89.11f. Additional method.
 136-89.11g. Conveyance by prior corporations.
 136-89.11h. Article liberally construed.

Article 6C.

State Toll Bridges and Revenue Bonds.

- 136-89.31. Short title.
 136-89.32. Definitions.
 136-89.33. General grant of powers.
 136-89.34. Acquisition of property.
 136-89.35. Bridge revenue bonds.
 136-89.36. Credit of State not pledged.
 136-89.37. Trust agreement.
 136-89.38. Revenues.
 136-89.39. Trust funds.
 136-89.40. Remedies.
 136-89.41. Negotiable instruments.
 136-89.42. Exemption from taxation.
 136-89.43. Bonds eligible for investment.
 136-89.44. Bridge revenue refunding bonds.
 136-89.45. Additional method.
 136-89.46. Article liberally construed.
 136-89.47. Inconsistent laws inapplicable.

Article 6D.

Controlled-Access Facilities.

- 136-89.48. Declaration of policy.
 136-89.49. Definitions.

- Sec.
 136-89.50. Authority to establish controlled-access facilities.
 136-89.51. Design of controlled-access facility.
 136-89.52. Acquisition of property and property rights.
 136-89.53. New and existing facilities; grade crossing eliminations.
 136-89.54. Authority of local units to consent.
 136-89.55. Local service roads.
 136-89.56. Commercial enterprises.

- Sec.
 136-89.57. Unlawful use of limited-access facilities; penalties.

Article 7.

Miscellaneous Provisions.

- 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

ARTICLE 1.

Organization of State Highway Commission.

§ 136-1. **State Highway Commission created.** — There is hereby created a State Highway Commission, to be composed of seven members appointed by the Governor from different areas of the State. The Governor shall, on July 1, 1957, appoint four members to serve for four years, and three members to serve for two years, and the Governor shall thereafter appoint their successors for four-year terms. On July 1, 1957, and biennially thereafter, the Governor shall designate one of the said members to serve as chairman of the Commission for two years. Any member appointed pursuant to this section may be removed from office by the Governor for cause. In case of death, resignation, or removal from office of a commissioner prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term. The commissioners shall each receive while engaged in the discharge of the duties of their office such per diem, subsistence, and necessary travel expenses as is provided by law for members of State boards and commissions generally.

It is the intent and purpose of this section that the commissioners shall represent the entire State and not represent any particular area; provided, however, that the Governor and the State Highway Commission shall, without regard to the boundaries of engineering divisions, divide the State into geographic areas, and assign one or more commissioners to each area to be responsible for relations with the public generally and with individual citizens regarding highway matters; and provided further that the Highway Commission shall within the State hold at least one meeting each year in a town or city east of Raleigh, one meeting in a town or city west of Raleigh but east of Hickory, and one meeting in a town or city located in the remaining western part of the State at which meetings the Commission shall in addition to its other business be available to the members of the public who wish to be heard regarding highway matters. In addition the State Highway Commission shall from time to time provide that one or more of its members or representatives shall publicly hear any person or persons desiring to bring to their attention such highway matters as such person or persons may deem wise, in each of said geographic areas of the State.

The Commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, improvement and maintenance of the roads and highways of the State, with due regard to farm-to-market roads and school bus routes. It is the intent and purpose of this section that there shall be maintained and developed a State-wide system of roads and highways commensurate with the needs of the State as a whole and not to sacrifice the general State-wide interest to the purely local desires of

any particular area. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1; 1945, c. 895; 1953, c. 115; 1957, c. 65, s. 1.)

Editor's Note.—

The 1957 amendment rewrote this section and created the present State Highway Commission to have charge of the State highway system, the State prison system being now under the control and management of the State Prison Depart-

ment. See G. S. 148-1 et seq.

Cited in *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952); *Carolina-Virginia Coastal Highway v. Coastal Turnpike Authority*, 237 N. C. 52, 74 S. E. (2d) 310 (1953).

§ 136-1.1. **Change of name in General Statutes.**—Wherever in the General Statutes the words “State Highway and Public Works Commission” appear, the same shall be stricken out and the words “State Highway Commission” inserted in lieu thereof. (1957, c. 65, s. 11.)

§ 136-4. **Director of Highways.**—There shall be a Director of Highways, who shall be a career official and the chief executive officer of the State Highway Commission. The Director of Highways shall be appointed by the State Highway Commission, subject to the approval of the Governor, on July 1, 1957, or as soon as practicable thereafter, to serve until July 1, 1962, and his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, for a four-year term. In case of death, resignation, or removal from office of the Director, his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, to serve the unexpired term. Subject to the approval of the Governor, the Director may be removed from office by the State Highway Commission for cause. The Director shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Except as hereinafter provided, the Director shall, in accordance with the State Personnel Act, appoint all subordinate officers and employees of the Highway Department, and they shall perform duties and have responsibilities as the Director may assign them.

The Director shall have such powers and perform such duties as the State Highway Commission shall prescribe. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2.)

Editor's Note.—The 1957 amendment rewrote this section which formerly related to the State Highway Engineer and

other employees. As to Chief Engineer, see § 136-4.2.

§ 136-4.1. **Controller.** — There shall be a Controller, who shall be the financial officer of the Highway Department. The Controller shall be appointed by the Director of Highways, subject to the approval of the State Highway Commission and the Governor, on July 1, 1957, or as soon as practicable thereafter, to serve until July 1, 1962, and his successor shall be appointed by the Director, subject to the approval of the State Highway Commission and the Governor, for a four-year term. In case of death, resignation, or removal from office of the Controller, his successor shall be appointed by the Director, subject to the approval of the State Highway Commission and the Governor, to fill out the unexpired term. The Controller may be removed from office by the Director, subject to the approval of the State Highway Commission and the Governor, for cause. The Controller shall be paid a salary fixed by the Director, subject to the approval of the Governor and the Advisory Budget Commission.

The Controller shall, under the direction of the Director of Highways, and in accordance with the requirements of the Executive Budget Act, develop formalized procedures, budgets, internal audits, systems, and reports covering all financial phases of highway activity.

The Controller shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of his office and upon the

proper accounting of all public funds coming into his possession or under his control. The premium on the bond shall be paid from the Highway Fund. (1957, c. 65, s. 3.)

§ 136-4.2. **Chief Engineer.**—There shall be a Chief Engineer who shall be a career official and perform such duties and have such responsibilities as the Director shall assign him. The Chief Engineer shall be appointed by the Director, subject to the approval of the State Highway Commission, and may be removed at any time by the Director with the approval of the State Highway Commission. The Chief Engineer shall be paid a salary fixed by the Director, subject to the approval of the Governor and the Advisory Budget Commission. (1957, c. 65, s. 3.)

§§ 136-6 to 136-9: Repealed by Session Laws 1957, c. 65, s. 12.

§ 136-10. **Annual audits; report of audit to General Assembly.**—The books and accounts of the State Highway Commission shall be audited at least once a year by the State Auditor, or by a certified public accountant designated by the State Auditor. The audit shall be of a business type, and shall follow generally accepted auditing practices and procedures. The audit report shall be made a part of the report of the State Highway Commission required under the provisions of G. S. 136-12. The cost of the audit shall be borne by the State Highway Fund. (1921, c. 2, s. 24; C. S., s. 3846(m); 1933, c. 172, s. 17; 1957, c. 65, s. 4.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 136-11. **Annual reports to Governor.** — The State Highway Commission shall make to the Budget Bureau, or to the Governor, a full report of its finances and the physical condition of buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the Governor or Directors of the Budget may call for the same. (1933, c. 172, s. 11; 1957, c. 65, s. 11; c. 349, s. 7.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission." The second 1957 amendment deleted the words "the State's prison, prison camps, and other" formerly appearing immediately before "buildings, depots and properties."

§ 136-14.1. **Highway engineering divisions; division engineers.**—For purposes of administering the field activities of the State Highway Commission, there shall be 14 highway engineering divisions, with boundaries coterminous with the 14 divisions existing on January 1, 1957. Each division shall be under the supervision of a division engineer, who shall be appointed by the Director of Highways in accordance with the State Personnel Act. The division engineers shall perform duties and have responsibilities as the Director may assign them. (1957, c. 65, s. 5.)

ARTICLE 2.

Powers and Duties of Commission.

§ 136-17. **Seal; rules and regulations.**—The State Highway Commission shall adopt a common seal and shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the Commission, and to make all necessary rules and regulations for carrying out the intent and purposes of this chapter. The Commission shall succeed to all the rights, powers and duties heretofore vested in the State Highway Commission, and it is hereby empowered to make

all necessary rules and regulations for carrying out such duties. (1933, c. 172, s. 2; 1957, c. 65, s. 11; c. 349, s. 8.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission for "State Highway and Public Works Commission" in the first sentence.

The second 1957 amendment deleted the words "and the State Prison Department" formerly appearing after "State Highway Commission" in the second sentence.

§ 136-17.1. Succeeding to powers, duties, rights, etc., of State Highway and Public Works Commission.—Except as otherwise expressly provided in chapter 65 of the Session Laws of 1957, the State Highway Commission created by such chapter shall succeed to all the powers, duties, rights, liabilities, ownership of property, and all other interests of the State Highway and Public Works Commission as the same may be immediately prior to July 1, 1957. (1957, c. 65, s. 10.)

§ 136-18. Powers of Commission.

(q) The State Highway Commission is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the State-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. And said Commission is further authorized to maintain and repair sufficient parking facilities for the school buses at those schools.

(r): Struck out by Session Laws 1957, c. 349, s. 9.
(1953, c. 437; 1957, c. 65, s. 11.)

Editor's Note.—

The 1953 amendment rewrote subsection (q).

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in subsection (q) and other subsections not set out. The second 1957 amendment struck out subsection (r).

Powers of Commission Are Incidental to Purpose for Which It Was Created.—The Commission is the State agency created for the purpose of constructing and maintaining our public highways. All the other powers it possesses are incidental to the purpose for which it was created. *De Bruhl v. State Highway & Public Works Comm.*, 245 N. C. 139, 95 S. E. (2d) 553 (1956).

The Commission cannot be sued for tort or trespass, even though the trespass allegedly occurs in the building of a public highway. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Power to Acquire Residences.—The State Highway Commission does not have authority to acquire residences, either by purchase or by eminent domain, unless such residence is needed for construction or maintenance of the highway system. *De*

Bruhl v. State Highway & Public Works Comm., 245 N. C. 139, 95 S. E. (2d) 553 (1956).

Condemnation or Curtailment of Abutting Landowner's Right of Access to Highway.—The power and authority vested in the State Highway and Public Works Commission, by virtue of the statutes enacted by the General Assembly, is expressed in language broad and extensive and general and comprehensive enough and the object so general and prospective in operation as to authorize the Commission to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a State public highway adjacent to his property for the construction or reconstruction, maintenance and repair, of a limited-access highway upon the payment of just compensation. *Hedrick v. Graham*, 245 N. C. 249, 96 S. E. (2d) 129 (1957).

Injunction Will Not Lie against Commission.—

See *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Applied, as to subsection (g), in *Shaver Motor Co. v. Statesville*, 237 N. C. 467, 75 S. E. (2d) 324 (1953).

§ 136-18.2. Seed planted by Commission to be approved by Department of Agriculture.—The State Highway Commission shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the State Department of Agriculture as

provided for in the rules and regulations of the Department of Agriculture for such seed. (1957, c. 1002.)

Editor's Note. — By virtue of Session Commission" was substituted for "State Laws 1957, c. 65, s. 11, "State Highway Highway and Public Works Commission."

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.

Whenever the Commission and the owner or owners of the lands, materials, and timber required by the Commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the Commission is hereby vested with the power to condemn the lands, materials, and timber, and in so doing the ways, means, methods, and procedure of chapter 40, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as off-sets against damages: Provided, that in all cases where the State Highway Commission, upon the completion of the particular project, posts a notice at the courthouse door in each county wherein any part of the particular project is situate, and posts such notice in appropriate and suitable size at each end of the project for thirty (30) days to the effect that the project was completed as of a certain date named in the notice, any action for damages for rights of way or other causes shall be brought within six months from the date such notice was posted, and in all cases where the State Highway Commission does not post notice as above set forth, any action may be brought within twelve months from the date of the completion of the project: Provided, however, that in no event shall the completion of a particular project be construed to be any date or time prior to the opening of the particular part or section of road in question to public use in a completed state.

(1953, c. 217.)

Cross Reference.—As to power of Highway Commission to condemn or curtail right of access of abutting owner to highway, see § 136-18.

Editor's Note.—

The 1953 amendment added the second proviso of the second paragraph and substituted in the first proviso thereof the words "such notice was posted" for the words "the project was completed as specified in such notice."

By virtue of Session Laws 1957, c. 65, s. 11, "State Highway Commission" was substituted for "State Highway and Public Works Commission."

Only the second paragraph is set out.

The State Highway and Public Works Commission possesses the sovereign power of eminent domain, and by reason thereof can take private property for public use for highway purposes. The Commission may do this either by bringing a special proceeding against the owner for the condemnation of the property under this section, or by actually seizing the property and appropriating it to public use. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Remedy of Owner of Land Taken for Highway Purposes.—When the Commission, in the exercise of the power of eminent domain conferred upon it by statute,

this section and G. S. 40-12 et seq., takes land or any interest therein for highway purposes, the owner's remedy is by special proceeding as provided in G. S. 40-12. *Cannon v. Wilmington*, 242 N. C. 711, 89 S. E. (2d) 595 (1955).

Commission Not Subject to Suit, etc.—

In accord with original. See *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

The State Highway and Public Works Commission cannot be required to make recompense in any way in an ordinary civil action for an injury to property, no matter what the source of the injury may be. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Procedure for Adjusting Claim Exclusive.—

If the State Highway and Public Works Commission and the owner are unable to agree upon the compensation justly accruing to the latter from the taking of his property by the former, the owner must seek such compensation in the only mode appointed by law for the purpose, i. e., by a special proceeding in condemnation under this section. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Rights in Land Acquired by Purchase.—The purchase of a right of way by the State Highway and Public Works Com-

mission, under the provisions of this section, vests in the Commission the same rights as though it had acquired the land by condemnation. *Sale v. State Highway, etc.*, Comm., 238 N. C. 599, 78 S. E. (2d) 724 (1953).

Recovery of Consideration Agreed to Be Paid.—Where the Commission has failed to pay consideration for a right-of-way easement executed by landowners in accordance with an agreement between them and the Commission, the landowners may bring an action at law in the superior court to recover such consideration, and a special proceeding under this section and G. S. 40-12 et seq., is not proper. *Sale v. State Highway & Public Works Comm.*, 242 N. C. 612, 89 S. E. (2d) 290 (1955).

Payment of Award Not A Condition Precedent to Taking Possession of Land.—The Commission is not required to pay into court the amount of the award made by the commissioners, as a condition precedent to taking possession of the land sought to be acquired for right of way for public highway purposes. *North Carolina State Highway & Public Works Comm. v. Pardington*, 242 N. C. 482, 88 S. E. (2d) 102 (1955).

Effect of Voluntary Payment of Award.—Payment by the Commission of the amount of the award before taking possession is voluntary, and where a check in the amount of the damages assessed by commissioners was sent to the clerk of the superior court, and both the letter of the transmittal and the notation on the voucher disclosed that the check was in payment of the award, and the property owner accepted the check, the question of compensation was settled, and the Commission waived and surrendered any right to take exception to the commissioners' report. *North Carolina State Highway & Public Works Comm. v. Pardington*, 242 N. C. 482, 88 S. E. (2d) 102 (1955).

Extent of Right in Land Acquired by Condemnation.—Where it exercises the power of eminent domain vested in it by this section and in that way appropriates the land of another to public use as the right of way for a public highway, the State Highway and Public Works Commission acquires once for all the complete legal right to use the entire right of way for highway purposes as long as time shall last. *State Highway, etc.*, Comm. v. Black, 239 N. C. 198, 79 S. E. (2d) 778 (1954).

Effect of Registering Map of Lands Adjacent to Highway.—The Highway Com-

mission, already in possession of a traveled highway, could not get title to adjacent lands by simply registering with the register of deeds a map covering them, without exercising any rights of dominion or possession and without notice to the owners. However the filing of the maps was sufficient to vest title if accompanied by acts of dominion sufficient to constitute taking possession of or assertion of dominion over such lands. *Martin v. United States*, 240 F. (2d) 326 (1957).

Petition of Landowner in Proceeding to Recover Compensation.—When a landowner initiates a special proceeding to recover compensation from the State Highway and Public Works Commission under the provisions of this statute, his petition must allege, among other things, facts showing that his land has been taken or damaged for public use without just compensation by the State Highway and Public Works Commission. *Newton v. North Carolina State Highway, etc.*, Comm., 239 N. C. 433, 79 S. E. (2d) 917 (1954).

Rule of Damages for Property Taken.—For a statement of the rule of damages for property taken, see *State Highway, etc.*, Comm. v. Black, 239 N. C. 198, 79 S. E. (2d) 778 (1954).

Evidence of Market Value of Remaining Land.—In a special proceeding to assess compensation for land of an educational institution taken for highway purposes, any evidence which aids the jury in fixing a fair market value of the remaining land, and its diminution by the burden upon it, including everything which affects the market value of the land remaining, is competent. *Gallimore v. State Highway, etc.*, Comm., 241 N. C. 350, 85 S. E. (2d) 392 (1955).

Liability of Contractor.—A contractor who is employed by the State Highway and Public Works Commission to do work incidental to the construction or maintenance of a public highway and who performs such work with proper care and skill cannot be held liable to an owner for damages resulting to property from the performance of the work. The injury to the property in such a case constitutes a taking of the property for public use for highway purposes, and the only remedy available to the owner is a special proceeding against the State Highway and Public Works Commission under this section to recover compensation for the property taken or damaged. But if the contractor employed by the State Highway and Public Works Commission performs his work in a negligent manner and there-

by proximately injures the property of another, he is personally liable to the owner therefor. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Applied in *Laughter v. State Highway*, etc., Comm., 238 N. C. 512, 78 S. E. (2d) 252 (1953); *Simmons v. State Highway*, etc., Comm., 238 N. C. 532, 78 S. E. (2d) 308 (1953); *State Highway Comm. v.*

Privett, 246 N. C. 501, 99 S. E. (2d) 61 (1957).

Quoted in *United States v. Martin*, 140 F. Supp. 42 (1956).

Cited in *Cannon v. Wilmington*, 242 N. C. 711, 89 S. E. (2d) 595 (1955); *North Carolina State Highway & Public Works Comm. v. Mullican*, 243 N. C. 68, 89 S. E. (2d) 738 (1955).

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

A municipality is not entitled to a mandatory injunction to compel a railroad company to widen and improve an underpass in the interest of public safety when such underpass, although within the municipality, constitutes a part of a State highway, since the exclusive control over the underpass in such instance is vested in the State Highway and Public Works Commission under subsection (f) of this section. *Williamston v. Atlantic Coast Line R. Co.*, 236 N. C. 271, 72 S. E. (2d) 609 (1952).

Erection of Signaling Devices.—By the

enactment of this section the legislature has taken from the railroads authority to erect gates or gongs or other like signaling devices at railroad crossings at will and has vested exclusive discretionary authority in the State Highway and Public Works Commission to determine when and under what conditions such signaling devices are to be erected and maintained by railroad companies. *Southern Ry. Co. v. Akers Motor Lines*, 242 N. C. 676, 89 S. E. (2d) 392 (1955).

Cited in *Austin v. Shaw*, 235 N. C. 722, 71 S. E. (2d) 25 (1952).

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over one thousand dollars that the Commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the State Highway Commission, to a responsible bidder, the right to reject any and all bids being reserved to the Commission; except that contracts for engineering or other kinds of professional or specialized services may be let after the taking and consideration of bids or proposals from not less than three responsible bidders without public advertisement.

(1957, c. 65, s. 11; c. 1194, s. 1.)

Editor's Note.—

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first paragraph, and the second 1957 amendment added the exception clause thereto. Section 2 of the second amendatory act provided that all contracts for engineering or other kinds of professional or specialized services which may have

heretofore been made and entered into by the State Highway and Public Works Commission without public advertisement, which are otherwise regular and valid, are hereby validated.

As only the first paragraph was changed, the second paragraph is not set out.

Applied in *Wright Contracting Co. v. Saint Paul Mercury Indemnity Co.*, 151 F. Supp. 179 (1957).

§ 136-32.1. Misleading signs prohibited. — No person shall erect or maintain within one hundred feet of any highway right of way any warning or direction sign or marker of the same shape, design, color and size of any official highway sign or marker erected under the provisions of G. S. 136-30 and 136-31, or otherwise so similar to an official sign or marker as to appear to be an official highway sign or marker. Any person who violates any of the provisions of this section is guilty of a misdemeanor and shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1955, c. 231.)

§ 136-33.2. Signs marking beginning and ending of speed zones.—Whenever speed zones are established by any agency of the State having authority to establish such speed zones, there shall be erected or posted a sign of

adequate size at the beginning point of such speed zone designating the zone and the speed limit to be observed therein, and there shall be erected or posted at the end of such speed zone an adequate sign indicating the end of such speed zone which sign shall also indicate such different speed limit as may then be observed.

At least six hundred (600) feet in advance of the beginning of any speed zone established by any agency of the State authorized to establish the same, there shall be erected a sign of adequate size which shall bear the legend "Reduce Speed Ahead." (1955, c. 647.)

§ 136-37. Basis of apportionment between municipalities; annual certification of allocations.

Cross Reference.—As to estimate of population authorizing participation in State-collected funds, see § 160-4.1.

§ 136-41.1. Maintenance, etc., of municipal streets which form part of State highway system. — From and after July 1, 1951, all streets within municipalities which now or hereafter may form a part of the State highway system shall be maintained, repaired, improved, widened, constructed and reconstructed by the State Highway Commission, to the same extent and in the same manner as is done on roads and highways of like nature outside the corporate limits and the costs of such activities shall be paid from the State Highway and Public Works Fund: Provided, that municipalities shall be required to provide twenty per cent of the cost of acquisition of right of way for new streets or for relocating or widening old streets except where the federal government may pay as much as ninety per cent of the total cost of the highway under the provisions of any applicable federal statute: Provided, further, that when the State Highway Commission shall determine from a thorough engineering and traffic study and investigation that a by-pass is needed to carry a heavily traveled and congested highway around a city or town, and that the construction of such a highway link or by-pass is justified by the traffic needs of said highway, and when it appears from such engineering study and investigation that the topography of the surrounding country is such as to make the construction of such a by-pass impossible or so extremely expensive that it would be more economical to construct such a highway through such city or town, even if the type of construction required would mean carrying such highway through such city or town on elevated viaduct or some other similar type of construction, with no or very limited right of access from the streets of the city or town to said highway, then and only in such event the municipality may be relieved of its obligation to pay twenty per cent of the costs of acquisition of right of way, and the State Highway Commission may, upon a formal determination by the Commission, pay the entire right of way costs for the construction of such project. The appropriations in the Budget Appropriation Bill of 1951-53, the same being chapter 642 of the Session Laws of 1951, for the maintenance of State highways, both within and without cities and towns, together with any other appropriations for such purposes hereafter made, shall be used by the State Highway Commission for the purposes specified in this section as well as for maintaining other portions of the State highway system. Any municipality which is or may be called on to contribute any part of the cost of acquisition of a right-of-way for any highway shall be a proper party in any proceeding in court relating to the acquisition of such right-of-way. (1951, c. 260, s. 1; 1951, c. 948, s. 1; 1955, c. 875; 1957, c. 65, s. 11; c. 1088.)

Editor's Note.—The 1955 amendment added the second proviso to the first sentence.

The first 1957 amendment substituted "State Highway Commission" for "State

Highway and Public Works Commission." The second 1957 amendment changed the obligation of a municipality to pay the costs of acquisition of right of way from one-third to twenty per cent. The amend-

ment also inserted the exception clause in the first proviso and added the last sentence.

The correct name of the Fund mentioned in this section is "State Highway Fund." See §§ 105-436, 136-16.

§ 136-41.2. Appropriation to municipalities; allocation of funds.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety per cent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this act during the next fiscal year, to be paid for out of such funds when received.

(1953, c. 1127.)

Local Modification.—Henderson: 1957, c. 1181.

Editor's Note.—The 1953 amendment added the proviso to the fourth paragraph.

Cross Reference.—As to estimate of population authorizing participation in State-collected funds, see § 160-4.1.

As the rest of the section was not changed by the amendment only the fourth paragraph is set out.

§ 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.

In the case of each eligible municipality having a population of less than 5,000 as defined in G. S. 136-41.2, the State Highway Commission shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on non-system streets as the town may request within the limits of the current or accrued payments made to the municipality under the provisions of G. S. 136-41.2.

In computing the cost, the Commission may use the same rates for equipment rental, labor, materials, supervision, engineering and other items, which the Commission uses in making charges to one of its own department or against its own department, or the Commission may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights of way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Commission free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Commission, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the State Highway Commission and if it desires to dissolve the contract at the end of any two-year period it shall notify the State Highway and Public Works Commission of its desire to terminate said contract on or before April 1st of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Commission for the fiscal year ending June 30th, by August 1 following the fiscal year, then the Commission shall apply the said municipality's allocation under G. S. 136-41.2 to this account until said account is paid and the Commission shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipi-

pality with the State Highway Commission in accordance with the provisions of the three preceding paragraphs. (1951, c. 260, s. 3; 1951, c. 948, s. 4; 1953, c. 1044.)

Editor's Note.—The 1953 amendment added the above four paragraphs at the end of this section. As the amendment made no changes in the rest of the section only the new paragraphs are set out.

By virtue of Session Laws 1957, c. 65, s. 11, "State Highway Commission" was substituted for "State Highway and Public Works Commission."

§ 136-43. Historical marker program.—The State Highway and Public Works Commission is hereby authorized to expend not more than ten thousand dollars (\$10,000.00) a year for the purpose of purchasing historical markers, to be erected by the State Highway and Public Works Commission on sites selected by the State Department of Archives and History which Department shall also prepare the inscriptions and deliver the completed markers to the State Highway and Public Works Commission. This expenditure is hereby declared to be a valid expenditure of State highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2.)

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

ARTICLE 3.

State Highway System.

Part 2. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in State Highway and Public Works Commission.

Jurisdiction over Cartway Proceedings.—The Act of 1931 codified as this section discloses no legislative intent to withdraw from the board of commissioners of Buncombe County jurisdiction over cartway proceedings instituted under provisions of

ch. 328, § 18, Pub. Local Laws of 1923. *Merrell v. Jenkins*, 242 N. C. 636, 89 S. E. (2d) 242 (1955).

Cited in *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Part 3. Power to Make Changes in Highway System.

§ 136-55.1. Notice to property owners.—At the time of the notification of the road governing authorities of the county, or counties, in which there is a proposed change, alteration or abandonment of any road, and the posting of a map showing the old location and the new proposed location, as provided in G. S. 136-55, the State Highway Commission shall notify all known property owners whose property will be affected thereby, of said change, alteration or abandonment. The said notice shall be in general terms and shall call attention to the map which is posted at the courthouse door. This notice shall be sent to the property owner by certified mail, return receipt requested, or shall be personally delivered.

The State Highway Commission shall also publish in a newspaper published in the county in which said change, alteration or abandonment is proposed, a notice setting forth in general terms the proposed change, alteration or abandonment and calling attention to the map posted at the courthouse door. This notice shall be published once a week for four consecutive weeks. If there is no newspaper published in said county, then the said notice shall be posted at the courthouse door and at four other public places in said county for a period of thirty days.

Compliance with the provisions of this section shall constitute notice to all property owners affected by the proposed change, alteration or abandonment. (1957, c. 1063.)

Editor's Note.—The act inserting this section is effective as of January 1, 1958. By virtue of Session Laws 1957, c. 65, s. 11, "State Highway Commission" was substituted for "State Highway and Public Works Commission."

§ 136-61. Plans for secondary roads; duties of State Highway Commission and boards of county commissioners.—Plans for additions, construction, and maintenance of secondary roads shall be developed as follows:

- (1) The State Highway Commission shall be responsible for establishing standards and criteria for additions of roads to the secondary system, and for maintenance and construction of secondary roads, and these standards and criteria shall be based on the service rendered by the roads, and shall be a matter of public record.
- (2) On the basis of the standards and criteria, and on the basis of appropriations made by the General Assembly, the State Highway Commission shall annually, in advance of the beginning of the fiscal year, allocate funds for expenditure by the Highway Department in the several counties of the State for secondary road additions, maintenance, and construction.
- (3) Periodically representatives of the Highway Department shall, on the basis of standards and criteria established by the Commission and within the allocation of secondary road funds, prepare a plan for the secondary roads of each county, making provision for additions to the system, maintenance and construction. During the preparation period, these representatives shall meet with and consult the board of county commissioners of the county. Following the meeting, the board of county commissioners may make written recommendations concerning the plan as the members of the board deem advisable, and the recommendations shall be followed insofar as they are compatible with the standards and criteria established by the State Highway Commission and as available funds will permit, having due regard for the addition, maintenance, and construction of all existing secondary roads in the county. When it becomes necessary to depart from a written recommendation of the board of county commissioners, the representatives of the Highway Department shall transmit to the board the reasons therefor in writing. Final decisions in all such cases shall be the responsibility of the State Highway Commission, except that no road shall be added to the system unless it has been recommended for addition by the board of county commissioners: Provided, that if the State Highway Commission finds it necessary to the adequate development of the secondary system to add a road to the system without the recommendation of the board of county commissioners, it may do so, but the costs incurred shall not be charged against the county's annual allocation of secondary road funds nor shall the road be charged against the county in any way.
- (4) When the secondary road plan for each county has finally been completed by the representatives of the Highway Department, and approved by the Director, a copy of the plan shall be filed with the board of county commissioners. The plan shall thereafter be followed unless timely notice of change is given the board of county commissioners with opportunity for the board to make written recommendations concerning the change. At the close of each fiscal year, a report on expenditures on the secondary roads shall be made by the

Director of Highways to the board of county commissioners. (1931, c. 145, s. 13; 1933, c. 172, s. 17; 1957, c. 65, s. 6.)

Editor's Note.—The 1957 amendment to change or abandon roads or build new roads rewrote this section, which formerly related to petition by county commissioners

§ 136-62. Right of petition.—The citizens of the State shall have the right to present petitions to the board of county commissioners, and through the board to the Director of Highways, concerning additions to the system and improvement of roads. The board of county commissioners shall receive such petitions, forwarding them on to the State Highway Commission with their recommendations. Petitions on hand at the time of the periodic preparation of the secondary road plan shall be considered by the representatives of the Highway Department in preparation of that plan, with report on action taken by these representatives on such petitions to the board of commissioners at the time of consultation. The citizens of the State shall at all times have opportunities to discuss any aspect of secondary road additions, maintenance, and construction, with representatives of the Highway Department in charge of the preparation of the secondary road plan, and if not then satisfied opportunity to discuss any such aspect with the division engineer, the Director of Highways, and the State Highway Commission in turn. (1931, c. 145, s. 14; 1933, c. 172, s. 17; 1957, c. 65, s. 7.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 136-63. Change or abandonment of roads.—The board of county commissioners of any county may, on their own motion or on petition of a group of citizens, request the Director of Highways to change or abandon any road in the secondary system, when in the opinion of the board the best interest of the people of the county will be served thereby. The Director shall thereupon make inquiry into the proposed change or abandonment, and if in his opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street-governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. If not satisfied with the decision of the Director, the board of county commissioners or the street-governing body of the city or town shall have opportunity to discuss the matter with the State Highway Commission. Any request refused by the Director of Highways may be presented again upon the expiration of twelve (12) months. (1931, c. 145, s. 15; 1957, c. 65, s. 8.)

Editor's Note.—The 1957 amendment rewrote this section.

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Easements in Abandoned Roads Retained for Use by Public.—By this section, the easements theretofore owned by the State in and to such segments of abandoned road are retained and reserved by the State for use by the public, not as public highways but as neighborhood public roads. Every segment of public road which has been abandoned as a part of the State road system coming within the terms of the statute is thus, by legislative enact-

ment, established as a neighborhood public road. *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

Superior Court Does Not Have Original Jurisdiction of Proceeding.—The procedure for the establishment of a neighborhood public road, as well as the procedure to establish discontinuance thereof, is by special proceeding before the clerk, and although an interlocutory injunction in connection with the proceeding may be issued

only by the judge, the superior court does not have original jurisdiction of the proceeding. *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957).

Use of Word "Declare" in Petition.—Where the petitioners seek to obtain a judicial declaration of the existence of those facts which are necessary to bring the road in question within the definition contained in this section, so as to procure the establishment thereof as a neighborhood public road as a matter of public record, they do not invoke the provisions of the Declaratory Judgment Act, by the use of the word "declare," and the clerk of the superior court has jurisdiction over the proceeding. *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

Allegations Insufficient to Bring Road in Question within Definition of this Section.—See *Clinard v. Lambeth*, 234 N. C. 410, 67 S. E. (2d) 452 (1951).

The facts alleged by plaintiff did not bring the segment of old road in contro-

versy within the meaning of neighborhood public road as defined by this section. *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957).

Findings Supporting Dismissal of Action.—Where an action to have a portion of abandoned highway adjudged to be a neighborhood public road under this section was submitted to the court under agreement of the parties, findings of fact by the court, supported by evidence, to the effect that the abandoned road was not necessary for ingress or egress to any dwelling, there having been by-roads constructed giving access to the dwelling in question and connecting the schools involved, and that the abandoned road had not remained open and in general use by the public, were held to support judgment dismissing the action. *Woody v. Barnett*, 239 N. C. 420, 79 S. E. (2d) 789 (1954).

Stated in *Woody v. Barnett*, 243 N. C. 782, 92 S. E. (2d) 178 (1956).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

Jurisdiction of Clerk.—The legislature has vested in the clerks of the superior courts of the State jurisdiction over proceedings relating to the establishment, maintenance, alteration, discontinuance, or abandonment of neighborhood public roads, church roads, and cartways. Proceedings under this article ordinarily involve questions of fact rather than issues

of fact. An expeditious method of entertaining and disposing of such proceedings, without unnecessarily cluttering the civil issue docket of the superior court, was desired. To this end jurisdiction was vested in the clerk. *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

Cited in *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

The Laying Off of a Cartway, etc.—

In accord with original. See *Tucker v. Transou*, 242 N. C. 498, 88 S. E. (2d) 131

(1955).

Cited in *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

§ 136-70. Alteration or abandonment of cartways, etc., in same manner.

Cited in *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

ARTICLE 6A.

Carolina-Virginia Turnpike Authority.

§ 136-89.1. Turnpike projects.—In order to provide for the construction of modern express highways or superhighways embodying safety devices, including center division, ample shoulder widths, long-sight distances, multiple lanes in each direction and grade separation at intersections with other highways and railroads, and thereby facilitate vehicular traffic, provide better connections between the highway system of North Carolina and the highway systems of the adjoining states, remove many of the present handicaps and hazards on the congested highways in the State and promote the agricultural and industrial development of the State, the Carolina-Virginia Turnpike Authority (hereinafter created), is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of

the Authority, payable solely from revenues, to finance such projects. (1953, c. 1159.)

Editor's Note.—Session Laws 1953, c. 1159, effective April 29, 1953, rewrote this article, which was codified from Session Laws 1949, c. 1024, and was formerly entitled "Municipal Corporations Operating Toll Roads."

§ 136-89.2. Credit of State not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but all such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under the provisions of this article. (1953, c. 1159.)

§ 136-89.3. Carolina-Virginia Turnpike Authority.—There is hereby created a body politic and corporate to be known as the "Carolina-Virginia Turnpike Authority". The Authority is hereby constituted a public instrumentality, and the exercise by the Authority of the powers conferred by this article in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

The Carolina-Virginia Turnpike Authority shall consist of four members, including the chairman of the State Highway and Public Works Commission who shall be a member ex officio, and three members appointed by the Governor who shall serve for terms expiring on July 1, 1954, July 1, 1955 and July 1, 1956, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each of the three appointed members shall be appointed for a term of four years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

The Authority shall elect one of the appointed members as chairman of the Authority and another as vice-chairman, and shall also elect a secretary-treasurer who need not be a member of the Authority. The chairman, vice-chairman and secretary-treasurer shall serve as such officers at the pleasure of the Authority. Three members of the Authority shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this article, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000.00) and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars (\$50,000.00), each such surety bond to be conditioned upon the faithful performance of the du-

ties of his office, to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State.

The chairman of the Authority shall receive the sum of fifteen dollars (\$15.00) for each day or part thereof of service, but not exceeding three thousand dollars (\$3,000.00) in any one year. The other appointed members of the Authority shall receive the sum of ten dollars (\$10.00) for each day or part thereof of service, but not exceeding two thousand dollars (\$2,000.00) in any one year. The chairman of the State Highway and Public Works Commission shall serve as a member of the Authority without extra compensation for such service. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. (1953, c. 1159.)

§ **136-89.4. 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:

(a) The word “Authority” shall mean the Carolina-Virginia Turnpike Authority, created by § 136-89.3, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Authority shall be given by law.

(b) The word “project” or the words “turnpike project” shall mean any highway, express highway or superhighway, toll road constructed under the provisions of this article by the Authority, including all tunnels, overpasses, underpasses, interchanges, entrance places, approaches, toll houses, service stations, and administration, storage and other buildings, and facilities which the Authority may deem necessary for the operation of such project, together with all property, rights, easements, and interests which may be acquired by the Authority for the construction or the operation of such project.

(c) The word “cost” as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation of expense hereafter incurred by the State Highway and Public Works Commission with the approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.

(d) The words “public highways” shall include all public highways, roads and streets in the State, whether maintained by the State or by any county, city, town or other political subdivision.

(e) The word “bonds” or the words “turnpike revenue bonds” shall mean revenue bonds of the Authority authorized under the provisions of this article.

(f) The word “owner” shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article. (1953, c. 1159.)

§ 136-89.5. **General grant of powers.**—The Authority is hereby authorized and empowered:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, plead and be impleaded;

(e) To construct, maintain, repair and operate turnpike projects at such locations within the State as may be determined by the Authority and approved by the State Highway and Public Works Commission; provided, further, that no turnpike or toll road shall be constructed or operated in this State unless and until a certificate of approval be first obtained from the State Highway Commission certifying that the operation of such toll road or turnpike will not be harmful or injurious to the secondary or primary roads embraced in the system of State highways;

(f) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this article;

(g) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;

(h) To establish rules and regulations for the use of any such turnpike project;

(i) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(j) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(k) To make and enter into contracts and operating agreements with similar organizations or agencies of other states and to make and enter into all other contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(l) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(m) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(n) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1953, c. 1159.)

§ 136-89.6. **Acquisition of property.**—The authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands which are located within the State, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights,

rights of way, franchises, easements and other property, including public lands or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. The amount and size of any lands, property, rights of way, easements and other property to be obtained by the Authority under its exercise of the power of eminent domain shall first be determined and approved by the State Highway and Public Works Commission. Any such proceedings shall be conducted, and the compensation to be paid shall be ascertained and paid, in the manner provided by the laws of the State then applicable which relate to condemnation or the exercise of the power of eminent domain as provided in chapter 40 of the General Statutes and amendments thereof. Title to any property acquired by the Authority shall be taken in the name of the State. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the State or the Authority except as may be paid from the funds provided under the authority of this article.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right of way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right of way, plans and specifications of the proposed project showing compliance with the above mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 30 days to approve the plans and specifications so submitted, the matter shall be submitted to the North Carolina Utilities Commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the North Carolina Utilities Commission as the case may be. A copy of the plans and specifications approved by the railroad or the North Carolina Utilities Commission shall be filed as an exhibit with the petition for condemnation.

Whenever it shall be found necessary to cross any electric power or telephone or telegraph lines, any powers of condemnation or eminent domain may be exercised only to acquire an easement thereover without any unnecessary inter-

ference with the continued use and operation of such lines. The Authority shall pay any and all costs which may be necessary to make such crossings reasonably safe and usable. If the Authority and the owner of such power, telephone or telegraph lines are unable to agree upon the terms and conditions as to the payment of damages and costs involved in such matters, and the way and manner in which such crossings shall be made, this shall be determined by the North Carolina Utilities Commission upon petition filed by the Authority and after notice and hearing as to the other utilities concerned, in accordance with such rules and procedures as may be prescribed by the said Commission. Before using such easement as may be acquired by the Authority as herein provided it shall fully comply with such agreement as shall be made by it with any such utility or fully comply with any conditions set forth in the order of condemnation. In the event any land which is used for agricultural purposes is condemned for the location thereon of any highway under the provisions of this article which would divide one part of such agricultural land from another part thereof, the Authority shall pay all the damages to such land caused from the taking of such part thereof as shall be used for such highway and in addition thereto the damages resulting from dividing such agricultural land so that one part thereof will not be accessible to the other. If the owner of such land shall be dissatisfied with the amount of damages assessed to be paid for the taking of such property, he shall have a right to demand that the value of the whole tract of agricultural land, including woodland used as a part thereof, shall be valued and the Authority shall be required to pay in lieu of damages for condemnation of such highway thereunder the total value of such property upon conveyance of the same in fee simple, free from encumbrances, to the Authority. The owner of such property shall, however, have the option at any time to accept the damages assessed for the taking of the land or the total valuation of said property as hereinbefore provided. (1953, c. 1159.)

Cited in *Carolina-Virginia Coastal Highway v. Coastal Turnpike Authority*, 237 N. C. 52, 74 S. E. (2d) 310 (1953).

§ 136-89.7. **Incidental powers.**—The Authority shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of such project; provided where any part of an existing public road is vacated, no charge may be made for the use of such vacated public road where the same becomes a part of a turnpike project.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands and premises in the State for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall

not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities.

The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Authority shall determine that it is necessary that any such public utility facility which now is, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

The State hereby consents to the use of all lands owned by it which are deemed by the Authority to be necessary for the construction or operation of any turnpike project; provided no public property may be used except upon the approval of the State Highway and Public Works Commission, and with the consent of the Governor and the Council of State acting together. (1953, c. 1159.)

§ 136-89.8. Turnpike revenue bonds.—The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form 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. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the official seal of the Authority shall be impressed thereon and attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Authority. 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. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon

or in registered form, or both, as the Authority 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 Authority may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, 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, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, 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. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority 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 Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1953, c. 1159.)

§ 136-89.9. **Trust agreement.**—In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds 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 Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project or projects in connection with such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State 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 Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project or projects. (1953, c. 1159.)

§ 136-89.10. **Revenues.**—The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use; provided that a sufficient number of gasoline stations should be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted in respect to the aggregate of tolls from the turnpike project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such turnpike project or projects and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the turnpike project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other money so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1953, c. 1159.)

§ 136-89.11. **Trust funds.**—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolutions or trust agreement may provide. (1953, c. 1159.)

§ 136-89.11a. **Remedies.**—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights

under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls. (1953, c. 1159.)

§ 136-89.11b. **Exemption from taxation.**—The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State, except inheritance and gift taxes. (1953, c. 1159.)

§ 136-89.11c. **Miscellaneous.**—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Authority may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this article.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth a complete operating and financial statement covering its operation during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one year, or both. (1953, c. 1159.)

§ 136-89.11d. **Turnpike revenue refunding bonds.**—The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued

or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of construction improvements, extensions, or enlargements of the turnpike project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of any additional turnpike project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 1159.)

§ 136-89.11e. **Transfer to State.**—When all bonds issued under the provisions of this article in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair, shall become part of the State highway system and shall thereafter be maintained by the State Highway and Public Works Commission free of tolls; provided, however, that the Authority may thereafter charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another turnpike project or projects. but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment. (1953, c. 1159.)

§ 136-89.11f. **Additional method.**—The foregoing sections of this article shall be deemed to provide an additional alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article need not comply with the requirement of any other law applicable to the issuance of bonds. (1953, c. 1159.)

§ 136-89.11g. **Conveyance by prior corporations.**—Any corporation organized under the provisions of this article 6A prior to the revision of this article in the year 1953 shall have power to give, sell, assign, transfer or convey any and all of its properties, rights and assets to the State of North Carolina for the use of the Carolina-Virginia Turnpike Authority. (1953, c. 1159.)

§ 136-89.11h. **Article liberally construed.**—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1953, c. 1159.)

ARTICLE 6B.

Turnpikes.

§ 136-89.12. **Turnpike projects.**

Cited in Carolina-Virginia Coastal Highway v. Coastal Turnpike Authority, 237 N. C. 52, 74 S. E. (2d) 310 (1953).

§ 136-89.14. **North Carolina Turnpike Authority.**

The North Carolina Turnpike Authority shall consist of ten members, including the chairman of the State Highway and Public Works Commission who shall be a member ex officio, and four members appointed by the Governor who shall serve for terms expiring on July 1, 1952, July 1, 1953, July 1, 1954, and July 1, 1955, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified, together with five members of the State Highway and Public Works Commission designated and appointed by the Governor, who shall serve for terms expiring with their respective terms as members of the North Carolina State Highway and Public Works Commission or until their respective successors shall be designated and appointed. The successor of each of the four appointed members shall be appointed for a term of four years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

(1953, c. 1116.)

Editor's Note.—The 1953 amendment was affected by the amendment the rest rewrote the first sentence of the second of the section is not set out. paragraph. As only the second paragraph

ARTICLE 6C.

State Toll Bridges and Revenue Bonds.

§ 136-89.31. **Short title.**—This article shall be known, and may be cited, as the "State Bridge Revenue Bond Act." (1953, c. 900, s. 1.)

§ 136-89.32. **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:

(a) The word "Commission" shall mean the State Highway and Public Works Commission or, if said Commission shall be abolished, any board, body or Commission succeeding to the principal functions thereof or to whom the powers given by this article to the Commission shall be given by law.

(b) The word "bridge" shall mean any bridge acquired or constructed by the Commission under the provisions of this article, and shall embrace the substructure and superstructure thereof and the approaches thereto, and such entrance plazas, interchanges, overpasses, underpasses, connecting highways (including elevated or depressed highways), toll houses, administration, storage and other buildings, and other structures as the Commission may determine to construct in connection therewith, together with all property, rights, easements and interests acquired by the Commission for the construction or the operation of such bridge.

(c) The word "cost" as applied to any bridge shall embrace the cost of acquisition or construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Commission for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining any such project, administrative expense, and such other expense as may be necessary or incident to the acquisition or construction of

the bridge, the financing of such acquisition or construction and the placing of the bridge in operation. Any obligation or expense heretofore or hereafter incurred by the Commission for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the acquisition or construction of a bridge hereunder shall be regarded as a part of the cost of such bridge and shall be reimbursed to the Commission out of the proceeds of revenue bonds hereinafter authorized.

(d) The word "owner" shall include all individuals, copartnerships, associations or corporations and also municipalities, political subdivisions and all public agencies and instrumentalities having any title or interest in any property, rights, easements and interests authorized to be acquired by this article.

(e) The word "bonds" or the words "revenue bonds" or "bridge revenue bonds" shall mean revenue bonds of the Commission issued under the provisions of this article. (1953, c. 900, s. 2.)

§ 136-89.33. General grant of powers.—The Commission is hereby authorized and empowered, subject to the provisions of this article:

(a) to acquire by purchase or by condemnation, construct, reconstruct, enlarge, improve, maintain, repair and operate any one or more bridges over any of the rivers or navigable waters which are wholly or partially within this State; provided, that no bridge shall be acquired or constructed under the provisions of this article unless such bridge shall be not less than one mile in length nor unless the construction cost of such bridge shall be not less than \$1,000,000;

(b) to issue bridge revenue bonds of the State, to be known and designated as "State of North Carolina Toll Bridge Revenue Bonds" payable solely from the tolls and revenues pledged for their payment and to refund such bonds, all as provided in this article;

(c) to combine for financing purposes any two or more bridges hereafter acquired, constructed or operated by the Commission;

(d) to fix and revise from time to time and charge and collect tolls and other charges for transit over or the use of any bridge;

(e) to establish rules and regulations for the use of any bridge;

(f) to require, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(g) to enter upon any lands and structures and upon lands under water, to make surveys, borings, soundings or examinations as it may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall any entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending; provided, however, that the Commission shall make reimbursement for any actual damage resulting to such lands, structures and lands under water as a result of such activities;

(h) to enter upon, use, occupy and dig up any street, alley, road, highway or other public place necessary to be entered upon, used or occupied in connection with the construction, reconstruction, enlargement, improvement, maintenance, repair or operation of any bridge;

(i) to make and enter into contracts and agreements with other states or political subdivisions or agencies thereof with reference to approaches and connecting highways in any such state and to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(j) to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(k) to receive and accept from any federal agency grants for or in aid of the construction of any bridge, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(1) to do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1953, c. 900, s. 3.)

§ 136-89.34. **Acquisition of property.**—The Commission is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, from funds provided under the authority of this article, either within or without the State, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, as it may deem necessary or convenient for the construction or operation of any bridge, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Commission is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or part thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, or municipality or political subdivision deemed necessary or convenient for the construction or the efficient operation of any bridge or necessary in the restoration of public or private property damaged or destroyed, and in so doing the ways, means, methods and procedure of chapter 40 of the General Statutes of North Carolina, entitled "Eminent Domain", shall be used by the Commission as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages. In case condemnation shall become necessary the Commission is authorized to enter the lands or other property and take possession of the same prior to bringing the proceedings for condemnation, and prior to the payment of the money for such property. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the Commission to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action.

The State hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Commission to be necessary for the construction or operation of any bridge. (1953, c. 900, s. 4.)

§ 136-89.35. **Bridge revenue bonds.**—The Commission is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bridge revenue bonds of the State for the purpose of paying all or any part of the cost of any one or more bridges; provided, however, that no such bonds shall be issued unless the Commission shall make a finding in such resolution, or in a separate resolution adopted by the Commission prior to the issuance of such bonds, that (a) sufficient funds for paying such cost are not available to the Commission from appropriations or other State or federal funds, and (b) the revenues of such bridge or bridges, as the case may be, as estimated by the Commission following traffic surveys made by competent engineers for the Commission, after providing for the payment of the cost of maintenance and operation thereof and reserves therefor, will be sufficient to provide for the payment of such bonds and the interest thereon as the same shall fall due. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for their payment.

The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The

Commission shall determine the form 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. The bonds shall be signed by the chairman of the Commission and the official seal of the Commission shall be impressed thereon, attested by the secretary or other officer of the Commission designated by the Commission, and any coupons attached thereto shall bear the facsimile signature of said Chairman. 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. The bonds may be issued in coupon or in registered form, or both, as the Commission 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, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Commission may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article, but no such 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 Commission may provide in the resolution authorizing the issuance of such bonds or in the trust agreement, hereinafter mentioned, securing the same. If the proceeds of such bonds issued for the purpose of paying the cost of construction of any bridge or bridges, 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, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, 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, or any trust agreement securing such bonds, may contain such limitations upon the issuance of additional revenue bonds as the Commission 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 Commission 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 Commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings, conditions or things which are specifically required by this article. (1953, c. 900, s. 5.)

§ 136-89.36. Credit of State not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds provided therefor from tolls and revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State

nor the Commission shall be obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, and that the faith and credit of the State are not pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor. (1953, c. 900, s. 6.)

§ 136-89.37. **Trust agreement.**—In the discretion of the Commission any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any bridge or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds 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 Commission in relation to the acquisition of property and the construction, enlargement, improvement, maintenance, repair, operation and insurance of the bridge or bridges in connection with which such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State 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 Commission. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the bridge or bridges. (1953, c. 900, s. 7.)

§ 136-89.38. **Revenues.**—The Commission is hereby authorized to fix, revise, charge and collect tolls for the use of any bridge acquired or constructed under the provisions of this article. Such tolls shall be so fixed and adjusted with respect to the aggregate of tolls from any such bridge or bridges as to provide a fund sufficient, with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such bridge or bridges and any other expenses payable from such tolls and (b) the principal of and the interest on the bonds which are payable from such tolls as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other department, division, commission, board, bureau or agency of the State. The tolls and all other revenues derived from the bridge or bridges in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls and other revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien

of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Commission, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

Notwithstanding any of the foregoing provisions of this section the Commission may, unless prohibited by any provision of the Constitution of North Carolina, covenant in such resolution or such trust agreement to pay the cost of maintaining, repairing and operating any bridge or bridges acquired or constructed under the provisions of this article, and, inasmuch as such bridge or bridges will at all times belong to the State, such covenant shall have the force of contract between the State and the holders of the bonds issued for such bridge or bridges. (1953, c. 900, s. 8.)

§ 136-89.39. **Trust funds.**—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee or such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution of trust agreement may provide. (1953, c. 900, s. 9.)

§ 136-89.40. **Remedies.**—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Commission or by any officer thereof, including the fixing, charging and collecting of tolls. (1953, c. 900, s. 10.)

§ 136-89.41. **Negotiable instruments.**—Notwithstanding any of the foregoing 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. (1953, c. 900, s. 11.)

§ 136-89.42. **Exemption from taxation.**—The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of bridges by the Commission will constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon any bridge or any property acquired or used by the Commission under the provisions of this article or upon the income therefrom, and the bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1953, c. 900, s. 12.)

§ 136-89.43. **Bonds eligible for investment.**—Bonds issued by the Commission under the provisions of this article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1953, c. 900, s. 13.)

§ 136-89.44. **Bridge revenue refunding bonds.**—The Commission is hereby authorized to provide for the issuance of bridge revenue refunding bonds of the State for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if the Commission shall so determine, for the additional purpose of constructing improvements, extensions or enlargements of the bridge or bridges in connection with which the bonds to be refunded shall have been issued. The Commission is further authorized to provide for the issuance of bridge revenue bonds of the State for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of any additional bridge or bridges. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Commission in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 900, s. 14.)

§ 136-89.45. **Additional method.**—The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, that the issuance of bridge revenue bonds or bridge revenue refunding bonds under the provisions of this article need not comply with requirements of any other law applicable to the issuance of bonds. (1953, c. 900, s. 15.)

§ 136-89.46. **Article liberally construed.**—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1953, c. 900, s. 16.)

§ 136-89.47. **Inconsistent laws inapplicable.**—All other laws or parts thereof inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1953, c. 900, s. 18.)

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.48. **Declaration of policy.**—The General Assembly hereby finds, determines, and declares that this article is necessary for the immediate preservation of the public peace, health and safety, the promotion of the general welfare, the improvement and development of transportation facilities in the State, the elimination of hazards at grade intersections, and other related purposes. (1957, c. 993, s. 1.)

§ 136-89.49. **Definitions.**—When used in this article:

- (1) “Controlled-access facility” means a State highway, or section of State highway, especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property, or others, shall have only a controlled right or easement of access.
- (2) “Frontage road” means a way, road or street which is auxiliary to and located on the side of another highway, road or street for service to abutting property and adjacent areas and for the control of access to such other highway, road or street.
- (3) “Commission” means the State Highway Commission. (1957, c. 993, s. 2.)

§ 136-89.50. **Authority to establish controlled-access facilities.**—The Commission may designate, establish, abandon, improve, construct, maintain and regulate controlled-access facilities as a part of the State Highway System, National System of Interstate Highways, and Federal Aid Primary System whenever the Commission determines that traffic conditions, present or future, justify such controlled-access facilities, or the abandonment thereof. (1957, c. 993, s. 3.)

§ 136-89.51. **Design of controlled-access facility.**—The Commission is authorized so to design any controlled-access facility and so to regulate, restrict, or prohibit access as best to serve the traffic for which such facility is intended. In this connection the Commission is authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, or stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time by the Commission. (1957, c. 993, s. 4.)

§ 136-89.52. **Acquisition of property and property rights.**—For the purposes of this article, the Commission may acquire private or public property and property rights for controlled-access facilities and service or frontage roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation in the same manner as now or hereafter authorized by law to acquire such property or property rights in connection with highways. The property rights acquired under the provisions of this article may be in fee simple or an appropriate easement of right of way in perpetuity. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or frontage road in connection therewith, the Commission may, in its discretion, with the consent of the landowner, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper. Along new highway locations abutting property owners shall not be entitled, as a matter of right, to access to such new locations; however, the denial of such rights of access shall be considered in determining general damages. (1957, c. 993, s. 5.)

§ 136-89.53. **New and existing facilities; grade crossing eliminations.**—The Commission may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility. When an existing street or highway shall be designated as and included within a controlled-access facility the owners of land abutting such existing street or highway shall be entitled to compensation for the taking of or injury to their easements of ac-

cess. The Commission shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing State highways and county roads, and city and town streets, by grade separation or frontage road, or by closing off such roads and streets, or other public ways at the right of way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No street or any city or town and no State highway, county road, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Commission. Such consent and approval shall be given only if the public interest shall be served thereby. (1957, c. 993, s. 6.)

§ 136-89.54. **Authority of local units to consent.**—The Commission, as the highway authority of the State, and the governing body of any county, city or town are authorized, after a public hearing to be held in the county affected, to enter into agreements with each other, and the Commission is authorized to enter into agreements with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulations, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this article. (1957, c. 993, s. 7.)

§ 136-89.55. **Local service roads.**—In connection with the development of any controlled-access facility the Commission is authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service or frontage roads and streets or to designate as local service or frontage roads and streets any existing road or street, and to exercise jurisdiction over service or frontage roads in the same manner as is authorized over controlled-access facilities under the terms of this article, if in its opinion such local service or frontage roads and streets are necessary or desirable; provided, however, that after a local service or frontage road has been established the same shall not be vacated or abandoned without the consent of the abutting property owners so long as the controlled-access facility is maintained as such facility, and the Commission shall not have any authority to control or restrict the right of access of abutting property owners from their property to such local service or frontage roads or streets, except such authority as the Commission has with respect to primary and secondary roads. Such local service or frontage roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable. (1957, c. 993, s. 8.)

§ 136-89.56. **Commercial enterprises.**—No commercial enterprises or activities shall be authorized or conducted by the Commission, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this article. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Commission shall permit access to service or frontage roads within the publicly owned right of way of any controlled-access facility established or designated as provided in this article, at points which, in the opinion of the Commission, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Commission. (1957, c. 993, s. 9.)

§ 136-89.57. **Unlawful use of limited-access facilities; penalties.**—It shall be unlawful for any person:

- (1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on any controlled-access facility;

- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on any controlled-access facility;
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on any controlled-access facility;
- (4) To drive any vehicle into the controlled-access facility from a local service or frontage road except through an opening provided for that purpose in the dividing curb, dividing section or dividing line which separates such service or frontage road from the controlled-access facility proper.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of one hundred dollars (\$100.00), or by imprisonment not in excess of sixty (60) days, or by both such fine and imprisonment, in the discretion of the court. (1957, c. 993, s. 10.)

ARTICLE 7.

Miscellaneous Provisions.

§ 136-96. **Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.**—Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within fifteen (15) years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except that where such dedication was made less than twenty (20) years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953: provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under chapter 46 of the General Statutes of North Carolina, entitled "Partition", and chapter 1, article 29-A of the General Statutes of North Carolina, known as the "Judicial Sales Act", and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or

those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out hereinbefore in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953. (1921, c. 174; C. S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517.)

Editor's Note.—

The 1953 amendment rewrote this section.

The 1957 amendment substituted "chapter 46" for "chapter 146" in line twenty-four.

Withdrawal in Conformity with Section, etc.—

Where revocation of a dedication is made in the manner provided in this section, streets and alleys theretofore dedi-

cated become private property and are not subject to any easement by reason of the dedication except in so far as their use may be necessary to afford convenient ingress to and egress from any lot previously sold and conveyed by the dedicator. *Hine v. Blumenthal*, 239 N. C. 537, 80 S. E. (2d) 458 (1954).

Cited in *Lee v. Walker*, 234 N. C. 687, 68 S. E. (2d) 664 (1951); *Todd v. White*, 246 N. C. 59, 97 S. E. (2d) 439 (1957).

Chapter 137.

Rural Rehabilitation.

Article 1.

State Rural Rehabilitation Law.

Sec.
137-1 to 137-30. [Repealed.]

Article 2.

North Carolina Rural Rehabilitation Corporation.

137-31.1. State agency and its rights, functions, etc., continued.

Sec.

137-31.2. Property of Corporation.

137-31.3. Members of board of directors; terms of office.

137-31.4. Cancellation of stock; Corporation to be nonstock.

137-31.5. Annual audit and financial statement.

137-32.1. Powers of board of directors.

ARTICLE 1.

State Rural Rehabilitation Law.

§§ 137-1 to 137-30: Repealed by Session Laws 1955, c. 190.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31.1. State agency and its rights, functions, etc., continued.
—The North Carolina Rural Rehabilitation Corporation shall be and continue as an agency of the State of North Carolina, and as such is vested with and shall continue to have and be vested with all the rights, powers, functions, objects and purposes granted to and vested in it by the certificate of incorporation of said Corporation, as amended, or by statute or act of the General Assembly of North Carolina. (1953, c. 724, s. 1.)

§ 137-31.2. Property of corporation.—All lands, buildings, structures, funds, notes, bonds, mortgages, contracts, records, reports, equipment, vehicles, supplies, materials and other property, real, personal or mixed, tangible or in-

tangible, which are owned by said Corporation or in which said Corporation has an interest on April 8, 1953, shall continue and remain the property of said Corporation. (1953, c. 724, s. 2.)

§ 137-31.3. Members of board of directors; terms of office.—The governing body of the North Carolina Rural Rehabilitation Corporation shall be a board of directors consisting of nine members, of whom the Commissioner of Agriculture, the Director of the Co-operative Agricultural Extension Service of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the Director of the Division of Vocational Education of the State Department of Public Instruction, and the North Carolina State Director of the Farmers Home Administration of the United States Department of Agriculture, or in the event of a change of name of any of said offices, the persons performing the principal duties of said offices, by whatever name called, shall be ex officio members, and the remaining five members shall be named by the Governor of North Carolina. Of the five directors first named by the Governor, one shall be appointed for a term of one year, two shall be appointed for terms of two years each and two for terms of three years each, and subsequent appointments shall be made for terms of three years each. (1953, c. 724, s. 3.)

§ 137-31.4. Cancellation of stock; Corporation to be nonstock.—On April 8, 1953, all of the capital stock of the Corporation, including both the stock held by the stockholders of the Corporation and the stock held by the Corporation itself, shall be cancelled and shall be surrendered to the Secretary of State of the State of North Carolina, who shall cancel and destroy such stock and make an appropriate notation upon the original records of the Corporation in his office showing the cancellation and destruction of such stock. Thereafter, said Corporation shall cease to have any capital stock and shall be a nonstock Corporation. (1953, c. 724, s. 4.)

§ 137-31.5. Annual audit and financial statement.—The State Auditor shall, at least once in each year, make or cause to be made a detailed audit of all moneys received and disbursed by the Corporation during the preceding year and shall make or cause to be made a statement of the financial condition of the Corporation as of the close of such preceding year. A copy of said audit and statement shall be furnished to the Governor and to each member of the board of directors, and two copies shall be furnished to the principal office of the Corporation. (1953, c. 724, s. 5.)

§ 137-32.1. Powers of board of directors.—The existing board of directors of said Corporation shall have all the powers and authority of the stockholders and directors of said Corporation only until the appointment and qualification of the board of directors provided for in G. S. 137-31.3; and upon the appointment and qualification of the board of directors provided for in G. S. 137-31.3 it shall have all of the powers and authority heretofore vested in the stockholders and directors of the Corporation, and as such shall be vested with all the rights, powers, functions, and authority vested in said Corporation or its stockholders or directors by its certificate of incorporation, as amended, or by statute or act of the General Assembly of North Carolina, including, but not limited to, the following powers:

(a) To adopt, alter or repeal its own bylaws, rules and regulations governing the conduct of its affairs and the manner in which its business shall be transacted and in which the powers granted to it shall be exercised,

(b) To elect or appoint all necessary officers and committees, and to employ agents, clerks, workmen and such other personnel as said board may deem advisable, to fix their compensation, to prescribe their duties, to dismiss without previous notice; and generally to be in sole and final control and management of the personnel of said Corporation.

(c) To contract for the purchase of, and to purchase all supplies, materials, equipment, printing, telephone, telegraph, electric light and power, postal and all other contractual services and needs of said corporation, to rent, lease or purchase all offices and office space, lands, buildings and equipment, needful or desirable in the conduct of the Corporation's business, to pay for same out of the funds of the Corporation; and generally to be in sole and final control and management of the acquisition, use and disposition of such property on behalf of the corporation.

(d) To elect or appoint a treasurer or other officers or agents for the handling of the funds and fiscal affairs of the Corporation, to require the posting of surety bonds of such officers and agents and to fix the amount of such bonds, to provide for the methods and procedures for the collection and disbursement of the funds of the Corporation by such treasurer or other officers or agents, to fix the depository or depositories for the funds of the Corporation and to provide for the investment of the surplus funds of the Corporation from time to time, to make loans or grants and to expend the funds of the Corporation for the furtherance and accomplishment of the objects and purposes of the Corporation as granted to it by its certificate of incorporation, as amended, or by statute or act of the General Assembly; and generally to be in sole and final control and management of the funds and fiscal affairs of the Corporation.

Provided, however, that any obligations or indebtedness incurred or created by the Corporation shall be that of the Corporation only and shall not constitute an obligation or indebtedness of the State of North Carolina, and no such obligation or indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina. (1953, c. 724, s. 6.)

Chapter 138.

Salaries and Fees.

Sec.

138-4. Governor to set salaries of administrative officers; exceptions.

§ 138-4. Governor to set salaries of administrative officers; exceptions.—The salaries of all State administrative officers not subject to the State Personnel Act shall be set by the Governor, subject to the approval of the Advisory Budget Commission and shall be payable in equal monthly installments. In setting the salaries of those who serve as administrative officers to a board or commission, the Governor and Advisory Budget Commission shall give consideration to the recommendations, if any, of the board or commission involved. This provision does not apply to State officials whose positions are specifically authorized by the Constitution, nor to the chief administrative assistants of such officials, nor to the administrative officers of the occupational licensing boards of the State, except those administrative officers of occupational licensing boards whose salaries are now set by the Governor, subject to the approval of the Advisory Budget Commission. (1947, c. 898; 1957, c. 541, s. 1.)

Editor's Note.—The 1957 amendment rewrote this section.

Chapter 139.

Soil Conservation Districts.

Sec.

139-6. Election and duties of county supervisors; members of county super-

visor board to be ex officio district supervisors.

§ 139-4. State Soil Conservation Committee.

C. The Committee shall designate its chairman, and may, from time to time, change such designation. A member of the Committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the Committee. A majority of the Committee shall constitute a quorum, and the concurrence of a majority of the Committee in any matter within their duties shall be required for its determination. Every member of the State Committee who does not receive a salary from an agency of the State or federal government, shall receive a per diem of seven dollars (\$7.00) while engaged in the discharge of the duties of the Committee. All members of the State Committee, except those who are State or federal employees shall be entitled to their necessary expenses, including traveling expenses incurred in the discharge of their duties as members of the Committee. The Committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the State Soil Conservation Committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.

(3) To co-ordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the State Committee may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1.)

Editor's Note.—

The 1953 amendment added paragraph (6) to subsection D. The 1957 amendment increased the per diem in the fourth sentence of subsection C from \$5.00 to \$7.00,

and rewrote the latter part of the sentence as a new sentence. As the rest of the section was not affected by the amendments only these subsections are set out.

§ 139-6. Election and duties of county supervisors; members of county supervisor board to be ex officio district supervisors.

A county committee shall select from its members a chairman, a vice-chairman, and a secretary. A county supervisor board shall select from its members a

chairman, a vice-chairman and a secretary. Each member of the county supervisor board shall be a member of the soil conservation district board of supervisors.

(1957, c. 1374, s. 2.)

Editor's Note.—

The 1957 amendment rewrote the fifth paragraph. As the rest of the section was not changed only this paragraph is set out.

§ 139-7. Appointment, qualifications and tenure of supervisors. — The governing body of any district shall consist of all the members of the county supervisor board or boards of the county or counties within the district, together with such additional supervisor or supervisors as may be appointed by the State Committee pursuant to this paragraph. When a district is comprised of less than four counties, the State Committee shall appoint two residents of the district to serve as district supervisors along with the elected supervisors. When a district is comprised of four or more counties, the State Committee may, but is not required to, appoint one resident of the district to serve as a district supervisor along with the elected supervisors. Such appointive supervisors shall qualify and assume their duties at the same time as the elected supervisors and shall serve for a term of three years. When a vacancy arises with respect to an appointive supervisor, the State Committee shall fill such vacancy for the unexpired term by appointment of a resident of the district in which the vacancy occurs. Every supervisor shall hold office until his successor has been elected or appointed and qualifies. When a vacancy arises on a county committee, the vacancy shall be filled by appointment by the State Committee, of a resident of the county, to serve the remainder of the unexpired term.

(1957, c. 1374, s. 3.)

Editor's Note.—

The 1957 amendment rewrote the first sentence of the first paragraph. As only this paragraph was changed the rest of the section is not set out.

Chapter 140.

State Art and Symphony Societies.

Article 2.

State Symphony Society.

Sec.

140-10. Counties and municipalities authorized to make contributions.

ARTICLE 1A.

Acquisition and Preservation of Works of Art.

§ 140-5.1. Purpose of article.—The North Carolina State Art Society is authorized and empowered to inspect, appraise, obtain attributions and evaluations, to purchase, acquire, exchange, transport, exhibit, loan and store, and to receive on consignment or as loans, statuary, paintings and other works of art of any and every kind and description which are worthy of acquisition and preservation, and to do all other things incidental to and necessary to effectuate the purposes of this article. (1947, c. 1097, s. 1; 1953, c. 696, s. 1.)

Editor's Note.—The 1953 amendment inserted the word "exchange" in the third line of this section. Stated in North Carolina State Art Society v. Bridges, 235 N. C. 125, 69 S. E. (2d) 1 (1952).

§ 140-5.3. Right to receive gifts.—In order to carry out the purposes of this article, the North Carolina State Art Society is authorized to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal

government or from any other source, works of art or money or other property, which might be retained, sold or otherwise used to promote the purposes of the North Carolina State Art Society; provided that works of art acquired by the society under the provision of this section may not be pledged, mortgaged or sold, but can be exchanged for other works of art, which, in the opinion of the board of directors of the State Art Society, would improve the quality, value or representative character of its art collection; and provided, further, that any gifts, donations, devises, bequests, or legacies of property, other than works of art, money and bonds may be disposed of only with the approval of the Governor and Council of State. The proceeds of the sale of any property acquired under the provisions of this section shall be deposited in the State treasury to the account of the State Art Society Special Fund. (1947, c. 1097, s. 1; 1953, c. 696, s. 2.)

Editor's Note.—The 1953 amendment added to the first proviso the provision as to exchanging for other works of art.

§ 140-5.5. Appropriation contingent on gifts.

Stated in *North Carolina State Art Society v. Bridges*, 235 N. C. 125, 69 S. E. (2d) 1 (1952).

§ 140-5.6. Expenditure of funds.

Before any purchases of works of art shall be made by the "State Art Commission", such purchases shall be approved by the board of directors or the executive committee of the North Carolina State Art Society. No expenses shall be incurred by the State Art Commission in travel for the purpose of inspecting works of art unless authorized or approved by the board of directors, or the executive committee of the State Art Society. (1947, c. 1097, s. 1; 1951, c. 1168; 1953, c. 696, s. 3.)

Editor's Note.—

The 1953 amendment rewrote the third paragraph. As only this paragraph was affected by the amendment the first and second paragraphs are not set out.

Appraisal of Works of Art.—The naming, in this section as it stood before the 1953 amendment, of the director or curator of the National Gallery of Art in Washington as the person to make the appraisal of the works of art selected by

the State Art Commission was directory only, and the person of the appraiser was not essential to the act, and the substitution by competent authority of another person found to be an equally qualified art critic constituted a substantial compliance with the provision in the section requiring technical appraisal of the paintings selected for purchase. *North Carolina State Art Society v. Bridges*, 235 N. C. 125, 69 S. E. (2d) 1 (1952).

ARTICLE 2.

State Symphony Society.

§ 140-9. **Allocations from contingency and emergency fund; expenditures.**—The Governor and Council of State are hereby authorized to allot such sums as they may deem appropriate, from the contingency and emergency fund, to the North Carolina Symphony Society, to aid in carrying on the activities of the said Society. All expenditures made by said Society shall be subject to the provisions of G. S. 143-1 to 143-34, inclusive. (1943, c. 755, s. 5; 1955, c. 1309.)

Editor's Note. — Prior to the 1955 amendment the allocations were limited to \$2,000 a year.

§ 140-10. **Counties and municipalities authorized to make contributions.**—The governing body of any county or incorporated municipality is hereby authorized and empowered to appropriate and make voluntary contributions out of nontax funds to the North Carolina Symphony Society. (1953, c. 1212.)

Chapter 142.

State Debt.

ARTICLE 6.

Citations to Bond and Note Acts.

- 48. State Mental Institutions Bond Act of 1953. 1953, c. 1148.
- 49. State Permanent Improvement Bond Act of 1953. 1953, c. 1149.
- 50. Bonds for dormitories at University of North Carolina and certain colleges. 1955, c. 1289.
- 51. State Capital Improvement Bond Act of 1957. 1957, c. 935.

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

- Sec.
- 143-3.1. Transfer of functions.
- 143-3.2. Issuance of warrants upon State Treasurer.
- 143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements.
- 143-19. Help for Director.
- 143-20. Accounting records and audits.
- 143-23.1. Maintenance funds for the State Auditor and State Treasurer.
- 143-27.1. Allocation of funds appropriated for area vocational training schools.
- 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.
- 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers.

Article 2.

State Personnel Department.

- 143-36. Duties and powers of Director and Council as to State employees.
- 143-38. Reconsideration of survey and report; changes therein.
- 143-45. Director to certify copies of reports to State Auditor and Director of the Budget.

Article 3.

Purchase and Contract Division.

- 143-48. Purchase and Contract Division created.
- 143-58. Department of Administration directed to give preference to home products.
- 143-63. [Repealed.]

Article 3A.

State Agency for Surplus Property.

- Sec.
- 143-64.1. Department of Administration designated State agency for surplus property.
- 143-64.2. Authority and duties of the State agency for surplus property.
- 143-64.3. Power of Department of Administration and Director to delegate authority.
- 143-64.4. Warehousing, transfer, etc., charges.
- 143-64.5. Department of Agriculture exempted from application of article.

Article 8.

Public Building Contracts.

- 143-134. Applicable to State Highway Commission and Prison Department; exceptions.
- 143-135.2. Contracts for restoration of historic buildings with private donations.

Article 9.

Building Code Council and Building Code.

- 143-136. Building Code Council created; membership.
- 143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs.
- 143-138. North Carolina State Building Code.
- 143-139. Enforcement agencies.
- 143-140. Hearings before enforcement agencies as to questions under Building Code.
- 143-141. Appeals to Building Code Council.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

- 143-142. Further duties of the Building Code Council.
- 143-143. Effect on certain existing laws.
- 143-143.1. Interdepartmental Building Regulation Committee.

Article 10.

Various Powers and Regulations.

- 143-145.1. State agencies to locate and mark boundaries of real property.
- 143-145.2. Agencies may establish agreed boundaries.
- 143-146. Validation of conveyances of State-owned lands.
- 143-147. Execution of conveyances of State-owned lands.
- 143-162. [Repealed.]

Article 13.

Publications.

- 143-169. Limitation on the scope of publications.
- 143-170. [Repealed.]

Article 19A.

Governor Richard Caswell Memorial Commission.

- 143-204.1. Creation and membership; terms and vacancies.
- 143-204.2. Powers of Commission; appropriations by counties and municipalities.
- 143-204.3. Acquisition and control of memorial property; care, maintenance and development.
- 143-204.4. Members deemed commissioners of public charities.

Article 21.

State Stream Sanitation and Conservation.

- 143-213. State Stream Sanitation Committee; creation.
- 143-214. Organization of Committee; meetings; State Board of Health as administrative agent.
- 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.

Article 22.

State Ports Authority.

- 143-227.1. Purchase of supplies, material and equipment.
- 143-228.1. Warehouses, wharves, etc., on property abutting navigable waters.

Article 23.

Armory Commission.

Sec.

- 143-236.1. Unexpended portion of State appropriation.

Article 25A.

Historic Sites Commission; Historic and Archeological Sites.

- 143-260.1 to 143-260.5. [Repealed.]

Article 29A.

Commission on Employ the Physically Handicapped.

- 143-283.1. Employ the Physically Handicapped Week.
- 143-283.2. Commission on Employ the Physically Handicapped created; membership; compensation.
- 143-283.3. Program of Commission; cooperation with President's Committee.
- 143-283.4. Local commissions.
- 143-283.5. Allocation from Contingency and Emergency Fund; gifts, etc., and solicitation of funds.

Article 30.

John H. Kerr Reservoir Development Commission.

- 143-286.1. Nutbush Conservation Area.

Article 31.

Tort Claims against State Departments and Agencies.

- 143-291. Industrial Commission constituted a court to hear and determine claims; damages.
- 143-291.1. Costs.
- 143-299.1. Contributory negligence a matter of defense; burden of proof.
- 143-300. Rules and regulations of Industrial Commission; destruction of records.
- 143-300.1. Claims against county and city boards of education for accidents involving school buses.

Article 33.

Judicial Review of Decisions of Certain Administrative Agencies.

- 143-306. Definitions.
- 143-307. Right to judicial review.
- 143-308. Right to judicial intervention when agency unreasonably delays decision.

Sec.

- 143-309. Manner of seeking review; time for filing petition; waiver.
 143-310. Contents of petition; copies served on all parties.
 143-311. Record filed by agency with clerk of superior court; contents of record; costs.
 143-312. Stay of board order.
 143-313. Procedure for taking newly discovered evidence.
 143-314. Review by court without jury on the record.
 143-315. Scope of review; power of court in disposing of case.
 143-316. Appeal to Supreme Court; obtaining stay of court's decision.

Article 34.**Board of Water Commissioners; Water Conservation and Education; Emergency Allocations.**

- 143-317. Declaration of policy.
 143-318. Purpose of article.
 143-319. Definitions.
 143-320. Article to be administered by Board of Water Commissioners; composition of Board.
 143-321. Compensation of Board members.
 143-322. Organization of Board.
 143-323. Ordinary powers and duties of the Board.
 143-324. Declaration of water emergency.
 143-325. Water emergency powers and duties of the Board.
 143-326. Temporary rights of way.
 143-327. Compensation for water allocated during water emergency and temporary rights of way.
 143-328. Cooperation of State agencies and officials.

Article 35.**Youth Service Commission.**

Sec.

- 143-329. Appointment by Governor; duration.
 143-330. Purposes, powers and duties.
 143-331. Chairman.
 143-332. Per diem and travel allowance.
 143-333. Funds to pay necessary expenses.

Article 36.**Department of Administration.**

- 143-334. Short title.
 143-335. Department of Administration created.
 143-336. Definitions.
 143-337. Structure and organization of the Department.
 143-338. Appointment and salary of Director and Acting Director.
 143-339. Appointment and salary of division heads.
 143-340. Powers and duties of Director.
 143-341. Powers and duties of Department.
 143-342. Rules governing allocation of property and space.
 143-343. General Services Division.
 143-344. Transfer of functions, property, records, etc.
 143-345. Saving clause.

Article 37.**Salt Marsh Mosquito Advisory Commission.**

- 143-346. Commission created; membership.
 143-347. Commission to advise State Board of Health.

ARTICLE 1.*Executive Budget Act.*

§ 143-1. **Scope and definitions.**—This article shall be known, and may be cited, as “The Executive Budget Act.” Whenever the word “Director” is used herein, it shall be construed to mean “Director of the Budget.” Whenever the word “Commission” is used herein, it shall be construed to mean “Advisory Budget Commission,” if the context shows that it is used with reference to any power or duty belonging to the Department of Administration and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. “State funds” are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted “Department of Administration” for “Budget Bureau” in line six.

§ 143-2. **Purposes.**—It is the purpose of this article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G. S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, s. 2.)

Editor's Note.—The first 1955 amendment, effective July 1, 1955, added the last paragraph. The second 1955 amendment made changes in the second paragraph.

The 1957 amendment deleted from the second paragraph certain provisions relating to the Governor's connection with the Budget Bureau and relating to the budget officer known as "Assistant to the Direc-

tor." The amendment substituted "Director of the Budget" for "Budget Bureau" in the third paragraph, and substituted "Department of Administration" for "Budget Bureau" in the fourth paragraph. It also struck out the former reference to the "Assistant Director of the Budget" in the fourth paragraph.

§ 143-3.1. **Transfer of functions.**—Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of pre-audit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Director of the Budget. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Department of Administration, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Department of Administration. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Department of Administration the

unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Director of the Budget under the provisions of this act. (1955, c. 578, s. 2; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" and "Director of the Budget" for "Department of Administration" and "Budget Bureau."

§ 143-3.2. **Issuance of warrants upon State Treasurer.**—Upon the transfer of functions from the Auditor's office to the Director of the Budget, as provided in this act, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Department of Administration. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor and the State Treasurer shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Department of Administration monthly or otherwise as may be required by the Director of the Budget. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. The Director of the Budget shall secure insurance and/or a bond in an amount of not less than twenty-five thousand dollars (\$25,000) to protect the State of North Carolina against any misuse or unauthorized use of the facsimile signature machine by any person. It is further required that the State Disbursing Officer shall be placed under an official bond in a penal sum to be fixed by the Governor and Advisory Budget Commission at not less than fifty thousand dollars (\$50,000). Such official bond shall be a bond with corporate surety and furnished by a company admitted to do business in the State, and the premiums will be paid by the State out of the appropriations to the Department of Administration. (1955, c. 578, s. 2; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" and "Director of the Budget" for "Department of Administration" and "Budget Bureau."

§ 143-4. **Advisory Budget Commission.**—The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, and two other persons to be appointed by the Governor, shall constitute the Advisory Budget Commission, whose duties shall be such as are hereinafter defined.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon ten days' notice by the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

Vacancies on the Commission shall be filled by the Governor: Provided, any vacancy caused by the death, resignation, or other removal from office of any member of the Commission by virtue of his office as a member of the General Assembly shall be filled by the Governor upon the recommendation of the presiding officer of that branch of the General Assembly in which such member holds office.

The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor and the State Treasurer, and for such purposes the Advisory Budget Commission shall require the State Auditor and State Treasurer to maintain records and to submit budget requests and periodic reports on their respective departments in the same manner and form as do other State agencies, and may further direct that such requests and reports be filed for safekeeping in the office of the Department of Administration.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's office, one copy with the Department of Administration and at least two copies filed with the Secretary of State.

In all matters where action on the part of the Advisory Budget Commission is required by this article, four (4) members of said Commission shall constitute a quorum for performing the duties or acts required by said Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, inserted the fourth and fifth paragraphs and changed the number constituting a quorum in the last paragraph from three to four.

The 1957 amendment substituted "De-

partment of Administration" for "Budget Bureau" in the fourth and fifth paragraphs. It also struck out the words "or Assistant to the Director" formerly appearing after the word "Director" in the fourth line of the second paragraph.

§ 143-6. Information from departments and agencies asking State aid.—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Since it is not practicable to require the members of the judicial system who preside over courts to attend and furnish such information, upon request of the Director, the Attorney General shall furnish such information, data and estimates and expenditures as may be desired in reference to the Judicial Department of this State.

Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then prepare preliminary studies and cost estimates for the use of the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking in presenting its request to the Director of the Budget. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957, c. 584, s. 4.)

Editor's Note.—The 1957 amendment added the third paragraph. Section 9 of the amendatory act provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ 143-7. **Itemized statements and forms.** — The statements and estimates required under § 143-6 shall be itemized in accordance with the budget classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Director of the Budget. (1925, c. 89, s. 7; 1929, c. 100, s. 7; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment "Budget Bureau" at the end of the substituted "Director of the Budget" for tion.

§ 143-11.1. **Photographs to aid in determining needs of institutions requesting permanent improvements.**—When the Advisory Budget Commission makes its biennial inspection of the facilities of the State and receives requests from the State institutions in the preparation of the report of the Advisory Budget Commission, the Director of the Budget may secure the services of a qualified photographer to accompany the Advisory Budget Commission on such tour of inspection and to take such photographs as the members of the Advisory Budget Commission may deem advisable in order to assist the Advisory Budget Commission and the members of the General Assembly in obtaining a clear conception of the needs of the various institutions requesting permanent improvements. The Director of the Budget may furnish sufficient copies of such photographs to the General Assembly at the time it is considering requests for appropriations from such institutions to enable each member of the General Assembly to have ready access to such photographs.

For the purpose of securing the service provided in this section, the Director of the Budget is authorized to obtain the services of any regular photographer in the employment of the State and if no such photographer is available the Director of the Budget may secure the services of a professional photographer and the expense of such service shall be borne from the regular funds of the Budget Bureau, and if necessary, additional funds may be secured from the Contingency and Emergency Fund. (1953, c. 982; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment fore "Director" at four places in the deleted "Assistant" formerly appearing be tion.

§ 143-12. **Bills containing proposed appropriations.**—The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

- (1) A bill containing all proposed appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."
- (2) A bill containing the views of the Director of the Budget with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.
- (3) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the Director and the Commission shall not agree as to the Appropriation, Revenue and Machinery Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment "Budget Bureau" in paragraph (2) and substituted "Director of the Budget" for in the next to last paragraph.

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.—The appropriations committees of the House of Representatives and the Senate and subcommittees thereof shall sit jointly in open sessions while considering the budget and such consideration shall embrace the entire budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, board, commission, and agency of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or subcommittees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or subcommittees thereof. The said joint committee or any subcommittee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be such as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16; 1953, c. 501; 1955, c. 5.)

Editor's Note.—The 1953 amendment end of the section was repealed by the which added the former proviso at the 1955 amendment.

§ 143-17. **Requisition for allotment.**— Before an appropriation to any spending agency shall become available, such agency shall submit to the Director, not less than twenty days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who in the course of his audits shall check for compliance with such allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director of the Budget in writing: Provided, that quarterly allotments made to the Auditor's office and the Treasurer's office shall be in such amounts as may be designated by the Advisory Budget Commission, and shall be made available in accordance with procedures determined by the Advisory Budget Commission. (1925, c. 89, s. 18; 1929, c. 100, s. 19; 1955, c. 578, s. 4.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, made changes in the last two sentences and added the proviso.

§ 143-19. **Help for Director.**—The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this article; and shall fix the compensation of all persons employed under this article; which shall be paid by the State Treasurer upon the warrant of the State Auditor. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this article, shall be reported to the General Assembly by the Director, and all payments made under this article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Department of Administration. (1925, c. 89, s. 20; 1929, c. 100, s. 21; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" for "Budget Bureau" at the end of the section.

§ 143-20. **Accounting records and audits.**—The Director shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Director may deem advisable. Audits of the records of the State Auditor and the State Treasurer for the periods preceding the transfer of pre-audit and related functions from the auditor's office to the Director of the Budget may be accomplished by the Department of Administration at the direction of the Director of the Budget. (1925, c. 89, s. 22; 1929, c. 100, s. 22; 1955, c. 578, s. 5; 1957, c. 269, s. 2.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section. The 1957 amendment substituted "Director of the Budget" and "Department of Administration" for "Budget Bureau" in the last sentence.

§ 143-21. **Issuance of subpoenas.**—The Director shall have and is hereby given full power and authority to issue the writ of subpoena for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director or the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for con-

tempt in the discretion of the court and to be fined as witnesses summoned to attend the superior court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney General under the direction of the Director. Any and all persons who shall be subpoenaed and required to appear before the Director or the Commission as witnesses concerning any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23; 1953, c. 675, s. 18.)

Editor's Note.—

The 1953 amendment substituted "or" for "of" in line four.

§ 143-23.1. Maintenance funds for the State Auditor and State Treasurer.—All appropriations now or hereafter made for the support of the functions and responsibilities of the State Auditor and the State Treasurer are for the purposes and objects enumerated in the itemized requirements of such activities recommended to the General Assembly by the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budgets of the State Auditor and the State Treasurer may be authorized by the Advisory Budget Commission in accordance with procedures established by the Commission. (1955, c. 578, s. 6.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.—All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Commissioner of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata, including appropriations for the State Auditor and the State Treasurer, when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this act are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this act as to prevent any such overdraft or deficit. (1929, c. 100, s. 26; 1955, c. 578, s. 7.)

Editor's Note.—The 1955 amendment words "including appropriations for the State Auditor and the State Treasurer." inserted in the next to last sentence the

§ 143-27.1. Allocation of funds appropriated for area vocational training schools.—Funds appropriated to the Budget Bureau for area vocational training schools shall be allocated and disbursed for training programs

under terms and conditions as may be prescribed by the Director of the Budget upon approval of the Advisory Budget Commission. (1957, c. 1385.)

§ 143-28. All State agencies under provisions of this article.—It is the intent and purpose of this article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this article. Any power expressed in this article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this article shall be liberally construed. Provided, that notwithstanding the general language in this article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G. S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget, and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 28; 1929, c. 100, s. 29; 1955, c. 578, s. 8; 1957, c. 269, s. 2.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, added the last sentence.

The 1957 amendment substituted "Department of Administration" for "Budget

Bureau" and deleted the words "or the Assistant Director of the Budget" formerly appearing after "Budget" near the end of the section.

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.—It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications. (1953, c. 1090.)

§ 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers.—All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget. (1949, c. 718, s. 5; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment deleted the words "Assistant to the" wherever appearing before "Director."

ARTICLE 2.

State Personnel Department.

§ 143-35. **State Personnel Department established.** — (1) Department Distinct from Department of Administration and under Supervision of Director.—There is hereby created and established a State Personnel Department (hereinafter referred to as "Department") for the State of North Carolina. The Department shall be separate and distinct from the Department of Administration and shall be under the administration and supervision of a Director appointed by the State Personnel Council. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the Personnel Council.

(2) State Personnel Council.—There is hereby created and established a State Personnel Council (hereinafter referred to as "Council") for the purpose of advising and assisting the State Personnel Director in preparing, formulating and promulgating rules and regulations, determining and fixing job classifications and descriptions, job specifications and minimum employment standards, standards of salaries and wages, and any and all other matters pertaining to employment under this article. The State Personnel Council shall consist of five members to be appointed by the Governor of North Carolina on or before July 1, 1953. The Council shall have the power to designate the member of said Council who shall act as chairman thereof. At least one member of the Council shall be an individual of recognized standing in the field of personnel administration and who is not an employee of the State subject to the provisions of this article; at least one member of the Council shall be an individual actively engaged in the management of a private business or industry; two members of the State Personnel Council shall also serve as members of the Merit System Council; not more than one member of the Council shall be an individual chosen from the employees of the State subject to the provisions of this article. The Council shall meet at least one time in each calendar quarter of the year, or upon call of the Governor, or of the Director, or a member of the Council, or at the request of the head of any department or agency when necessary to consider any appeal provided for hereunder. Three members of the Council shall constitute a quorum. Notice of meetings shall be given members of the Council by the Director who shall act as secretary to the Council. The members of the Council shall each receive seven dollars (\$7.00) per day including necessary time spent in traveling to and from their place of residence within the State to the place of meeting while engaged in the discharge of the duties imposed hereunder, and his necessary subsistence and traveling expenses. The member of the Council who is an employee of the State, as provided hereunder, shall not receive any per diem for his services but such member shall receive traveling expenses and subsistence, while engaged in the discharge of his duties hereunder, at the same rate and in the same amount as provided for State employees without any deduction for loss of time from his employment. One of the Council members shall be appointed by the Governor to serve for a term of two years. One member shall be appointed to serve for a term of three years. Three members shall be appointed to serve for a term of four years and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each thereafter. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member of the State Personnel Council shall not be considered a public officer, or as holding office within the meaning of Article XIV, Section 7, of the Constitution of this State, but such member shall be a commissioner for a special purpose. The Governor may, at any time after notice and hearing, remove any Council mem-

ber for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(1953, c. 1085, s. 1; 1957, c. 269, s. 2; c. 541, s. 16; c. 1004, s. 2.)

Editor's Note.—

The 1953 amendment rewrote subsection (2).

The first 1957 amendment substituted "Department of Administration" for "Budget Bureau" in subsection (1). The second 1957 amendment rewrote the third sentence of subsection (1). The third 1957

amendment inserted the words "two members of the State Personnel Council shall also serve as members of the Merit System Council" in lines fourteen and fifteen of subsection (2).

Only the subsections affected by the amendments are set out.

§ 143-36. Duties and powers of Director and Council as to State employees.—The State Personnel Director shall, after consultation with the heads of State agencies affected, and with their cooperation, survey the duties and responsibilities of positions and the qualifications required therefor, for the purpose of classifying the positions and establishing standard salary scales for State employees. Each class shall consist of one or more positions substantially different from other positions as to duties and responsibilities. The positions in a class shall be so similar as to duties and responsibilities that all can have the same descriptive title, the same qualifications, requirements, and the same salary scale.

After such surveys, and after consultation with the heads of State agencies affected, and with the approval of the State Personnel Council, the State Personnel Director shall establish a specification for each class of State positions setting forth a descriptive title, the duties and responsibilities characteristic of positions in the class, and the minimum qualifications required for entrance to positions in the class, shall allocate the positions to such classes, and shall establish for each class a standard salary scale with minimum, intermediate, and maximum salary rates. The salary rates shall reflect the relative difficulty and responsibility of the work in the classes and shall be equitable within the limit of available funds.

When the personnel survey and investigation is completed with respect to a particular State department, bureau, agency or commission, the State Personnel Director shall file a report with the Governor and with the head of such department, bureau, agency or commission, setting out the classification of each State position, and the salaries and wages to be paid to each of the employees in said State department, bureau, agency or commission, and the scale of increments to be granted at least once each year to each State employee whose services have met the standard of efficiency as established by the State Personnel Director and approved by the Council and Governor: Provided, however, in establishing the standard of efficiency for the purpose of annual increments, the regulations shall provide that all State employees whose services merit retention in service shall, as hereinafter set forth, be granted annual increments up to but not exceeding the intermediate salary step nearest to the middle of the salary range established for the respective classification and/or position, and those State employees whose services meet higher standards, as formulated and fixed by the State Personnel Director and Council, shall, as hereinafter set forth, be given annual increments up to but not exceeding the maximum of the salary range for the respective classification and/or position. (1949, c. 718, s. 1; 1957, c. 1349, s. 1.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 143-37. Contents of report to become fixed standard; effective date.—When said report with respect to any such department, bureau, agency or commission has been completed and filed with and approved by the Governor, and also filed with the head of such department, bureau, agency or commission, the findings in said report shall then become the fixed standard for the classifica-

tion of positions and the duties to be performed, and/or the positions to be filled, the salaries and/or wages to be paid, and the increments to be granted to all employees in the department, bureau, agency or commission, to which said report relates, and it shall thereupon be the duty of the head of such department, bureau, agency or commission, on the first day of the next month, beginning not less than thirty days subsequent to the date of the reception of said report by him, to put the same into effect, and thereupon with respect to such department, bureau, agency or commission, the classification of positions, the duties to be performed and/or the positions to be filled, the salaries and wages to be paid, and the increments to be granted, all as specified in said report, shall become the only allowable standard for and with respect to such department, bureau, agency or commission. (1949, c. 718, s. 1; 1957, c. 1349, s. 2.)

Editor's Note. — The 1957 amendment deleted references to "the number of allowable positions and employees."

§ 143-38. Reconsideration of survey and report; changes therein. — It shall be the duty of the State Personnel Director upon request of the head of any State department, bureau, agency or commission, and also from time to time without such request, to reconsider the survey and report hereinbefore provided for, and with the approval of the Council and the Governor, to make changes therein in accordance with such findings within the limits of available appropriations; and upon report by him to the head of any department, bureau, agency or commission, and to the Governor setting out such findings and changes, it shall be the duty of the head of such department, bureau, agency or commission, to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the date of receipt by him of such report: Provided, however, the State Personnel Director shall have the authority to make necessary individual adjustments within the framework of the approved salary and classification plan. (1949, c. 718, s. 1; 1957, c. 1349, s. 3.)

Editor's Note. — The 1957 amendment rewrote this section.

§ 143-40. Director and Council to fix holidays, vacations, hours, sick leave and other matters pertaining to State employment. — The State Personnel Director, upon the advice and approval of the Council, shall fix, determine and establish the hours of labor in each State department, bureau, agency or commission, and is authorized and empowered to make all necessary rules and regulations with respect to holidays, vacations, sick leave or any other type of leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor, all of which shall be subject to the approval of the Governor: Provided, however, that the amount of annual leave granted as a matter of right to each regular State employee shall not be less than one and one-fourth days per calendar month cumulative to at least thirty days, and that sick leave granted to each State employee shall not be less than ten days for each calendar year, cumulative from year to year. (1949, c. 718, s. 1; 1953, c. 675, s. 19.)

Editor's Note. — The 1953 amendment substituted "cumulative" for "accumulative" in the last line.

§ 143-41. Director to determine qualifications of applicants for positions.

Quoted in *Pinnix v. Toomey*, 242 N. C. 358, 87 S. E. (2d) 893 (1955).

§ 143-45. Director to certify copies of reports to State Auditor and Director of the Budget. — The State Personnel Director shall transmit to the

State Auditor and the Director of the Budget copies of his report or reports, or any changes in same, with respect to the various departments, bureaus, agencies and commissions, and the salaries and wages, including increments, for such positions and employees in the several departments, bureaus, agencies and commissions and the same shall be paid out of the appropriation for such purposes and in accordance with the schedule set out in said report or reports or any duly established changes made therein: Provided, however, that when the Director of Personnel shall have approved any employment or salary increase in any department, bureau or agency of the State government, the certification for payment by the Director of the Budget, as required by § 143-341, shall not be construed as conferring upon or vesting in the Director of the Budget any authority or control over the employment of personnel, salaries, wages, hours of labor, vacations, sick leave, classifications, standards, regulations and reports, matters, things, administration and functions committed and vested in this article to the jurisdiction and control of the State Personnel Director and Council as set forth in this article. (1949, c. 718, s. 1; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Director of the Budget" for "Budget Bureau" in line two and deleted the words "Assistant to the" formerly appearing before "Director" in the proviso.

§ 143-46. Exemptions; persons and employees not subject to this article.—The provisions of this article shall not apply to certain persons and employees as follows: Persons employed solely on an hourly basis; public school superintendents; principals and teachers and other public school employees; instructional and research staff of the educational institutions of the State; Business Managers of the University of North Carolina, Consolidated, the University of North Carolina, the State College of Agriculture and Engineering, the Woman's College, East Carolina College, and the Appalachian State Teachers College; professional staff of hospitals, asylums, reformatories and correctional institutions of the State; members of boards, bureaus, agencies, commissions, councils and advisory councils, compensated on a per diem basis; constitutional officers of the State and except as to salaries, their chief administrative assistant; officials and employees whose salaries are fixed by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State, or Advisory Budget Commission, by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by the Governor subject to the approval of a definitely named officer, agent, bureau, agency or commission of the State by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than by the method provided by this article explicitly pertaining to such officials and/or employees. In all cases of doubt or where any question arises as to whether or not any person, official or employee is subject to the provisions of this article, the doubt, controversy or question shall be investigated and decided by the State Personnel Director with the approval of the Council and such decision shall be final. Where the approval of any appointment, employment and/or salary is required by statute to be made by the Budget Bureau or assistant to the Director of the Budget (by whatever title or name), all such authority and power of approval, in whatever manner or form exercised, is hereby transferred to and vested in the State Personnel Director, and all such statutes shall be deemed to be amended to such extent. (1949, c. 718, s. 1; 1957, c. 1447.)

Editor's Note.—The 1957 amendment inserted, after the words "educational institutions of the State" the words and punctuation "Business Managers of the University of North Carolina, Consolidated, the University of North Carolina, the State College of Agriculture and Engineering, the Woman's College, East Carolina College, and the Appalachian State Teachers College."

ARTICLE 3.

Purchase and Contract Division.

§ 143-48. **Purchase and Contract Division created.**—There is hereby created in the Department of Administration a division to be known as the Purchase and Contract Division. (1931, c. 261, s. 1; 1931, c. 396; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment re-wrote this section.

§ 143-49. **Powers and duties of Director.** — The Director of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this article:

- (1) To canvass all sources of supply, and to contract for the purchase of all supplies, materials and equipment required by the State government, or any of its departments, institutions or agencies under competitive bidding in the manner hereinafter provided for.
- (2) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State government for any of its departments, institutions or agencies; there shall be included in the contract for the printing of the Session Laws of the General Assembly such specifications as to the time limit within which, or the speed with which, such Session Laws are to be printed as to insure the speediest publication practicable so as to make possible an early distribution of the Session Laws after the adjournment of the General Assembly.
- (3) To purchase or contract for all telephones, telegraph, electric light power, postal and any and all other contractual services and needs of the State government, or any of its departments, institutions, or agencies; or in lieu of such purchase or contract to authorize any department, institution or agency to purchase or contract for any or all such services.
- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer and/or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to maintain inventories of all fixed property and of all moveable equipment, supplies and materials belonging to the State government, or any of its departments, institutions or agencies.
- (5) To make provision for and to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same.
- (6) To permit charitable, nonprofit corporations operating charitable hospitals, under such rules, regulations and procedures as the Advisory Budget Commission shall adopt, to purchase hospital supplies and equipment under contracts negotiated and entered into by the Department of Administration for the purchase of hospital supplies and equipment for State sanatoria, hospitals and other medical institutions operated by the State or agencies of the State. (1931, c. 261, s. 2; 1951, c. 3, s. 1; 1951, c. 1127, s. 1; 1957, c. 269, s. 3.)

Editor's Note.—

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract" and "Department of Administration" for "Division of Pur-

chase and Contract." The amendment also deleted a provision for leasing space required by any department, institution or agency of the State government.

§ 143-50. **Certain contractual powers exercised by other departments transferred to Director.**—All rights, powers, duties and authority relating to State printing, or to the purchase of supplies, materials and equipment now imposed upon and exercised by any State department, institution, or agency under the several statutes relating thereto, are hereby transferred to the Director of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Administration under the provisions of this article. (1931, c. 261, s. 3; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-51. **Reports to Director required of all agencies as to needs.**—It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Director of Administration when requested, and on blanks to be approved by him, tabulated estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-52. **Consolidation of estimates by Director; bids; awarding of contract; rules and regulations.**—The Director of Administration shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all State departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of State-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Director of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the Director of Administration to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall wherever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Director of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the

faithful performance of any contract may be required of the successful bidder in the discretion of the Director of Administration. After the contracts have been awarded, the Director of Administration shall certify to the several departments, institutions and agencies of the State government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for. (1957, c. 269, s. 3.)

Editor's Note.—

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract" at several places

in the first paragraph. As the second paragraph and the lettered subparagraphs were not changed they are not set out.

§ 143-53. Requisitioning for supplies by agencies; must purchase through sources certified.—After sources of supply have been established by contract under competitive bidding and certified by the Director of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition on blanks to be approved by the Director of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of Administration. One copy of such requisition shall be sent to the Director of Administration when the requisition is issued. (1931, c. 261, s. 6; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-54. Certain purchases excepted from provisions of article.—Unless otherwise ordered by the Director of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Administration shall not be mandatory in the following cases:

- (1) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets and periodicals for the use of the State Library or any other library in the State supported in whole or in part by State funds.
- (2) Perishable articles and such as fresh vegetables, fresh fish, fresh meat, eggs and milk: Provided, that no other article shall be considered perishable within the meaning of this clause, unless so classified by the Director of Administration with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall wherever possible be based on at least three competitive bids. Whenever an order or contract for such articles is awarded by any of the departments, institutions and agencies of the State government a copy of such order or contract, together with a record of the competitive bids upon which it was based, shall be forwarded to the Director of Administration. (1931, c. 261, s. 7; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase of Contract."

§ 143-55. Purchase of articles in certain emergencies.—In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Administration shall have power to purchase in the open market any necessary supplies, materials or equipment for immediate de-

livery to any department, institution or agency of the State government. A report on the circumstances of such emergency and his transactions thereunder shall be transmitted in writing by the Director of Administration to the Advisory Budget Commission at its next meeting and shall be entered in the minutes of the Commission. (1931, c. 261, s. 8; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-56. Contracts contrary to provisions of article made void.—Whenever any department, institution or agency of the State government, required by this article and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment through the Director of Administration shall contract for the purchase of such supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department, institution or agency purchases any supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, the executive officer of such department, institution or agency shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor. (1931, c. 261, s. 9; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-57. Preference given to North Carolina products and articles manufactured by State agencies; sales tax considered.—The Director of Administration shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution: Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the State of North Carolina which is levied now or hereafter may be levied and in no case shall a bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-58. Department of Administration directed to give preference to home products.—The Department of Administration or any State agency or institution which is authorized to purchase foodstuff and other supplies for State institutions, is hereby directed in all cases where the prices, products, or other supplies are available and equal, the said purchasing agency or institution shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the State of North Carolina. (1933, c. 168; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section applied to the "Division of Purchase and Contract or any other constituted department."

§ 143-59. **Rules and regulations covering certain purposes.** — The Director of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this article:

- (1) Requiring monthly reports by State departments, institutions or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
- (2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
- (3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemical and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.
- (4) Prescribing the manner in which purchases shall be made by the Director of Administration in all emergencies as defined in § 143-55.
- (5) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article.
- (6) Notwithstanding any of the provisions of this article, the Director of Administration, with the approval of the Advisory Budget Commission, may follow whatever procedure is deemed necessary to enable the State, its institutions and agencies, to take advantage of the sale of any war surplus material sold by the federal government or its disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3.)

Editor's Note.—

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-60. **Standardization Committee.**—It shall be the duty of the Governor to appoint a Standardization Committee to consist of seven members as follows: The Director of Administration, who shall be chairman of said Committee; an engineer from the State Highway Commission to be appointed by the Governor upon the recommendation of the chairman of the State Highway Commission; a representative of the State educational institutions to be appointed by the Governor, a representative of the State departments to be appointed by the Governor, a representative of the State charitable and correctional institutions to be appointed by the Governor, and two members of the Advisory Budget Commission to be designated by the Governor.

(1957, c. 65, s. 11; c. 269, s. 3.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission." The second 1957 amendment substituted "Director of Ad-

ministration" for "Director of Purchase and Contract" in the first sentence. As only the first sentence was changed the rest of the section is not set out.

§ 143-61. **Public printer failing to perform contract; course pursued.**—If any person who has contracted to do the public printing for the State shall fail to perform his contract according to the terms thereof, the Director of Administration shall procure the public printing to be done by other parties, and the Attorney General shall institute suit in the Superior Court of Wake County in the name of the State to recover of the public printer and his bond any damages for failure to perform the contract. (1899, c. 724; 1901, cc. 280, 401, 667; Rev., s. 5094; C. S., s. 7289; 1931, c. 261, s. 2; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section related to the former Division of Purchase and Contract.

§ 143-63: Repealed by Session Laws 1957, c. 269, s. 3.

§ 143-64. **Financial interest of officers in sources of supply; acceptance of bribes.**—Neither the Director of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials, or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

ARTICLE 3A.

State Agency for Surplus Property.

§ 143-64.1. **Department of Administration designated State agency for surplus property.**—The Department of Administration is hereby designated as the State agency for surplus property, and with respect to the acquisition of surplus property said agency shall be subject to the supervision and direction of the Director of Administration who is authorized to prescribe the duties which shall be assigned to the personnel of said Department for surplus property purposes. (1953, c. 1262, s. 1; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment of Purchase and Contract and the Director thereof.

§ 143-64.2. **Authority and duties of the State agency for surplus property.**—(a) The State agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes or public health purposes, including research; (2) to warehouse such property; and (3) to distribute such property to tax supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the State, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 101 (6) of the United States Internal Revenue Code, within the State.

(b) For the purpose of executing its authority under this article, the State agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations as may be deemed necessary; and take such other action as is deemed necessary and suitable in the administration of this article, including the enactment and promulgation of such rules and regulations as may be necessary to bring this article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The State agency for surplus property herein designated is authorized and empowered to appoint such advisory boards or committees as may be necessary to the end that this article, and the rules and regulations promulgated hereunder,

may conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(d) The State agency for surplus property is authorized and empowered to take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State, require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing, and distribution of property received by the State agency for surplus property from the United States of America.

(e) The State agency for surplus property is authorized and empowered to act as clearing house of information for the public and private non-profit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above mentioned institutions and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions and agencies in every way possible in the consummation or acquisition or transactions hereunder.

(f) The State agency for surplus property, in the administration of this article, shall co-operate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of America and shall make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the State. (1953, c. 1262, s. 2.)

§ 143-64.3. Power of Department of Administration and Director to delegate authority.—The Department of Administration and/or the Director of said Department may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this article. The Department of Administration and/or the Director of said Department may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this article. (1953, c. 1262, s. 3; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment of Purchase and Contract and the Director ment this section related to the Division thereof.

§ 143-64.4. Warehousing, transfer, etc., charges. — Any charges made or fees assessed by the State agency for surplus property for the acquisition, warehousing, distribution, or transfer of any property acquired by donation from the United States of America for educational purposes or public health purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipts, warehousing, distribution or transfer by the State agency for surplus property. (1953, c. 1262, s. 4.)

§ 143-64.5. Department of Agriculture exempted from application of article.—Notwithstanding any provisions or limitations of this article, the North Carolina Department of Agriculture is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the North Carolina Department of Agriculture is authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this

section, the provisions of this article shall not apply to the North Carolina Department of Agriculture. (1953, c. 1262, s. 5.)

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. **Institutions included.**—All persons admitted to the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, State Hospital at Butner, Butner Training School, Goldsboro Training School, Caswell Training School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29.)

Editor's Note.—

The 1957 amendment inserted in the list of institutions the following: "State Hos-

pital at Butner, Butner Training School, Goldsboro Training School."

ARTICLE 8.

Public Building Contracts.

§ 143-128. **Separate specifications for building contracts; responsible contractors.**

Local Modification.—Greene: 1953, c. 718.

§ 143-129. **Procedure for letting of public contracts; purchases from federal government by State, counties, etc.**—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three thousand five hundred dollars (\$3,500.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand dollars (\$2,000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision: Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than three thousand dollars (\$3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other subdivision wherein there is no newspaper published and the estimated cost of the contract is less than three thousand dollars

(\$3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bid is in excess of the funds available for such purpose, such board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned and may award such contract to such bidder if such bidder will agree to perform the same, without making any substantial changes in the plans and specifications, at a sum within the funds available therefor. If the contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, the said letting and make such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation, in an amount equal to not less than five per cent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects: Provided, that in the case of contracts for the purchase of apparatus, supplies, materials, or equipment the board or governing body may waive the requirement for the deposit of a surety bond or securities as required herein.

The owning agency or the Budget Bureau, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political

subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, and funds of political subdivisions of the State, in contracts with such political subdivisions, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town or other subdivision of the State may enter into any contract with the United States of America or any agency thereof for the purchase, lease or other acquisition of any apparatus, supplies, materials or equipment without regard to the provisions of this section which require:

- (1) The posting of notices or public advertising for proposals or bids.
- (2) The inviting or receiving of competitive bids.
- (3) The delivery of purchases before payment.
- (4) The posting of deposits of bonds or other sureties.
- (5) The execution of written contracts.

The Director of Administration, the governing board of any county, city, town or subdivision may designate any office holder or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by the United States of America, or any agency thereof, and may authorize such person to make any partial or down payment or payment in full that may be required by regulations of the United States of America or any agency thereof in connection with such bid or bids. (1931, c. 338, s. 1; 1933, c. 50; 1933, c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4.)

Local Modification.—Forsyth: 1955, c. 94, s. 1; Greene: 1953, c. 718; Lee (board of education): 1953, c. 228; city of Henderson: 1953, c. 731, s. 33; city of Kernersville: 1953, c. 67; town of Wrightsville Beach: 1955, c. 670, s. 1; Bessemer Sanitary District: 1953, c. 729, s. 1.

Editor's Note.—

The 1953 amendment inserted the word "performance" in line three of the seventh paragraph.

The 1955 amendment inserted the ninth paragraph.

The first 1957 amendment substituted in the last paragraph "Director of Administration" for "Director of the Division of Purchase and Contract."

The second 1957 amendment rewrote the ninth paragraph.

The third 1957 amendment increased the amounts in the first paragraph from \$2,500.00 and \$1,000.00 to \$3,500.00 and \$2,000.00, respectively, and the amount in the fourth paragraph from \$2,000.00 to \$3,000.00. It also substituted "equipment" for "equivalent" in line three of the fifth paragraph and added the proviso to the eighth paragraph. Section 7 of the amendatory act provides that the limitations prescribed in this section shall apply to all governmental units in this State, except governmental units subject to lesser or greater limitations by charter provision or special act, in which case the charter provision or special act shall apply to such governmental units.

Cited in *Karpark Corp. v. Graham*, 99 F. Supp. 124 (1951).

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials or equipment, involving the expenditure of public money in the amount of two hundred dollars (\$200.00) or more but less than the limits prescribed in G. S. 143-129, made by any officer, department, board or commission of any county, city, town or other subdivision of this State, shall be awarded to the lowest responsible bidder after

informal bids have been secured, and it shall be the duty of such officer, department, board or commission to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5.)

Local Modification.—Forsyth: 1955, c. 94, s. 2; city of Henderson: 1953, c. 731, s. 33; town of Wrightsville Beach: 1955, c. 670, s. 2; Bessemer Sanitary District: 1953, c. 729, s. 2.

substituted the words “the limits prescribed in G. S. 143-129” for the words and figures “one thousand dollars (\$1,000.00)” and deleted the words “when practical” formerly appearing immediately after “State” in line six.

Editor’s Note.—The 1957 amendment

§ 143-132. Minimum number of bids for public contracts.

Local Modification.—Bertie and Northampton: 1953, c. 1257.

§ 143-134. Applicable to State Highway Commission and Prison Department; exceptions.—This article shall apply to the State Highway Commission and the Prison Department except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the State Highway Commission can be done more economically through use of employees of the State Highway Commission, and/or prison inmates than by letting such repair or building construction to contract, the provisions of this article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11.)

Editor’s Note.—The 1955 amendment effective January 1, 1956, rewrote this section.

The 1957 amendment substituted “State Highway Commission” for “State Highway and Public Works Commission.”

§ 143-135. Limitation of application of article.

Local Modification.—Beaufort: 1955, c. 1136; Franklin: 1957, c. 288; Halifax: 1957,

c. 803; Moore (temporary): 1955, c. 303; 1957, c. 779; Pender: 1955, c. 187.

§ 143-135.2. Contracts for restoration of historic buildings with private donations.—This article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the cost of the restoration of such building or structure is provided entirely by funds donated from private sources for such purposes. (1955, c. 27.)

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership.—(a) **Creation; Membership; Terms.**—There is hereby created a Building Code Council, which shall be composed of nine members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal building inspector, a representative of the public who is not a member of the building construction industry, and a representative of the engineering staff of a State agency charged with approval of plans of State-owned buildings. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation.—Members of the Building Code Council other than any who are employees of the State shall receive seven dollars (\$7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council. (1957, c. 1138.)

Editor's Note.—Session Laws 1957, c. 1138 repealed former article 9 entitled "Building Code" and substituted the present article therefor. The former article was codified from Public Laws 1933, c. 392 and Public Laws 1941, c. 280.

§ 143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs.—(a) First Meeting; Organization: Rules and Regulations.—Within thirty days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules and regulations. The Council shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require.

(b) Meetings.—The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff.—Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

- (1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;
- (2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council.—All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Budget Bureau or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council. (1957, c. 1138.)

§ 143-138. North Carolina State Building Code.—(a) Preparation and Adoption.—The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing in the city of Raleigh. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than fifteen days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

(b) Contents of the Code.—The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings; requirements concerning means of egress from buildings; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings; regulations governing plumbing, heating, air-conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems (regulations for which electric systems may be the National Electric Code, as approved by the American Standards Association and filed with the Secretary of State); and such other reasonable rules and regulations pertaining to the construction of buildings and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building, wherever it might be situated in the State; provided, however, that such regulations shall not apply to the following types of buildings, unless the governing body of the municipality or the county wherein such buildings are located shall by vote adopt a resolution making the regulations applicable to one or more of such types of buildings:

- (1) Dwellings; and outbuildings used in connection therewith;
- (2) Apartment buildings used exclusively as the residence of not more than two families;
- (3) Temporary buildings or sheds used exclusively for construction purposes, not exceeding twenty feet in any direction and not used for living quarters.

The governing body of any municipality or county is hereby authorized to adopt such a resolution.

Provided further, that nothing in this article shall be construed to make any building regulations applicable to farm buildings located outside the corporate limits of any municipality.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building the total cost of which is less than twenty thousand dollars (\$20,000.00), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

- (1) Any boiler regulations adopted by the Board of Boiler Rules,
- (2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
- (3) Any regulations relating to sanitation adopted by the State Board of Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers.

(c) Standards to Be Followed in Adopting the Code.—All regulations contained in the North Carolina State Building Code shall have a reasonable and

substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Building Exits Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the National Board of Fire Underwriters for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code.—The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Building Codes.—The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations, provided that before any such building code or regulations or any amendments thereto shall be effective they must be officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Such approval shall be taken as conclusive evidence that a local code supersedes the State Building Code in its particular political subdivision. This article shall not affect any existing building codes or regulations until the North Carolina State Building Code has been legally adopted by the Building Code Council.

(f) Effect upon Existing Laws.—Until such time as the North Carolina State Building Code has been legally adopted by the Building Code Council pursuant to this article, the North Carolina Building Code adopted by the Council and the Commissioner of Insurance in 1953 shall remain in full force and effect. Such Code is hereby ratified and adopted.

(g) Publication and Distribution of Code.—The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below.

(Those marked by an asterisk will receive copies only on written request to the Council).

OFFICIAL, OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant-Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
State Board of Health	10
Medical Care Commission	3
State Highway Commission	3
Adjutant General	1
Utilities Commission	1
Budget Bureau	3
Department of Conservation and Development	3
State Board of Public Welfare	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
State Library	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other State-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State College of Agriculture and Engineering of the University of North Carolina	*15
Woman's College of the University of North Carolina	* 1
A & T College at Greensboro	* 5
All other State-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairmen of the Boards of County Commissioners	* 1 each
City Clerk of each incorporated municipality	1 each

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations.—Any person who shall be adjudged to have violated this article or the North Carolina State Building Code shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars (\$50.00), for each offense. Each thirty days that such violation continues shall constitute a separate and distinct offense. (1957, c. 1138.)

History.— See *Lutz Industries, Inc. v. N. C.* 358, 87 S. E. (2d) 893 (1955).
Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955); *Pinnix v. Toomey*, 242 N. C. 358, 87 S. E. (2d) 893 (1955). **Building Code Has Force of Law.**—The

the force of law. In re O'Neal, 243 N. C. 714, 92 S. E. (2d) 189 (1956).

The Supreme Court will take judicial notice of the Building Code adopted, promulgated and published by the Building Code Council. Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

Building Code Provisions Referred to in Complaint for Negligent Construction.—Pinnix v. Toomery, 242 N. C. 358, 87 S. E. (2d) 893 (1955).

"National Electrical Code" as Statutory Standard of Care.—Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

§ 143-139. **Enforcement agencies.**—(a) Plumbing.—Those sections of the North Carolina State Building Code relating to plumbing shall be enforced by plumbing inspectors appointed by municipal corporations, county commissioners, or local boards of health.

(b) Boilers.—The Bureau of Boiler Inspection of the Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in article 7 of chapter 95 of the General Statutes.

(c) Elevators.—The Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement devices such as merry-go-rounds, roller coasters, ferris wheels, etc.

(d) General Building Regulations.—The Insurance Commissioner shall have general supervision of the administration and enforcement of all sections of the North Carolina State Building Code other than those specifically allocated to other agencies by subsections (a) through (d) above. The Insurance Commissioner shall exercise his duties in cooperation with local officials in accordance with §§ 160-115 to 160-123, 160-126, 160-142 to 160-145, and 160-149 to 160-153, inclusive.

(e) Procedural Requirements.—Subject to the provisions set forth herein, the Building Code Council shall adopt such procedural requirements in the North Carolina State Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code. (1957, c. 1138.)

§ 143-140. **Hearings before enforcement agencies as to questions under Building Code.**—Any person desiring to raise any question under this article or under the North Carolina State Building Code shall be entitled to a full hearing before the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency shall appoint a time for the hearing, giving such person reasonable notice thereof. The enforcement agency, through an appropriate official, shall conduct a full and complete hearing of the matters in controversy and make a determination thereof within a reasonable time thereafter. The person requesting the hearing shall, upon request, be furnished a written statement of the decision, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options of

(1) Appealing to the Building Code Council or

(2) Appealing directly to the superior court, as provided in § 143-141. (1957, c. 1138.)

§ 143-141. **Appeals to Building Code Council.**—(a) Method of Appeal.—Whenever any person desires to take an appeal to the Building Code Council from the decision of a State enforcement agency relating to any matter under this article or under the North Carolina State Building Code, he shall within thirty days after such decision give written notice to the Building Code Council through the Division of Engineering of the Department of Insurance that he desires to take an appeal. A copy of such notice shall be filed at the same time

with the enforcement agency from which the appeal is taken. The chairman of the Building Code Council shall fix a reasonable time and place for a hearing, giving reasonable notice to the appellant and to the enforcement agency. Such hearing shall be not later than the next regular meeting of the Council. The Building Code Council shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions.

(b) Interpretations of the Code.—The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions of the Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs.

(c) Variations of the Code.—Where the Building Code Council finds on appeal that materials or methods of construction proposed to be used are as good as those required by the Code, it shall remand the case to the enforcement agency with instructions to permit the use of such materials or methods of construction. The Council shall thereupon immediately initiate procedures for amending the Code as necessary to permit the use of such materials or methods of construction.

(d) Further Appeals to the Courts.—Whenever any person desires to take an appeal from a decision of the Building Code Council or from the decision of an enforcement agency (with or without an appeal to the Building Code Council), he may take an appeal either to the Wake County Superior Court or to the superior court of the county in which the proposed building is to be situated, in accordance with the provisions of article 33 of chapter 143 of the General Statutes. (1957, c. 1138.)

§ 143-142. **Further duties of the Building Code Council.**—(a) Recommend Statutory Changes.—It shall be the duty of the Building Code Council to make a thorough study of the building laws of the State, including both the statutes enacted by the General Assembly and the rules and regulations adopted by State and local agencies. On the basis of such study, the Council shall recommend to the 1959 and subsequent General Assemblies desirable statutory changes to simplify and improve such laws.

(b) Recommend Changes in Enforcement Procedures.—It shall be the duty of the Building Code Council to make a thorough and continuing study of the manner in which the building laws of the State are enforced by State, local, and private agencies. On the basis of such studies, the Council may recommend to the General Assembly any statutory changes necessary to improve and simplify the enforcement machinery. The Council may also advise State agencies as to any changes in administrative practices which could be made to improve the enforcement of building laws without statutory changes. (1957, c. 1138.)

§ 143-143. **Effect on certain existing laws.**—Nothing in this article shall be construed as abrogating or otherwise affecting the power of any State department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law not in conflict with the provisions herein. (1957, c. 1138.)

§ 143-143.1. **Interdepartmental Building Regulation Committee.**—(a) Creation; Membership.—There is hereby created an Interdepartmental Building Regulation Committee which shall be composed of seven members as follows: The head of the Division of Engineering of the Department of Insurance, the head of the Division of Sanitary Engineering of the State Board of Health, the head of the Division of Standards and Inspections of the Department of Labor, the head of the Division of School Planning of the Department of Public Instruction, the head of the Division of Engineering of the Budget

Bureau, the head of the Division of Engineering of the Medical Care Commission, and a representative of the State Board of Public Welfare. Each member may formally designate, by written notice to the chairman of the Interdepartmental Building Regulation Committee, a representative from his department who may exercise any and all of his powers as a member of the Committee, including the right to vote.

(b) First Meeting; Organization; Rules and Regulations.—Within 30 days after the first day of July, 1957, the Interdepartmental Building Regulation Committee shall meet on call of the head of the Division of Engineering of the Department of Insurance. The Committee shall elect a chairman and such other officers as it may choose for such terms as it may designate in its rules and regulations. The Committee shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such subcommittees as the work of the Committee may require.

(c) Meetings.—The Committee shall meet regularly, at least once every three months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Four members shall constitute a quorum.

(d) Powers and Duties.—The Interdepartmental Building Regulation Committee shall have the duty of establishing procedures for the interchange of plans among interested agencies and for the transmission to the applicant of the approval or disapproval of each interested agency, to the end that no applicant shall have to submit the same plans for approval to more than one State agency, which agency shall act upon each application within a reasonable time; which time shall not exceed 30 days unless the said agency shall advise the applicant that additional time is necessary for more information. (1957, c. 978.)

ARTICLE 10.

Various Powers and Regulations.

§ 143-145.1. **State agencies to locate and mark boundaries of real property.**—Every State agency and institution shall locate and identify and shall mark and keep marked the boundaries of all lands owned by such agency or institution or under its control. The Department of Administration shall locate and identify and mark and keep marked the boundaries of all State lands not owned by or under the control of any other State agency or institution. The chief administrative officer of any State agency or institution is authorized to contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the chief administrative officer of such State agency or institution, of prison labor for use, where feasible, in the performance of these duties. (1957, c. 584, s. 2.)

Editor's Note.—Section 9 of the act inserting this and the following section provides that “nothing in this act shall be construed as repealing in any manner G. S. 146-1.”

§ 143-145.2. **Agencies may establish agreed boundaries.**—Every State agency or institution is authorized to establish agreed boundaries between lands owned by it or under its control, and the lands of any other owner, subject to the approval of the Governor and Council of State. The Department of Administration is authorized to establish agreed boundaries between State lands not owned by or under the control of any other State agency or institution, and

the lands of any other owner, subject to the approval of the Governor and Council of State. The Attorney General shall represent the State in all proceedings to establish boundaries which cannot be established by agreement. (1957, c. 584, s. 3.)

Cross Reference.—See note to § 143-145.1.

§ 143-146. **Validation of conveyances of State-owned lands.**—All conveyances heretofore made by the Governor, attested by the Secretary of State and authorized by the Council of State, in the manner provided by § 143-148 of any lands, the title to which was vested in the State for the use of any State institution, department or agency or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C. S., s. 7524; 1951, c. 18; 1957, c. 584, s. 7.)

Editor's Note.—

The 1957 amendment repealed the former first paragraph of this section relating to the execution of deeds for State-owned lands, now covered by § 143-147.

Section 9 of the amendatory act provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ 143-147. **Execution of conveyances of State-owned lands.**—Every proposed conveyance of real property, timber rights, or mineral rights owned by the State or by any State agency or institution must be submitted to the Governor and Council of State for their approval, in the manner prescribed in article 14 of chapter 146. Upon approval of the proposed conveyance by the Governor and Council of State, a deed for the real property, timber rights, or mineral rights being conveyed shall be executed in the manner prescribed by §§ 143-148 through 143-150. (1957, c. 584, s. 7.)

Editor's Note.—Session Laws 1957, c. 584, s. 7 repealed the former section, relating to the method of alienation of real property held by any State agency, and

inserted the present section in place thereof. Section 9 of the act provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ 143-162: Repealed by Session Laws 1955, c. 984.

ARTICLE 12.

Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. **Law Enforcement Officers' Benefit and Retirement Fund.**

(g) The Board of Commissioners of the said Fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said Fund in accordance with the purposes of this article. And the Board shall have the authority to invest and reinvest any funds not immediately needed in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the federal intermediate credit banks, federal home loan banks, Federal National Mortgage Association, banks for cooperatives, and federal land banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties, and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the two highest ratings of at least two nationally recognized rating services;
- (7) Obligations of any corporation incorporated in North Carolina if such

obligations bear either of the three highest ratings of at least two nationally recognized rating services;

- (8) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of ten thousand dollars (\$10,000.00) in any one bank or trust company; and
- (9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed ten thousand dollars (\$10,000.00) in any one of such associations.

Subject to the limitations set forth above, said Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this section, and the moneys in the various funds created by this section, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this section specifically otherwise provided. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; 1939, c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½.)

Editor's Note.—

The 1953 amendment increased the amounts in subsection (g) from five thousand to ten thousand dollars. The first 1957 amendment added subsection (q).

The second 1957 amendment rewrote subsection (g). As only these subsections were affected by the amendments the rest of the section is not set out.

ARTICLE 13.

Publications.

§ 143-168. **Reports and publications; conciseness; Governor and Attorney General to prescribe scope of reports.**—The reports and publications of every kind now authorized or required to be printed by the several State departments and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of the department. The details of the work of the departments shall not be printed when not necessary to an intelligent understanding of the work of the departments, but totals and results may be tabulated and printed in said reports. The Governor and the Attorney General shall confer with the various departments and prescribe the scope of the matter to be published in any report now prescribed, required, or permitted, to the end that unnecessary matter may be eliminated. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C. S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983.)

Editor's Note.— The 1955 amendment substituted "may" for "shall" in line six.

§ 143-169. **Limitation on the scope of publications.**— No report of any State department, institution or agency shall be printed without specific statutory authority or unless authorization has been obtained from the Governor and the Attorney General, in writing.

The Governor and Attorney General may authorize, limit, and prescribe the form and number of copies to be printed.

Every publication published at the public expense which makes use of the multi-color process is prohibited, except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the express approval of the Governor and the Attorney General is obtained;

(3) When the publication is a project of the Department of Conservation and Development in North Carolina, or is a part of the magazine entitled "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15; 1955, c. 1203.)

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

§ 143-170: Repealed by Session Laws 1955, c. 986.

ARTICLE 19A.

Governor Richard Caswell Memorial Commission.

§ 143-204.1. **Creation and membership; terms and vacancies.** — There is created the Governor Richard Caswell Memorial Commission to be composed of twenty members, of whom—the Director of the State Department of Archives and History, the State Superintendent of Public Instruction, the mayor of the city of Kinston, and the chairman of the board of county commissioners of Lenoir County—shall serve as ex officio members and sixteen of whom shall be appointed by the Governor. Four appointive members shall be named for a term of two years, four for a term of four years, four for a term of six years, and four for a term of eight years, who shall hold membership on said Commission for the term specified and until their successors are appointed and qualified; provided, that upon expiration of the first term to which an appointment is made each term shall thereafter be for a period of eight years and any vacancy occurring shall be filled by the Governor for the unexpired term of the person whose vacancy is to be filled. (1955, c. 977, s. 1.)

§ 143-204.2. **Powers of Commission; appropriations by counties and municipalities.**—The Commission is authorized and empowered to receive property, both real and personal, by gift, devise, bequest, or otherwise and to solicit funds for the purpose of establishing, developing and maintaining said memorial. The governing bodies of the counties and municipalities of the State are hereby authorized to appropriate any surplus funds, not derived from ad valorem taxation, to said Commission for the purposes of developing and maintaining the memorial herein authorized. The Commission may organize such groups or units as in its discretion may be helpful in raising funds through organizations, societies, and clubs throughout the State for the purpose of developing and maintaining the said memorial. (1955, c. 977, s. 2.)

§ 143-204.3. **Acquisition and control of memorial property; care, maintenance and development.** — There is appropriated out of the general fund of the State of North Carolina the sum of twenty-five thousand dollars (\$25,000) for the purpose of acquiring in the name of the State the title in fee simple absolute to twenty-two acres of land surrounding that certain half-acre parcel of land which was reserved forever by the last will and testament of Governor Richard Caswell as a family cemetery, being known as the Caswell Cemetery, located in Lenoir County to the west of the city of Kinston. The said twenty-two acres of land and the half acre of the said cemetery, as well, shall, following the purchase of the said premises, be and remain forever under the control and management of the said commissioners and their successors in office who

are hereby charged with the care, maintenance, and development of the premises as a perpetual memorial and shrine to the end that the said premises shall be preserved, protected, improved and rendered of inspirational and educational value to the public forever. (1955, c. 977, s. 3.)

§ 143-204.4. Members deemed commissioners of public charities.—Members of the Commission shall be deemed commissioners of public charities within the meaning of the proviso to article XIV, section 7, of the Constitution of North Carolina. (1955, c. 977, s. 4.)

ARTICLE 21.

State Stream Sanitation and Conservation.

§ 143-211. Declaration of policy.

Editor's Note.—

For comment on this article, see 29 N.

C. Law Rev. 365.

§ 143-212. Definitions.

Editor's Note.—Session Laws 1957, c. 1275, s. 1, struck out the definition in (3) (d) which read as follows: The terms “waste,” “industrial waste,” and “other wastes” shall not be construed to include silt, soil and its natural content which may in anywise be discharged into streams.

§ 143-213. State Stream Sanitation Committee; creation.—(a) Establishment of Committee.—For the purpose of administering this article, there is hereby created within the State Board of Health a permanent committee to be known as the “State Stream Sanitation Committee”, which shall be composed of nine members, as follows: The chief engineer of the State Board of Health, ex officio, the chief engineer of the Water Resources and Engineering Division of the Department of Conservation and Development, ex officio, and seven members appointed by the Governor, two who shall, at the time of appointment, be actively connected with and have had production experience in the field of agriculture, one who shall, at the time of appointment, be actively connected with and have had experience in the wildlife activities of the State, two who shall, at the time of the appointment, be actively connected with and have had practical experience in waste disposal problems of municipal government, and two who shall, at the time of appointment, be actively connected with and have had industrial production experience in the field of industrial waste disposal. Of the members initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for a term of six years. Thereafter, all appointments shall be for terms of six years; provided, that the additional member representing agriculture provided for in this subsection shall be appointed initially for a term of two years. Ex officio members shall have all the privileges, rights, powers and duties held by appointed members under the provisions of this article except the right to vote.

(b) All appointments made by the Governor during a session of the General Assembly shall be subject to confirmation by the Senate. All appointments made to fill offices for terms expiring when the legislature is not in session and to fill vacancies occurring for any reason shall be valid until the convening of the next General Assembly following such interim appointment when such appointments shall be subject to confirmation by the Senate. In each instance the appointment shall be of a person of experience in the same field as that of the member who is being replaced. The Governor may at any time, after notice and hearing, remove any member for gross inefficiency, neglect of duty or other sufficient cause. (1953, c. 1295; 1957, c. 992.)

Editor's Note. — The 1953 amendment rewrote the former first sentence of sub-section (b) to appear as the present first two sentences. The 1957 amendment

changed subsection (a) by providing for an additional member representing agriculture. As only these subsections were affected by the amendments the rest of the section is not set out.

§ 143-214. Organization of Committee; meetings; State Board of Health as administrative agent.—(a) First Meeting; Organization; Rules; Regulations.—The Committee shall, within 30 days after its appointment, meet and organize, and elect from among its members a chairman and such other officers as it may choose for such terms as may be specified by the Committee in its rules and regulations. The chairman may appoint members to such committees as the work of the Committee may require.

(b) Meeting of Committee.—The Committee shall meet regularly, at least once every six months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative, and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum.

(c) State Board of Health as Administrative Agent of Committee.—The State Board of Health, through its Division of Water Pollution Control, shall be the administrative agent of the Committee, and subject to the general policies of the Committee, shall make such inspections, conduct such investigations, and do such other things as may be necessary to carry out the provisions of this article. The Attorney General shall act as attorney for the Committee, and shall initiate actions in the name of, and at the request of, the Committee.

(d) Division of Water Pollution Control.—A Division of Water Pollution Control shall be established within the State Board of Health to do stream sanitation work. This Division shall be responsible for administering the provisions of this article and shall be responsible for performing such other duties relating to the control of municipal, institutional, and industrial sewage and waste collection and disposal systems as may be assigned to it by the State Board of Health. The Board of Health shall make such assignments as soon as practicable, in order to eliminate duplication of effort in such areas. The Director of such Division shall be selected by the State Board of Health from nominees acceptable to both the Board and the Committee. He shall be a well-qualified sanitary engineer, fully trained and experienced in the field of waste disposal. He shall:

- (1) Serve as the administrative officer and secretary of the Committee and shall attend all meetings of the Committee, without voting power, and shall keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times;
- (2) Review and approve plans, specifications and such other documents as may be required in connection with applications filed for certificates of approval, permits, or other documents of approval under the provisions of this article; and
- (3) Perform such other related duties as the Committee or State Board of Health may from time to time direct. (1951, c. 606; 1957, c. 1267, s. 2.)

Editor's Note.—The 1957 amendment substituted present subsections (c) and (d) for the former subsections relating to the former executive secretary, the personnel and facilities of the Committee and its fiscal affairs.

§ 143-215. Water classification; standards and assignment of classifications.

(f) Final Adoption and Assignment of Classifications.—Upon completion of

hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Committee pursuant to this section, the Committee shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Committee shall likewise publish as part of its official regulations, the effective date for the application of the provisions of §§ 143-215.1 and 143-215.2 to persons within such watershed or watersheds.

(1957, c. 1275, s. 2.)

Editor's Note. — The 1957 amendment struck out the last sentence of subsection (f) which read as follows: "Such effective date shall not be less than 60 days from the

date of such publication." As only subsection (f) was changed the rest of the section is not set out.

§ 143-215.1. Control of new sources of pollution. — (a) Required Permits.—After the effective date applicable to any watershed, no person shall:

- (1) Make any new outlet into the waters of such watershed;
- (2) Construct or operate any new disposal system within such watershed;
- (3) Alter or change the construction or the method of operation of any existing disposal system within such watershed;

(4) Increase the quantity (determined by such method of measurement as the Committee shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the Committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;

(5) Change the nature of the sewage, industrial waste or other waste discharged through any existing outlet or processed in any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water: Unless such person shall have applied to the Committee for and shall have received from the Committee a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit, and in this connection no such permit shall be granted for disposal of wastes into water used for a public water supply where the State Board of Health determines and advises the Committee that such waste disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon until complete plans and specifications have been submitted to and approved by the State Board of Health in accordance with the provisions of § 130-110. In any case where the Committee denies a permit, it shall state in writing the reasons for such denial and shall also state the Committee's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. If any person has obtained the approval of the State Board of Health for the construction, alteration or change of any disposal system and a contract has been entered into for the construction thereof, or construction has been begun thereon, or a bond election has been authorized therefor, prior to the effective date applicable to any watershed in which such disposal system is located, such person shall not be required to obtain a permit from the Committee with respect to such construction, alteration or changes.

(1955, c. 1131, s. 1.)

Editor's Note. — The 1955 amendment rewrote the last sentence in subdivision (5) of subsection (a). As only subsection

(a) was changed, the rest of the section is not set out.

§ 143-215.2. Abatement of existing pollution.

(f) Equality of Enforcement Action.—It is the intent of this article that a comprehensive all-inclusive effort be made to accomplish the purposes of this article and to that end it is specifically provided that whenever more than one person is found to be responsible for a condition involving pollution of any segment of any particular water as identified and classified under § 143-215 that the Committee shall endeavor to obtain the co-operative effort of all such persons and that if this cannot be accomplished and the Committee deems it necessary to take enforcement action to correct such pollution, by invoking the power granted by this article, such action shall be taken against all persons who share responsibility for such condition, to the extent that such persons have not voluntarily undertaken satisfactory remedial measures or have not agreed, by consenting to the issuance of special orders pursuant to this section to undertake such measures: Provided, however, that where because of operation of law or otherwise, enforcement against any municipality or other political subdivisions of the State cannot be had, no special order shall be issued against any other person within the segment of water where abatement of pollution is sought.

When an order of the Committee to abate discharge of untreated or inadequately treated sewage and other waste is served upon a municipality or upon a sanitary district, the governing board of such municipality or the sanitary district board of such district shall, unless said order be reversed on appeal, proceed to provide funds, using any or all means necessary and available therefor by law, by issuance of bonds secured by the full faith and credit of such municipality or district or by issuance of revenue bonds or otherwise, for financing the cost of all things necessary for full compliance with said order and shall thereby comply with said order: Provided, nothing herein shall be construed to supersede or modify the provisions of the Local Government Act or of the Revenue Bond Act of 1938 with respect to approval or disapproval of bonds by the Local Government Commission and to the sale of bonds by said Commission: Provided, however, that before court action is instituted to enforce any order issued against any person polluting a segment of the stream, the Committee shall, if the municipal pollution is of such magnitude as to warrant consideration, take into consideration the probable time required by any municipality polluting the same segment of said stream to abate its pollution.

(1955, c. 1131, s. 2.)

Editor's Note.—The 1955 amendment (f). As the rest of the section was added the second paragraph of subsection changed only subsection (f) is set out.

§ 143-215.3. General powers of Committee.

(4) To delegate such of the powers of the Committee as the Committee deems necessary to one or more of its members or to any qualified employee of the State Board of Health; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Committee; and further provided that the Committee shall not delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution;

(1957, c. 1267, s. 3.)

Editor's Note.—The 1957 amendment substituted "State Board of Health" for "Committee" in paragraph (4) of subsection (a). As the rest of the section was not changed only this paragraph is set out.

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.—This article shall not be construed as amending, repealing, or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of public

water supplies, as now administered by the State Board of Health; nor shall the provisions of this article be construed as being applicable to or in anywise affecting the authority of the North Carolina State Board of Health to control the sanitary disposal of sewage as provided in G. S. chapter 130, article 13, or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers and ordinances and authority to pass ordinances in regard to sewage disposal of municipal corporations. (1951, c. 606; 1957, c. 1357, s. 11.)

Editor's Note. — The 1957 amendment, "article 13" in lieu of the former reference effective January 1, 1958, inserted the words "to control the sanitary disposal of sewage as provided in G. S. chapter 130, article 13" in lieu of the former reference to privies and septic tanks. It also inserted "those sections" in place of specified sections of former chapter 130.

ARTICLE 22.

State Ports Authority.

§ 143-216. **Creation of Authority; membership.** — The North Carolina State Ports Authority is hereby created, consisting of and governed by a board of seven members, said North Carolina State Ports Authority being hereinafter for convenience designated as the Authority. On or after the first day of June, 1953, the Governor shall appoint the members of said board and the membership thereof shall be selected from the State at large, and insofar as is practicable, so as to fairly represent each section of the State and all of the business, agricultural, and industrial interests of the State. The members of the board shall be appointed for a term of four years each, beginning June 1, 1953. Upon the expiration of the respective terms of office, the successors of said members shall be appointed for a term of four years each. Any vacancy occurring in the membership on said board for any cause shall be filled by the Governor for the unexpired term. The board shall elect one of its members as chairman, one as vice-chairman, and shall also elect a secretary and a treasurer who may not necessarily be a member of the Authority. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business. The members of the Authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1.)

Editor's Note.—

The 1953 amendment rewrote this section. Section 2 of the amendatory act provided that the term of office of the mem-

bers of the board serving in such capacity as of March 6, 1953, should terminate at twelve o'clock midnight on the 31st day of May, 1953.

§ 143-217. **Purposes of Authority.**

A. To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of water-borne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

G. And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of water-borne commerce, foreign and domestic, to, through, and from said harbors and ports.

(1953, c. 191, ss. 3, 4.)

Editor's Note. — The 1953 amendment rewrote paragraphs A and G. As only these paragraphs were affected by the amendment the rest of the section is not

set out.

Authority Was Created for Public Purpose. — Beyond question, the Authority was created and empowered to act to ac-

comply with a public purpose. *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-218. Powers of Authority.

D. On or after the first day of June, 1953, the board, with the approval of the Governor, shall appoint an executive director for the Authority who shall serve at the pleasure of the board. The salary of the said executive director shall be fixed by the Governor with the approval of the Advisory Budget Commission. The director shall have authority to appoint, employ and dismiss at pleasure, such number of employees as may be deemed necessary by the board to accomplish the purposes of this article. The compensation of such employees shall be fixed by the board. The governing board of said Ports Authority shall annually appoint an executive committee of three members of the board, which executive committee shall be vested with authority to do all acts which might be performed by the whole board, provided the board has not theretofore acted upon such matters. The members of the said executive committee shall serve until their successors are duly appointed;

(1953, c. 191, s. 5.)

Editor's Note.—

The 1953 amendment rewrote the former first sentence of subsection D to appear as the present first four sentences. As only this subsection was affected by the amendment the rest of the section is not set out.

Lease of Facility to Private Corporation.—A lease by the Port Authority of a grain handling facility to a private corporation, under the terms of which the

corporation would pay during a five-year term all costs of operation of facility and rentals sufficient to pay in full revenue bonds issued by the Authority, was within the power of the Authority and did not constitute a loan of the credit of the State or the agency. *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-219. Issuance of bonds.

Effect of Section 13 of State Ports Bond Act of 1949.—This section remains in full force and effect except to the extent, if any, it is in irreconcilable conflict with § 13 of the State Ports Bond Act of 1949. *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

Section 13 of the State Ports Bond Act does not prohibit or suspend the Author-

ity's right to raise \$60,000 of the cost of construction of a particular new facility by the issuance and sale of revenue bonds and to pledge the revenues to be derived from the operation of the particular facility to secure the payment of the bonds. *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-227.1. Purchase of supplies, material and equipment. — All the provisions of article 3 of chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. (1953, c. 191, s. 6.)

§ 143-228. Liberal construction of article.

Statutes Not to Be Construed to Hamper Authority in Accomplishment of Its Purpose.—Recognizing the dominant intent of the General Assembly to provide maximum development and use of our seaports, no construction should be placed upon statutes relating to the Authority,

unless plainly required by the express terms thereof, that would tend to hamper the Authority in its efforts to accomplish the very purposes of its existence. *North Carolina State Ports Authority v. First-Citizens Bank & Trust Co.*, 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-228.1. Warehouses, wharves, etc., on property abutting navigable waters.—The powers, authority and jurisdiction granted to the North Carolina State Ports Authority under this article and chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating ware-

houses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1955, c. 727.)

ARTICLE 23.

Armory Commission.

§ 143-236. County and municipal appropriations for benefit of military units.

Cross Reference.—As to municipal and county aid for construction of armory facilities, see §§ 127-112 to 127-117.

§ 143-236.1. **Unexpended portion of State appropriation.**—The unexpended portion of any appropriation from the General Fund of the State for the purposes set out in this article, remaining at the end of any biennium, shall not revert to the General Fund of the State, but shall constitute part of a permanent fund to be expended from time to time in the manner and for the purposes set out in this article. (1949, c. 1202, s. 2.)

ARTICLE 24.

Wildlife Resources Commission.

§ 143-237. **Title.**

Cited in *State v. Story*, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ 143-240. **Creation of Wildlife Resources Commission; districts; qualifications of members.**

Commission to Act by Resolution.—The Wildlife Resources Commission, in the discharge of its important duties in the public interest, can act only by resolution passed in a legal meeting of its members sitting as a commission, which resolution should be recorded in its minutes, and thus become the best evidence of the Commission's actions. *State v. Story*, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

Resolution Authorizing Director to Purchase Lands.—Resolution of the Wildlife Resources Commission authorizing its director to negotiate for the purchase of

certain lands and setting up a certain sum in its budget therefor, even if it be construed to authorize the director to actually purchase the lands designated, is not authorization to him to institute proceedings to condemn any part of the lands. Such resolution cannot support a finding that an application for certificate of public convenience and necessity for the acquisition of the land was filed by the Wildlife Resources Commission so as to confer jurisdiction on the Utilities Commission to issue the certificate. *State v. Story*, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ 143-246. **Executive Director; appointment, qualifications, duties, oath of office, and bond.**—The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have

had training and experience in conservation, protection and management of wild-life resources. The salary of such Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Before entering upon the duties of his office, the Executive Director shall take the oath of office as prescribed for public officials and shall execute and deposit with the State Treasurer a bond in the sum of ten thousand dollars (\$10,000.00), to be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of his duties of office. The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commission of Game and Inland Fisheries relating to wildlife resources. (1947, c. 263, s. 10; 1957, c. 541, s. 17.)

Editor's Note.—Prior to the 1957 amendment to the approval of the Wildlife Resources Commission.

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.

Cross Reference.—As to power to acquire land for game farms or game refuges, see note to § 113-84.

§ 143-254. Conflicting laws; regulations of Department continued.

Editor's Note.—Session Laws 1957, c. 1423, amending §§ 113-91 and 113-141, provides that the act shall not be construed to repeal any of the provisions of this article as they modify said sections.

ARTICLE 25A.

Historic Sites Commission; Historic and Archeological Sites.

§§ 143-260.1 to 143-260.5: Repealed by Session Laws 1955, c. 543, s. 5.

Editor's Note.—The repealed sections were derived from Session Laws 1953, c. 1197, ss. 1-5, creating the former Historic Sites Commission and providing for the acquisition and administration of historic and archeological sites. These matters now come under the jurisdiction of the Department of Archives and History. See §§ 121-1 to 121-12.

ARTICLE 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-280. Membership.—The Commission shall consist of one member from the North Carolina Hospitals Board of Control, one member from the State Board of Health, one member from the State Board of Public Welfare, one member from the boards of county commissioners, one county superintendent of public welfare, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12.)

Editor's Note.—The 1957 amendment, health director" for "county health officer" effective January 1, 1958, substituted "local in line five.

ARTICLE 29A.

Commission on Employ the Physically Handicapped.

§ 143-283.1. Employ the Physically Handicapped Week.—The Governor of North Carolina shall designate the first week in October of each year as "Employ the Physically Handicapped Week." (1953, c. 1224, s. 1.)

§ 143-283.2. **Commission on Employ the Physically Handicapped created; membership; compensation.**—There is hereby created a commission to be designated as the “North Carolina Commission on Employ the Physically Handicapped,” to be composed of ten members, three of whom, the Director of Rehabilitation, the Director of the Employment Security Commission, the Commissioner of Labor, shall serve as ex officio members, and seven appointed by the Governor, who shall hold membership on the Commission for the term specified, or until their successors are named by the Governor. The Governor shall designate one member as chairman. And it is further provided that no member of the Commission shall receive any compensation by reason of his services, nor shall they be allowed travel expenses. (1953, c. 1224, s. 2.)

§ 143-283.3. **Program of Commission; co-operation with President's Committee.**—The Commission shall carry on a continuing program to promote the employment of physically handicapped persons by creating State-wide interest in the rehabilitation and employment of the handicapped and by obtaining and maintaining co-operation from all public and private groups in this field. The Commission shall work in co-operation with the President's Committee on National Employ the Physically Handicapped Week in order to more effectively carry out the purposes of this article. (1953, c. 1224, s. 3.)

§ 143-283.4. **Local commissions.**—The Commission shall also appoint local employ the physically handicapped commissions and work with such commissions in an effort to promote employer acceptance of qualified handicapped workmen and inform handicapped persons of job openings available to them. (1953, c. 1224, s. 4.)

§ 143-283.5. **Allocation from Contingency and Emergency Fund; gifts, etc., and solicitation of funds.**—The Governor and Council of State are hereby authorized and empowered to allocate from the Contingency and Emergency Fund to the North Carolina Commission on Employ the Physically Handicapped a sum not to exceed one thousand dollars (\$1,000.00), to be administered by said Commission to defray its necessary expenses. The Commission is also authorized to receive property by gift, devise, bequest or otherwise and to solicit funds to be used in carrying out the purposes of this article. (1953, c. 1224, s. 5.)

ARTICLE 30.

John H. Kerr Reservoir Development Commission.

§ 143-284. **Commission created; membership; terms of office; vacancies.**—There is hereby created a commission to be known as the “John H. Kerr Reservoir Development Commission.” (1953, c. 1312, s. 2.)

Editor's Note. — The 1953 amendment substituted “John H. Kerr Reservoir Development Commission” for “Buggs Island Development Commission” in the first sentence. As only this sentence was affected by the amendment the rest of the section is not set out.

Session Laws 1953, c. 1312, s. 1, substituted the present title of this article for

“Buggs Island Development Commission.”

Session Laws 1953, c. 1312, s. 2, provides: “Whenever the words ‘Buggs Island Development Commission’ are used or appear in any other statute of this State the same shall be stricken out and the words ‘John H. Kerr Reservoir Development Commission’ inserted in lieu thereof.”

§ 143-286. **Powers and duties.**—The Commission shall endeavor to promote the development of the John H. Kerr area situated in northeastern North Carolina, and it shall be the duty of the Commission to study the development of this area and to recommend to the Department of Conservation and Development, and the Wildlife Resources Commission and the North Carolina Recreation

Commission policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various departments, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the development of this John H. Kerr area. It shall also advise and confer with any other State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies in their work in this area except so far as is expressly provided for in this article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the state of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states. (1951, c. 444, s. 3; 1953, c. 1312, s. 3.)

Editor's Note. — The 1953 amendment substituted "John H. Kerr" for "Buggs Island" in lines two and ten.

§ 143-286.1. **Nutbush Conservation Area.**—The Board of Conservation and Development is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The Board of Conservation and Development is further authorized to delegate to the John H. Kerr Reservoir Development Commission the authority to control and develop the area so leased and to enter into sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4.)

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. **Industrial Commission constituted a court to hear and determine claims; damages.**—The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the State Highway Commission, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages

awarded exceed the sum of ten thousand dollars (\$10,000.00). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361.)

Editor's Note.—

Chapter 400 of the 1955 Session Laws, as amended by chapter 1361, omitted the provision added by the 1953 amendment and extended the scope of this section to include negligent acts of officers and involuntary servants or agents. And chapter 1102 of the 1955 Session Laws increased the maximum amount of damages that can be awarded from \$8,000 to \$10,000. Section 1½ of chapter 400 provides that the act shall not apply to any claim arising prior to March 31, 1955.

By virtue of Session Laws 1957, c. 65, s. 11, "State Highway Commission" was substituted for "State Highway and Public Works Commission."

For comment on this article, see 29 N. C. Law Rev. 416.

Strict Construction.—The State Tort Claims Act is in derogation of the sovereign immunity from liability for torts, and the sounder view is that the Act should be strictly construed, and certainly the Act must be followed as written. *Floyd v. North Carolina State Highway, etc., Comm.*, 241 N. C. 461, 85 S. E. (2d) 703 (1955).

Wording in Statute Is Clear.—The wording in the statute is clear, certain and intelligible. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Legislative Purpose Ascertained from Wording of Statute.—The legislative intent and purpose in enacting the State Tort Claims Act must be ascertained from the wording of the statute, and the rule of liberal construction cannot be applied to enlarge its scope beyond the meaning of its plain and unambiguous terms. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

The State Tort Claims Act will be construed to effectuate its purpose to waive the sovereign immunity of the State in those instances in which injury is inflicted through the negligence of a State employee and the injured person is not guilty of contributory negligence, giving the injured party the same right to sue as any other litigant. *Lyon & Sons, Inc. v. State Board of Education*, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

Retroactive Effect of Statute.—The Tort Claims Act, c. 1059, Sess. Laws of 1951, incorporated in this section, was made retroactive as to certain persons named therein. *MacFarlane v. North Carolina Wildlife Resources Comm.*, 244 N. C. 385, 93 S. E. (2d) 557 (1956).

Meaning of Employee.—The word "employee" as used in the State Tort Claims Act must be given its ordinary meaning in construing the statute. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Thus it appears basically that a claim, to be recognizable within the purview of the Tort Claims Act, must arise "as a result of a negligent act of a State employee while acting within the scope of his employment." Manifestly, the word "employee" in the connection used, means "one who works for wages or salary in the service of an employer." *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Prisoner Detained at State Penal Institution.—A prisoner detained at a State penal institution is not an employee of the State within the meaning of the State Tort Claims Act, and the State may not be held liable under that statute for negligent injury inflicted by such prisoner while his services are made use of, which is the meaning of the word "employed" as used in G. S. 148-49.3. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Waiver of Governmental Immunity to Suit.—The State may prescribe such terms and conditions as it sees fit, subject to constitutional limitations, in waiving its governmental immunity to suit for negligence, and the State Tort Claims Act permits recovery against the State only for such injuries as are proximately caused by negligence of a State employee while acting within the scope of his employment when there is no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Industrial Commission and Superior Court Are Bound by Law of Negligence.—The legislature intended that the Industrial Commission on the original hearing and the superior court on the hearing on appeal should each be bound by the law of negligence, both substantive and adjective, as such common-law rules and doctrines appear in the numerous decisions of the Supreme Court, subject only to the limitations stipulated in the Act. *MacFarlane v. North Carolina Wildlife Resources Comm.*, 244 N. C. 385, 93 S. E. (2d) 557 (1956).

Recovery May Be Had Only for Negligent Acts.—No recovery can be had for

the intentional shooting of plaintiff's decedent by a State highway patrolman, since the Tort Claims Act does not permit recovery for wrongful and intentional injuries, but limits recovery to negligent acts. *Jenkins v. North Carolina Dept. of Motor Vehicles*, 244 N. C. 560, 94 S. E. (2d) 577 (1956).

And Not for Negligent Omissions.—The intent of the legislature was to permit recovery under the Tort Claims Act only for the negligent acts of State employees, for the things done by them, not for the things left undone. Thus recovery cannot be had for injuries in a wreck resulting from the negligent failure or omission of the responsible employees of the Highway Commission to repair a hole in a State highway. *Flynn v. North Carolina State Highway & Public Works Comm.*, 244 N. C. 617, 94 S. E. (2d) 571 (1956).

Effect of Compromise and Settlement in Suit against State Employee.—Where a person injured by the alleged negligence of a State employee while engaged in the discharge of his duties as such brought suit against the employee before the passage of the Tort Claims Act, and a compromise was effected in the suit, whereby the employee, or his insurer, paid the plaintiff \$9,715 and the plaintiff released the employee and his insurer for all claims arising out of the accident, a subsequent ac-

tion by the plaintiff against the State under the Tort Claims Act was properly dismissed, because (1) plaintiff had recovered from the employee an amount in excess of the maximum he could be awarded against the State, and (2) plaintiff had released the employee, the active tort-feasor, from further liability. *MacFarlane v. North Carolina Wildlife Resources Comm.*, 244 N. C. 385, 93 S. E. (2d) 557 (1956), wherein the plaintiff had been named in the Tort Claims Act as one whose claim should be heard and determined by the Industrial Commission, and the amount of his claim had been listed in the Act as \$25,000.

The right of subrogation exists under the provisions of this article against State departments and agencies. *Lyon & Sons, Inc. v. State Board of Education*, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

Applied in *Greene v. Mitchell County Board of Education*, 237 N. C. 336, 75 S. E. (2d) 129 (1953); *Gould v. North Carolina State Highway & Public Works Comm.*, 245 N. C. 350, 95 S. E. (2d) 910 (1957).

Stated in *Bradshaw v. State Board of Education*, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

Cited in *Lowe v. Department of Motor Vehicles*, 244 N. C. 353, 93 S. E. (2d) 448 (1956); *Eller v. Board of Education*, 242 N. C. 584, 89 S. E. (2d) 144 (1955).

§ 143-291.1. Costs.—The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2.)

§ 143-292. Notice of determination of claim; appeal to full Commission.—Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have seven days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars (\$500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770.)

Editor's Note.—The 1955 amendment added the last sentence. *Education*, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

Stated in *Bradshaw v. State Board of*

§ 143-293. Appeals to superior and Supreme courts.

Commission Bound by Order of Superior Court.—Where, in a proceeding under the Tort Claims Act, the superior court on appeal adjudicates that certain findings of the Commission were not supported by evidence, and remands the cause, the Commission is bound by the order unless and until it is set aside on further appeal to the Supreme Court, and the Commission may not merely rephrase the original findings and adopt them as so rephrased. *Johnson v. Cleveland County Board of Education*, 241 N. C. 56, 84 S. E. (2d) 256 (1954).

Exceptions Should Be Filed before Hearing in Superior Court.—If the appellants desire to enter exceptions to the findings of fact made by the Industrial Commission, they should file prior to the hearing in the superior court. Whether the judge should interrupt the hearing and call in the court reporter so that specific exceptions can be taken to certain findings of fact and conclusions of law of the Com-

mission rests in his sound discretion. *Greene v. Mitchell County Board of Education*, 237 N. C. 336, 75 S. E. (2d) 129 (1953).

Finding of Commission Conclusive if Supported by Competent Evidence.—Where the Industrial Commission has found as a fact and concluded as a matter of law that there was no negligence on the part of the employee, bus driver, of the State, resulting in damages to the claimant within the purview of §§ 143-291 to 143-300, and the superior court is unable to find that there is no evidence to support the finding of the Commission, the judgment of the superior court affirming the decision and order of the Commission is proper. *Bradshaw v. State Board of Education*, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

Applied in Lyon & Sons, Inc. v. State Board of Education, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing.

Identification of Employee and Statement of Negligent Act or Acts.—A claim under the State Tort Claims Act must identify the employee of the State whose negligence is asserted, and set forth the act or acts on his part which are relied upon. *Floyd v. North Carolina State Highway, etc., Comm.*, 241 N. C. 461, 85 S. E. (2d) 703 (1955).

Showing Negligence and Freedom from Contributory Negligence.—In order for claimant to prevail in a proceeding under the State Tort Claims Act, he must show

not only injury resulting from negligence of a designated State employee, but also that claimant was not guilty of contributory negligence. *Floyd v. North Carolina State Highway, etc., Comm.*, 241 N. C. 461, 85 S. E. (2d) 703 (1955).

Sufficiency of Evidence.—Evidence held to support sole conclusion that State employee was not guilty of negligence. *Floyd v. North Carolina State Highway, etc., Comm.*, 241 N. C. 461, 85 S. E. (2d) 703 (1955).

§ 143-299. Limitation on claims.

Quoted in *Lyon & Sons, Inc. v. State Board of Education*, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.—Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the State department, institution or agency against which the claim is asserted, and such State department, institution or agency shall have the burden of proving that the claimant or the person in whose behalf the claim is asserted was guilty of contributory negligence. (1955, c. 400, s. 1¼.)

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.—The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this article. When any case or claim under this article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the

discretion of the Industrial Commission with and by the authorization of the North Carolina Department of Archives and History, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 21 years. (1951, c. 1059, s. 12; 1957, c. 311.)

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

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses.—(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged negligent act or omission of the driver of a public school bus who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by § 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made. It shall thereupon be the duty of such superintendent to deliver such affidavit promptly to the attorney for such county or city board of education. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is the governing board.

(b) The Attorney General shall not be charged with any duty with reference to tort claims against such county or city board of education, but it shall be the duty of the attorney of such board to perform for such board with reference to such claims all duties which the Attorney General is required by this article to perform in respect to tort claims against the State Board of Education.

(c) In the event that the Industrial Commission shall make any award of damages against any county or city board of education pursuant to this section, such county or city board shall draw a requisition 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 then 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 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.

(d) Neither the State Board of Education nor any other department, institution or agency of the State shall be liable for the payment of any tort claim arising

ing out of the operation of any public school bus, or for the payment of any award made pursuant to the provisions of this article on account of any such claim. (1955, c. 1283.)

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

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§ 143-306. **Definitions.**—As used in this article the terms (a) “administrative agency” or “agency” shall mean any State officer, committee, authority, board, bureau, commission, or department authorized by law to make administrative decisions, except those agencies in the legislative or judicial branches of government, and except those whose procedures are governed by chapter 150 of the General Statutes, or whose administrative decisions are made subject to judicial review under some other statute or statutes containing adequate procedural provisions therefor. (b) “Administrative decision” or “decision” shall mean any decision, order, or determination rendered by an administrative agency in a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an opportunity for agency hearing. (1953, c. 1094, s. 1.)

Editor's Note.—The act from which this article was codified became effective July 1, 1953.

C. Law Rev. 378, 382.

Applied in *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

For comment on this article, see 31 N.

§ 143-307. **Right to judicial review.**—Any person who is aggrieved by a final administrative decision, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this article. (1953, c. 1094, s. 2.)

§ 143-308. **Right to judicial intervention when agency unreasonably delays decision.**—Unreasonable delay on the part of any agency in reaching a final administrative decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1953, c. 1094, s. 3.)

§ 143-309. **Manner of seeking review; time for filing petition; waiver.**—In order to obtain judicial review of an administrative decision under this chapter the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a county agency or county board and appealed to the State Board, the petition may be filed in the superior court of the county where the petitioner resides. Such petition may be filed at any time after final decision, but must be filed not later than thirty days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail, return receipt requested. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the administrative decision under this chapter notwithstanding such waiver. (1953, c. 1094, s. 4.)

Applied in *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

§ 143-310. **Contents of petition; copies served on all parties.**—The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within ten days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within ten days after receipt of the copy of the petition. (1953, c. 1094, s. 5.)

§ 143-311. **Record filed by agency with clerk of superior court; contents of record; costs.**—Within thirty days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1953, c. 1094, s. 6.)

§ 143-312. **Stay of board order.**—At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. (1953, c. 1094, s. 7.)

§ 143-313. **Procedure for taking newly discovered evidence.**—At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be heard. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1953, c. 1094, s. 8.)

§ 143-314. **Review by court without jury on the record.**—The review of administrative decisions under this chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear the matter de novo. (1953, c. 1094, s. 9.)

§ 143-315. **Scope of review; power of court in disposing of case.**—The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1953, c. 1094, s. 10.)

§ 143-316. **Appeal to Supreme Court; obtaining stay of court's decision.**—Any party to the review proceedings, including the agency, may appeal to the Supreme Court from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court. (1953, c. 1094, s. 11.)

ARTICLE 34.

Board of Water Commissioners; Water Conservation and Education; Emergency Allocations.

§ 143-317. **Declaration of policy.**—It is hereby declared that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the public interest. (1955, c. 857, s. 1.)

§ 143-318. **Purpose of article.**—The purpose of this article is to provide a State agency to study the State's water resources; to advise the Governor as to how the State's present water research activities might be coordinated; to devise plans and prepare and submit to the Governor and the General Assembly recommendations as to the laws, policies and administrative organization necessary for a more profitable use of the water resources of the State, and for improvements in the methods of conserving and using those resources. It is a further purpose of this article to empower the State agency created by G. S. 143-320, during periods of water emergency as found to exist pursuant to the provisions of this article, to take steps to meet the emergency to the end that the harmful effects of the emergency shall be reasonably minimized. (1955, c. 857, s. 2; 1957, c. 753, s. 1.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 143-319. **Definitions.**—When used in this article the following words shall have the following respective meanings:

(a) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(b) "Board," as the term is used in this article, shall mean the Board of Water Commissioners of North Carolina. (1955, c. 857, s. 3.)

§ 143-320. **Article to be administered by Board of Water Commissioners; composition of Board.**—For the administration of this article, there is hereby created a Board of Water Commissioners of the State of North Carolina to consist of seven members to be appointed by the Governor, at least one of whom shall represent the interests of agriculture, at least one of whom shall represent the interests of the electric power industry, at least one of whom shall represent the interest of other industry, and at least one of whom shall represent the interests of municipalities. Of the members of the Board initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and three shall serve for terms of six years each.

Thereafter, all appointments shall be for terms of six years. The Governor shall designate a chairman from among the membership of the Board and shall, by appointment, fill all vacancies occurring by reason of death, resignation or other cause.

The following persons shall serve as members of an Advisory Committee which shall act in an advisory capacity to the Board: The Commissioner of Agriculture, the Director of the Agricultural Extension Service, the Director of the Department of Conservation and Development, the State Soil Conservationist, the Secretary of the State Board of Health, the Director of the State Recreation Commission, the Executive Secretary of the Stream Sanitation Committee, and the Executive Director of the Wildlife Resources Commission. The Governor shall appoint as members of the Advisory Committee three members of the House of Representatives and two members of the Senate of the General Assembly, one member of the Advisory Committee who shall represent industry, one member who shall represent the electric power industry and one member who shall represent municipalities. The members of the Advisory Committee so appointed by the Governor shall serve for terms of two years beginning July 1, 1955.

The Governor shall designate a chairman among the membership of the Advisory Committee and shall, by appointment, fill all vacancies occurring by reason of death, resignation or otherwise. The Advisory Committee shall meet upon the call of the chairman of the Board or the chairman of the Advisory Committee and shall consider such matters as are brought to its attention. The members of the Advisory Committee shall, during the performance of their duties, receive regular State travel expenses. (1955, c. 857, s. 4.)

§ 143-321. **Compensation of Board members.**—Each member of the Board, while in the performance of the duties for which appointed, shall receive for his services ten dollars (\$10.00) per day and regular State travel expenses. (1955, c. 857, s. 5.)

§ 143-322. **Organization of Board.**—The Governor shall call an organizational meeting of the Board within thirty days after appointment of the members. At such first meeting and annually thereafter, the Board shall elect one of its members to serve as secretary. (1955, c. 857, s. 6.)

§ 143-323. **Ordinary powers and duties of the Board.**—Except as otherwise specified in this article, the powers and duties of the Board shall be as follows:

(a) The Board shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State.

(b) The Board shall advise the Governor as to how the State's present water research activities might be coordinated.

(c) The Board, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Board affecting the water supply of such municipality or unit together with the Board's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters authorized by § 143-325.

(d) The Board is authorized, subject to the State Personnel Act and the Executive Budget Act, to employ a full-time executive secretary and such other personnel as may be necessary to carry out the purposes of this article.

(e) The executive secretary shall serve as administrative officer of the Board and shall exercise such administrative powers as are delegated to him by the Board. He shall serve at the pleasure of the Board.

(f) The Board is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Board.

(g) Recognizing the complexity and difficulties attendant upon the recommendation to the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Board shall solicit from the various water interests of the State their suggestions thereon.

(h) The Board may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(i) All recommendations for proposed legislation made by the Board shall be available to the public.

(j) The Board shall file with the Governor and the General Assembly a biennial report in which its activities for the preceding two years shall be summarized and which shall contain recommendations for improvement in methods of conserving and using the State's water resources, and recommendations as to the laws, policies and administrative organization necessary for a more profitable use of those resources.

(k) The Board shall adopt such rules and regulations as may be necessary to carry out the purposes of this article.

(l) Any member of the Board or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered. (1955, c. 857, s. 7; 1957, c. 753, s. 2.)

Editor's Note.—The 1957 amendment subsection (a), rewrote subsection (b) and deleted the word "research" formerly appearing after "planning" in line one of with the words "and recommendations."

§ 143-324. Declaration of water emergency.— Upon the request of the governing body of a county, city or town the Board shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action under § 143-325. Upon making such determination, the Board shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Board shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed thirty days but the Governor may declare any number of successive emergencies upon request of the Board. (1955, c. 857, s. 8.)

§ 143-325. Water emergency powers and duties of the Board.— Whenever, pursuant to this article, the Governor has declared the existence of a water emergency within a particular area of the State, the Board shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this article, designated as the period of emergency:

(a) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restric-

tions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Board that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety.

In the event waters are diverted pursuant to this article, there shall be no diversion to the same person in any subsequent year unless the Board finds as fact from evidence presented that the person controlling the water or sewerage system has made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.

(b) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year or both within the discretion of the court; Provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area. (1955, c. 857, s. 9.)

§ 143-326. **Temporary rights of way.**—When any diversion of waters is ordered by the Board pursuant to § 143-325, the person controlling the water or sewerage system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Board. (1955, c. 857, s. 10.)

§ 143-327. **Compensation for water allocated during water emergency and temporary rights of way.**—Whenever the Board, pursuant to § 143-325 (a) has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Board, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Board in an amount determined by the Board and conditioned upon the payment of such loss or damage. (1955, c. 857, s. 11.)

§ 143-328. **Cooperation of State agencies and officials.**—The Governor may direct the cooperation and assistance of all State agencies and officials for the purpose of enforcing and carrying out the intent, purpose and policies of this article and the rules and regulations made by the Board pursuant to this article. (1955, c. 857, s. 12.)

ARTICLE 35.

Youth Service Commission.

§ 143-329. **Appointment by Governor; duration.**—The Governor of North Carolina is hereby authorized to appoint a commission of five members to be known as the Governor's Youth Service Commission. This Commission, when appointed, shall continue until June 30, 1957. (1955, c. 904, s. 1.)

§ 143-330. **Purposes, powers and duties.**—The purposes, powers and duties of the Commission are as follows:

(1) The Commission shall advise the Governor on all matters pertaining to the prevention, correction and control of juvenile delinquency.

(2) The Commission, no later than July 1, 1956, shall make recommendations to the Governor of North Carolina as to necessary legislation for the prevention and control of juvenile delinquency, and the supervision, training, care, correction and treatment of juvenile delinquents.

(3) The Commission shall establish standards for juvenile court judges and shall transmit these recommended standards to the several boards of county commissioners and municipal governing boards in the State, who shall be guided by these standards.

(4) The Commission shall be available to consult with the officials of counties and cities for the purpose of encouraging regional detention homes, juvenile courts and other facilities for the treatment of juvenile delinquency.

(5) The Commission shall cooperate with all agencies with programs designed to curb, control and correct juvenile delinquency and help promote coordination of said programs.

(6) The Commission shall encourage the development of programs within counties and cities by local agencies, governments, organizations, groups, and individuals, designed to curb, control and correct juvenile delinquency. (1955, c. 904, s. 2.)

§ 143-331. **Chairman.**—The chairman of the Commission shall be designated by the Governor. (1955, c. 904, s. 3.)

§ 143-332. **Per diem and travel allowance.**—The members of the Commission shall receive the payment necessary per diem and travel allowance as is prescribed by law for the officers and employees of the State. (1955, c. 904, s. 4.)

§ 143-333. **Funds to pay necessary expenses.**—The Governor, with the approval of the Council of State, is authorized to allocate funds from the contingency and emergency fund to pay necessary expenses in carrying out the purposes of this article. (1955, c. 904, s. 5.)

ARTICLE 36.

Department of Administration.

§ 143-334. **Short title.**—This article may be cited as the Department of Administration Act. (1957, c. 269, s. 1.)

§ 143-335. **Department of Administration created.**—There is hereby created the Department of Administration. (1957, c. 269, s. 1.)

§ 143-336. **Definitions.**—As used in this article:

“Agency” includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

“Department” means the Department of Administration, unless the context otherwise requires.

“Director” means the Director of Administration, unless the context otherwise requires.

“Division” means a division of the Department of Administration, unless the context otherwise requires.

“State buildings” mean all State buildings, utilities, and other property developments except railroads, highway structures, and bridge structures. But under no circumstances shall this article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 269, s. 1.)

§ 143-337. **Structure and organization of the Department.**—(a) The Department of Administration is under the direction and control of the

Director of Administration, who is responsible to the Governor for the administration of the Department.

(b) There shall be a Budget Division and a Purchase and Contract Division in the Department. The Director, with the approval of the Governor, may, if he deems it necessary or convenient for the efficient performance of the duties and functions of the Department, establish within the Department additional divisions, including but not limited to an Architecture and Engineering Division, a Property Control and Disposition Division, an Administrative Analysis Division, and a Long-Range Planning Division. The Director, with the approval of the Governor, may abolish any division within the Department except the Budget Division and the Purchase and Contract Division if he deems such action necessary or convenient for the efficient performance of the duties and functions of the Department, and reassign the duties and functions of the abolished division to any other division, officer or employee of the Department.

(c) Each division is under the immediate supervision and control of a division head, who is responsible to the Director for the administration of his division. (1957, c. 269, s. 1.)

§ 143-338. Appointment and salary of Director and Acting Director.—(a) The Director of Administration is appointed by the Governor and serves at the pleasure of the Governor.

(b) The salary of the Director is fixed by the Governor, with the approval of the Advisory Budget Commission.

(c) The Governor may appoint an Acting Director to serve during the absence or disability of the Director, or pending appointment to fill a vacancy in the office of Director, and may fix his salary, with the approval of the Advisory Budget Commission. (1957, c. 269, s. 1.)

§ 143-339. Appointment and salary of division heads.—The head of each division of the Department is appointed by the Director, with the approval of the Governor, and is removable at the will of the Director, with the approval of the Governor. The head of each division is selected on the basis of his experience, training, competence, and other qualifications appropriate to the position to which he is appointed. The head of each division is paid a salary which is fixed by the Governor, with the approval of the Advisory Budget Commission. (1957, c. 269, s. 1.)

§ 143-340. Powers and duties of Director.—The Director of Administration has the following powers and duties:

- (1) To administer the Department of Administration.
- (2) With the approval of the Governor, to organize and reorganize the Department and its several divisions.
- (3) To assign and reassign the duties and functions of the Department to the several divisions, division heads, and other officers and employees of the Department, in such manner as he determines to be necessary or convenient to the efficient performance of those duties and functions.
- (4) To perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Department, except as otherwise expressly provided by statute.
- (5) To delegate to any division chief or to any other officer or employee of the Department any of the powers and duties given the Director or the Department by statute or by the rules, regulations, and procedures established pursuant to this article.
- (6) To appoint, with the approval of the Governor, the head of each division of the Department; and to remove at will the head of any division, with the approval of the Governor.

- (7) To appoint all subordinate officers and employees of the Department, upon recommendation of the head of the division to which such officers or employees are to be assigned and in accordance with the State Personnel Act.
- (8) To transfer employees from one division of the Department to another, either temporarily or permanently, when he determines that such transfer is necessary to expedite the work of the Department as a whole.
- (9) To adopt, with the approval of the Governor, such reasonable rules, regulations, and procedures as he deems necessary or convenient concerning the organization, administration, and operation of the Department, and the conduct of its relations and business with other agencies of the State.
- (10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Director or the Department.
- (11) To exercise all of the powers and perform all of the duties which were, at the time of the ratification of this article, given by statute to the former Assistant Director of the Budget or the former Director of Purchase and Contract. All statutory references to the "Assistant Director of the Budget" or the "Director of Purchase and Contract" shall be deemed to refer to the Director of Administration.
- (12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.
- (13) To have legal custody of all books, papers, documents, and other records of the Department and its division. (1957, c. 269, s. 1.)

§ 143-341. **Powers and duties of Department.**—The Department of Administration has the following powers and duties:

- (1) Budget:
 - a. To exercise those powers and perform those duties which are delegated or assigned to it by the Director of the Budget pursuant to the Executive Budget Act.
 - b. To exercise those powers and perform those duties which were, at the time of the ratification of this article, conferred by statute upon the former Budget Bureau.
- (2) Purchase and Contract:
 - a. To exercise those powers and perform those duties which were, at the time of the ratification of this article, conferred by statute upon the former Division of Purchase and Contract.
- (3) Architecture and engineering:
 - a. To examine and approve all plans and specifications for the construction or renovation of all State buildings, prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
 - b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

- c. To supervise the letting of all contracts for the construction or renovation of all State buildings.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real property control:

- a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, metes and bounds description, source of title, condition, current value, and current use of all land (including swamp lands or marsh lands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys shall be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land shall be prepared, or copies obtained where such maps or plats are available.
- b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space, condition, floor plans, and current value of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.
- c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry or office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.
- d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor and Council of State may by resolution delegate to any State agency the duty of approving such classes of lease or rental transactions as the Governor and Council of State may deem advisable to delegate. Any contract entered into or any proceeding instituted without the approval of the Governor and Council of State, or, with respect to leases and rentals, the agency designated by them to approve leases and rentals, is voidable in the discretion of the Governor and Council of State.
- e. To make all sales of real property (including marsh lands or swamp lands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances by the State shall be executed

in accordance with the provisions of G. S. §§ 143-147 through 143-150. Any conveyance of land made, or contract to convey land entered into, without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamp lands or marsh lands shall be dealt with in the manner required by the Constitution and statutes.

- f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor and Council of State may by resolution delegate to any State agency the duty of approving such classes of lease or rental transactions as the Governor and Council of State may deem advisable to delegate. Any lease or rental agreement entered into without the approval of the Governor and Council of State or of the agency designated by them is voidable in the discretion of the Governor and Council of State.
 - g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State.
 - h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.
 - i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments.
 - j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.
 - k. None of the provisions of this subsection apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.
- (5) Administrative analysis:
- a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.
 - b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.
 - c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.
- (6) Long-range planning:
- a. To assist the Director of the Budget in reviewing the capital

- improvements needs, plans, and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.
- b. In cooperation with State agencies and other appropriate public or private agencies, to collect, analyze, and keep up to date comprehensive information regarding basic matters such as population trends, industrial and agricultural developments, income, urbanization, natural resources, and other matters affecting the economy of the State.
 - c. To make special studies of technological trends, industrial location, transportation, land use, and related matters, when requested by the Governor to do so, and to submit to the Governor recommended courses of action for the maintenance of a sound economy.
 - d. To assist operating agencies, upon their request, by providing assistance and basic information needed by such agencies in preparing their long and short range programs. (1957, c. 269, s. 1.)

§ 143-342. Rules governing allocation of property and space.—The Governor, with the approval of the Council of State, shall adopt such reasonable rules, regulations, and procedures as he deems necessary concerning the allocation and reallocation by the Department of land, buildings, and space within buildings to and among the several State agencies. (1957, c. 269, s. 1.)

§ 143-343. General Services Division.—If the Governor and Council of State at any time determine, pursuant to § 129-11, that the General Services Division should be made a part of the Department of Administration, the powers and duties given the Director of General Services by statute shall thereafter be deemed a part of the statutory powers and duties of the Director of Administration, and the powers and duties given the General Services Division by statute shall thereafter be deemed a part of the statutory powers and duties of the Department of Administration. The head of the General Services Division shall thereafter be appointed and removed, and his salary shall be fixed, in the same manner prescribed for other division heads. Upon the accomplishment of such transfer, the General Services Division shall thereafter be in all respects a part of the Department of Administration and subject to the supervision and control of the Director of Administration. (1957, c. 269, s. 1.)

§ 143-344. Transfer of functions, property, records, etc.—(a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Budget Bureau are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Budget Bureau" or the "Bureau of the Budget" shall be deemed to refer to the Department of Administration.

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Purchase and Contract are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Division of Purchase and Contract" or the "Purchase and Contract Division" shall be deemed to refer to the Department of Administration.

(c) The transfers directed by subsections (a) and (b) above, shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to such transfers.

(d) Insofar as practical the expenses necessary to carry out the provisions of this article shall, during the 1957-1959 biennium, be provided out of appropria-

tions made to the presently existing agencies the functions of which will be transferred to the Department of Administration; and in the event additional funds are necessary to carry out the provisions of this article the Governor with the approval of the Council of State and the Advisory Budget Commission is hereby authorized to appropriate such additional necessary expenses from the Contingency and Emergency Fund. (1957, c. 269, s. 1.)

§ 143-345. **Saving clause.**—No transfer of functions to the Department of Administration provided for in this article shall affect any action, suit, proceeding, prosecution, contract, lease, or other business transaction involving such a function which was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and so far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. (1957, c. 269, s. 1.)

ARTICLE 37.

Salt Marsh Mosquito Advisory Commission.

§ 143-346. **Commission created; membership.**—There is hereby created a commission to be known as "The Salt Marsh Mosquito Advisory Commission" to be composed of six members, four of whom shall be appointed by the Governor, one of whom shall be appointed by the Director of the Department of Conservation and Development as a representative of that Department, and one of whom shall be appointed by the Director of the Wildlife Resources Commission as a representative of that Department. The members appointed by the Director of the Department of Conservation and Development and the Director of the Wildlife Resources Commission shall serve ex officio as members of the Commission. All members shall serve at the pleasure of the appointing authority, and shall serve without pay.

In order to make available to the State the benefit of the two years of study by the Salt Marsh Mosquito Study Commission created by chapter 1197, Session Laws of 1955, all members appointed by the Governor initially shall be from the membership of that Study Commission. Vacancies may be filled by the appointing authority. (1955, c. 1197, s. 1; 1957, c. 831, s. 1.)

§ 143-347. **Commission to advise State Board of Health.**—It shall be the duty of the Commission to advise the State Board of Health concerning all aspects of the salt marsh mosquito problem in North Carolina. (1955, c. 1197, s. 2; 1957, c. 831, s. 2.)

Chapter 146.

State Lands.

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Article 12.

Sale of Lands.

Sec.

146-102. Locating and mapping lands owned by State Board of Education.

SUBCHAPTER III. ACQUISITION AND DISPOSITION OF REAL PROPERTY BY THE STATE.

Article 13.

Acquisitions.

Sec.

146-103. All acquisitions to be made by Department of Administration.

- Sec.
 146-104. Agency must file statement of needs; Department must investigate.
 146-105. Procedure for purchase or condemnation.
 146-106. Leases and rentals.
 146-107. Donations and devises to State.

**Article 14.
 Dispositions.**

- 146-108. All sales, leases, and rentals to be made by Department of Administration.

- Sec.
 146-109. Agency must file application with Department; Department must investigate.
 146-110. Procedure for sale, lease, or rental.
 146-111. Transactions contrary to this subchapter voidable.
 146-112. Exceptions.
 146-113. Right of appeal to Governor and Council of State.

SUBCHAPTER I. ENTRIES AND GRANTS.

ARTICLE 1.

Lands Subject to Grant.

§ 146-1. Vacant lands; exceptions.

Editor's Note.—Session Laws 1957, c. 584, amending or adding §§ 113-29.1, 143-6, 143-145.1, 143-145.2, 143-146, 143-147, 146-103 through 146-113 and 147-39, provides in section 9 that “nothing in this act shall be construed as repealing in any manner G. S. 146-1.”

History of Section.—See *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Watercourses Navigable in Fact Are Navigable in Law.—The present North Carolina law as to navigable waters is that all watercourses are regarded as navigable in law that are navigable in fact. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Grant of Land under Navigable Waters Void in Absence of Specific Authority.—In the absence of specific authority from the legislature, the State at no time had the power to grant land under navigable waters and all of such grants are void. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

§ 146-4. Swamp lands defined.

Tract Held Not Swamp Land. — See *Resort Development Co. v. Parmele*, 235 N. C. 689, 71 S. E. (2d) 474 (1952)

§ 146-6. Land covered by water, for wharves.

Cited in *Gaither v. Albemarle Hospital*, 235 N. C. 431, 70 S. E. (2d) 680 (1952);

Governor Not Authorized to Agree to Boundary Line Over Land under Navigable Waters.—The Governor of North Carolina was without authority in 1927 to agree as to a private owner's boundary line over lands under navigable waters, as this section at the time prohibited the grant of or entry upon such lands. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Decrees in Torrens Proceeding Adjudging Ownership in Land under Navigable Water.—Insofar as a decree in a Torrens proceeding adjudged the plaintiff the owner in fee of shoal lands under navigable water, it transcended the power of the court under the law, and, therefore, is open to collateral attack. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Quoted in part in *Resort Development Co. v. Parmele*, 235 N. C. 689, 71 S. E. (2d) 474 (1952).

Cited in *Parmele v. Eaton*, 240 N. C. 539, 83 S. E. (2d) 93 (1954).

Quoted in *Parmele v. Eaton*, 240 N. C. 539, 83 S. E. (2d) 93 (1954).

Cited in *Jones v. Turlington*, 243 N. C. 681, 92 S. E. (2d) 75 (1956).

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

ARTICLE 12.

Sale of Lands.

§ 146-94. **Sale of swamp lands.**

Stated in *Parmele v. Eaton*, 240 N. C. 539, 83 S. E. (2d) 93 (1954).

§ 146-102. **Locating and mapping lands owned by State Board of Education.**—The State Board of Education is hereby authorized and empowered to expend, from the Literary Fund, a sum not exceeding ten thousand dollars (\$10,000.00) for each year of the next biennium for the purpose of employing such personnel and paying such incidental expenses as may be found by it to be necessary for the purpose of making complete studies of swamplands and other lands now owned by the State Board of Education and for the purpose of providing such surveys and other investigations as may be necessary to fully and adequately inform the State Board of Education as to the said lands in the various counties of the State. The purpose of said expenditures will be to enable the State Board of Education to build up complete and adequate files of information respecting the various tracts of swamplands and other lands now owned by the State Board of Education in any part of the State, and to protect the said lands against trespassers and wrongful action by others. (1955, c. 1215.)

SUBCHAPTER III. ACQUISITION AND DISPOSITION OF REAL PROPERTY BY THE STATE.

ARTICLE 13.

Acquisitions.

§ 146-103. **All acquisitions to be made by Department of Administration.**—Every acquisition of real property on behalf of the State or any State agency or institution, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State or, with respect to leases and rentals, by the agency designated by them to approve leases and rentals, any other statutory provision to the contrary notwithstanding. The term "real property" as used in this subchapter includes land, buildings, space in buildings, timber rights, and mineral rights or deposits. (1957, c. 584, s. 6.)

Editor's Note.—Section 9 of the act inserting this article provides that "nothing in any manner G. S. 146-1."

§ 146-104. **Agency must file statement of needs; Department must investigate.**—Any State agency or institution desiring to acquire real property, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency or institution; the availability of real property already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability of other real property, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency, its value, and the status of its title; and the availability of funds to pay

for real property if purchased, condemned, leased, or rented. (1957, c. 584, s. 6.)

§ 146-105. **Procedure for purchase or condemnation.**—(a) If, after investigation, the Department determines that it is in the best interest of the State that real property be purchased, the Department shall proceed to negotiate with the owners of the desired real property for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the real property and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and no conveyance shall be made to a particular agency or institution, or to the State for the use or benefit of a particular agency or institution.

(c) If negotiations for the purchase of the real property are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such real property by condemnation in the manner prescribed by chapter 40 of the General Statutes. Upon approval of the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. (1957, c. 584, s. 6.)

§ 146-106. **Leases and rentals.**—If, after investigation, the Department of Administration determines that it is in the best interest of the State that real property be leased or rented for the use of the State or of any State agency or institution, the Department shall proceed to negotiate with the owners for the lease or rental of such property. The Governor and Council of State may by resolution delegate to any State agency the duty of approving such classes of lease and rental transactions as the Governor and Council of State deem advisable to delegate. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State, or to the agency designated by them, for approval or disapproval. (1957, c. 584, s. 6.)

§ 146-107. **Donations and devises to State.**—No devise or donation of real property or any interest therein to the State or to any State agency or institution shall be effective to vest title to the said real property or any interest therein in the State or in any State agency or institution until the donation or devise is accepted by the Governor and Council of State. Upon acceptance by the Governor and Council of State, title to the said real property or interest therein shall immediately vest as of the time title would have vested but for the above requirement of acceptance by the Governor and Council of State. (1957, c. 584, s. 6.)

ARTICLE 14.

Dispositions.

§ 146-108. **All sales, leases, and rentals to be made by Department of Administration.**—Every sale, lease, or rental of real property, which term for purposes of this article shall include rights of way, easements, and other interests in property, owned by the State or by any State agency or institution shall be made by the Department of Administration and approved by the Governor and Council of State or, with respect to leases and rentals, by the agency designated by them to approve leases and rentals, any other statutory provision to the contrary notwithstanding. (1957, c. 584, s. 6.)

Editor's Note.—Section 9 of the act inserting this article provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ 146-109. **Agency must file application with Department; Department must investigate.**—Any State agency or institution desiring to sell, lease, or rent any real property owned by the State or by any State agency or institution shall file with the Department of Administration an application setting forth the facts relating to the proposed transaction, and shall furnish the Department with such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the proposed transaction, including particularly present and future State need for the property proposed to be conveyed, leased, or rented. (1957, c. 584, s. 6.)

§ 146-110. **Procedure for sale, lease, or rental.**—If, after investigation, the Department of Administration determines that it is in the best interest of the State that real property be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with procedures established by the Governor and Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. The Governor and Council of State may by resolution delegate to any State agency the duty of approving such classes of lease and rental transactions as the Governor and Council of State deem advisable to delegate. Every conveyance of real property owned by the State or by any State agency or institution shall be made and executed in the manner prescribed in §§ 143-147 through 143-150. (1957, c. 584, s. 6.)

§ 146-111. **Transactions contrary to this subchapter voidable.**—Any purchase, sale, condemnation, lease, or rental of real property by or on behalf of the State or any State agency or institution, made or entered into without the approval of the Governor and Council of State or, with respect to leases and rentals, the agency designated by them to approve leases and rentals, is voidable in the discretion of the Governor and Council of State. (1957, c. 584, s. 6.)

§ 146-112. **Exceptions.**—None of the provisions of this subchapter apply to the acquisition of highway rights of way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the State Highway Commission. (1957, c. 584, s. 6.)

§ 146-113. **Right of appeal to Governor and Council of State.**—The requesting agency or institution, in the event of disagreement with a decision of the Department regarding the acquisition or disposition of real property pursuant to the provisions of this subchapter, shall have the right of appeal to the Governor and Council of State. (1957, c. 584, s. 6.)

**Chapter 147.
State Officers.**

Article 3.

The Governor.

Sec.
147-11. Salary and expense allowance of Governor.
147-20. [Repealed.]

Article 3A.

Emergency War Powers of Governor.

147-33.1 to 147-33.7. [Expired.]

Article 4.

Secretary of State.

Sec.
147-46. [Repealed.]
147-47. [Repealed.]

Article 5.

Auditor.

147-58. Duties and authority of State Auditor.

ARTICLE 1.

Classification and General Provisions.

§ 147-4. **Executive officers; election; term; induction into office.**—The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both Houses of the General Assembly. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law. On the first Thursday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two Houses of the General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor elected not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some Justice of the Supreme Court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article III, section 1, of the Constitution shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C. S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2.)

Editor's Note. — The 1953 amendment inserted Commissioner of Agriculture, Commissioner of Insurance and Commissioner of Labor in the first sentence and deleted the reference to such officers formerly appearing in the last sentence. Prior to the amendment the Governor took the

prescribed oath on the first Tuesday after the convening of the General Assembly, and in the case of his absence at such time he could thereafter take the oath before a judge of the superior court as well as before a justice of the Supreme Court.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-8. **Mileage allowance to officers or employees using public**

or private automobiles.—Where it is provided by any law affecting the State of North Carolina, or any subdivision thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any subdivision thereof or by any such employee or officer of the State or any subdivision thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed seven cents per mile. (1931, c. 382, s. 1; 1953, c. 675, s. 20.)

Editor's Note.—

The 1953 amendment substituted "seven" for "six" in the last line.

§ 147-9. Unlawful to pay more than allowance.—It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of seven cents per mile as set out in § 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2; 1953, c. 675, s. 21.)

Editor's Note.—

The 1953 amendment substituted "seven" for "six" in line six.

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor.—The salary of the Governor shall be fifteen thousand dollars (\$15,000.00) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars (\$5,000.00) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1.)

Editor's Note.—

The 1953 amendment increased the Governor's annual expense allowance from

\$600.00 to \$5,000.00 from the time he took the oath of office and began serving the term for which he was elected in 1952.

§ 147-12. Powers and duties of Governor.

7. He shall annually appoint eight members to the Board of Directors of the North Carolina Railroad, who shall serve for one year until the next annual meeting of stockholders held for the purpose of electing or naming directors.

8. In carrying out his ex officio duties, he is authorized to designate his personal representative to attend meetings and to act in his behalf as he directs.

9. He is authorized to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, added the above subsections at the end of this section. As the

rest of the section was not changed it is not set out.

§ 147-15. **Salary of private secretary; fees.**—The salary of the private secretary to the Governor shall be fixed by the Governor, with the approval of the Advisory Budget Commission, and shall not be in excess of five thousand dollars (\$5,000.00) per annum, and when so fixed shall be effective from and after January fourth, one thousand nine hundred and forty-five. This salary shall be full compensation for all services performed by the secretary. The secretary shall charge and collect the following fees, to be paid by the persons for whom the services are rendered, namely: For the commission of a judge, solicitor, Senator in Congress, Representative in Congress, or a place of profit, two dollars and fifty cents each; for a testimonial, one dollar; for the commission of a notary public, five dollars; for affixing the seal to a grant, twenty-five cents; for affixing the great seal of the State to State bonds, ten cents. He shall cover the whole of the fees collected into the State treasury. (R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; Pr. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C. S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8.)

Editor's Note.—

The 1953 amendment struck out the former last sentence of this section which provided: "He shall be ex officio secretary of the Board of Internal Improvements, but shall receive no compensation for such service."

The first and second 1955 amendments,

effective July 1, 1955, struck out "notary public" formerly appearing after "Congress" in line nine. The second 1955 amendment inserted, immediately following the words "one dollar" in line ten, the words "for the commission of a notary public, five dollars;"

§ 147-20: Repealed by Session Laws 1955, c. 867, s. 13.

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

§ 147-32. **Compensation for widows of Governors.**—All widows of Governors of the State of North Carolina, who shall make written request therefor to the Director of the Budget, shall be paid the sum of three thousand dollars (\$3,000.00) per annum, in equal monthly installments, out of the State treasury upon warrants duly drawn thereon. Provided, that such compensation shall terminate upon the subsequent remarriage of such person. (1937, c. 416; 1947, c. 897, ss. 1, 2; 1955, c. 1314.)

Editor's Note.—

The 1955 amendment, effective July 1, 1955, rewrote this section.

§ 147-33. **Compensation of Lieutenant Governor.**—As authorized by article III, section eleven, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at two thousand and one hundred dollars (\$2,100.00) per year, which amount shall be in addition to the compensation for the Lieutenant Governor as the presiding officer of the Senate, provided by article II, section twenty-eight, of the Constitution of North Carolina. Whenever the Lieutenant Governor shall attend any meeting of State officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. From and after the time that the Lieutenant Governor shall take the oath of office and begin serving the term for which he was elected in 1952, he shall be paid an annual expense allowance in the sum of one thousand dollars (\$1,000.00). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1.)

Editor's Note.—

The 1953 amendment added the last sentence.

ARTICLE 3A.

Emergency War Powers of Governor.

§§ 147-33.1 to 147-33.7: Expired by limitation March 1, 1957.

ARTICLE 4.

Secretary of State.

§ 147-35. **Salary of Secretary of State.**—The salary of the Secretary of State shall be twelve thousand dollars (\$12,000.00) a year, payable monthly. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the salary to \$10,000.00 from the time that the Secretary took the oath of office and began serving the term for which he was elected

in 1952.

The 1957 amendment increased the salary to \$12,000.00 from the time the Secretary took the oath of office and began serving the term for which he was elected in 1956.

§ 147-39. **Custodian of statutes, records, deeds, etc.**—The Secretary of State is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. Every deed, conveyance, or other instrument whereby the State or any State agency or institution has acquired title to any real property and which is deposited with the Secretary of State shall be filed by him, and indexed according to the county or counties wherein the real property is situated and the name or names of the grantor or grantors and of the grantee; and the real property shall be briefly described in the index. (R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; Code, s. 3337; Rev., s. 5347; C. S., s. 7656; 1957, c. 584, s. 5.)

Editor's Note.—The 1957 amendment added the second sentence. Section 9 of the amendatory act provides that “noth-

ing in this act shall be construed as repealing in any manner G. S. 146-1.”

§ 147-43.3. **Number to be printed.**—There shall not be printed more than twenty-five hundred (2500) volumes of Session Laws, which are to be half-bound; six hundred (600) volumes of House Journals and six hundred (600) volumes of Senate Journals of each Session of the General Assembly. (1929, c. 85, s. 1; 1941, c. 379, s. 6; 1943, c. 48, s. 5; 1955, c. 978, s. 1.)

Editor's Note.—The 1955 amendment reduced the number of volumes of Sessions Laws to be printed.

§ 147-45. **Distribution of copies of Session Laws, and other State publications by Secretary of State.**

The Governor may delete from the above list, in his discretion, any government official, department, agency or educational institution. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1955, c. 989.)

Editor's Note.—Session Laws 1953, c. 245 amended this section by increasing from 4 to 6 the number of copies of Session Laws and Supreme Court Reports distributed to the Industrial Commission. And Session Laws 1953, c. 266, increased from 3 to 6 the number of copies of Supreme Court Reports distributed to the

Utilities Commission.

Session Laws 1955, c. 989, added the above paragraph at the end of this section. This is the only part of the section set out though other changes were made as shown in this note.

Session Laws 1955, c. 505, s. 6, effective July 1, 1956, deleted the North Carolina

Library Commission from the list of agencies to whom copies of Session Laws, Senate and House Journals and Supreme Court Reports are distributed, and increased the number of Session Laws to be distributed to the North Carolina State Library from 20 to 22 and the number of House and Senate Journals from 20 to 22. And Session Laws 1955, c. 990, deleted

from the list the following: Sheriffs of the counties, registrars of deeds of the counties, and chairmen of the boards of county commissioners.

Session Laws 1957, cc. 1061, 1400, increased to 8 the number of copies of Session Laws and Supreme Court Reports distributed to the Utilities Commission and the Attorney General, respectively.

§ 147-46: Repealed by Session Laws 1955, c. 987.

§ 147-47: Repealed by Session Laws 1955, c. 748.

§ 147-48. **Sale of Laws and Journals and Supreme Court Reports.**

—Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding ten per centum (10%) over the costs for half-bound copies of the Session Laws; and not exceeding ten per centum (10%) in advance of the costs for copies of the Journals.

(1955, c. 978, s. 2.)

Editor's Note.—The 1955 amendment changed the sales price for the Session Laws. As only the first paragraph was

changed the second paragraph is not set out.

§ 147-50. **Publications of State officials and department heads furnished to certain institutions, agencies, etc.**

Editor's Note.—Session Laws 1955, chapter 505, s. 7, effective July 1, 1956, added the North Carolina State Library to the agencies listed as being entitled to re-

ceive State publications described in this section and directed that it be furnished five copies.

ARTICLE 5.

Auditor.

§ 147-55. **Salary of Auditor.**—The salary of the State Auditor shall be twelve thousand dollars (\$12,000.00) a year, payable monthly. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; 1907, c. 994, s. 2; 1911, c. 108, s. 1; 1911, c. 136, s. 1; 1913, c. 172; 1919, c. 149; 1919, c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the salary to \$10,000.00 from the time that the Auditor took the oath of office and began serving the term for which he was elected in 1952.

The 1957 amendment increased the salary to \$12,000.00 from the time the Auditor took the oath of office and began serving the term for which he was elected in 1956.

§ 147-58. **Duties and authority of State Auditor.**—The duties and authority of the State Auditor shall be as follows:

1. The State Auditor shall except as provided in G. S. 143-25 be independent of any fiscal control exercised by the Director of the Budget or the Budget Bureau, and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the duties and responsibilities of his office.

2. The State Auditor shall be responsible for conducting a thorough post audit of the receipts, expenditures and fiscal transactions of each and every State agency which in any manner handles State funds; "State agency" is hereby de-

fined to mean any State department, institution, board, commission, commissioner, official or officer of the State.

3. The Auditor shall be responsible for conducting a complete and detailed audit of the fiscal transactions of each and every State agency, except his own office, at least once each year, such audit to cover the fiscal transactions entered into since the period covered by the previous annual audit of such State agency.

4. The Auditor is authorized to conduct special audits, in addition to the annual audits, of the accounts of every State agency whenever in his discretion he determines that such is necessary.

5. The Auditor is authorized to audit at such times as he deems necessary the records of all performances staged on State property under direction of any State agency or wherein any State agency shares in a percentage of gross admission receipts except athletic funds, and the accounts of any private or semi-private agency receiving State aid.

6. The Auditor shall make special investigations upon written request from the Advisory Budget Commission, or upon written request from the Governor.

7. Upon completion of each audit and investigation, the Auditor shall report his findings and recommendations to the Advisory Budget Commission, furnishing a copy of such report to the Governor, a copy to the head of the agency to which the report pertains, and copies to such other persons as he may deem advisable.

8. If the Auditor shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds is contemplated but not consummated, in either case, he shall forthwith report the facts to the Governor with a copy of such report to the Advisory Budget Commission.

9. The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions or recommendations he deems desirable concerning any aspect of such agency's activities and operations.

10. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

11. The Auditor shall require, when deemed necessary, all persons who have received moneys or securities, or have had the disposition or management of any property of the State, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

12. The Auditor shall require all persons who have received any moneys belonging to the State, and who have not accounted therefor, to settle their accounts; upon failure of any person to settle accounts, the Auditor is authorized and directed to call the matter to the attention of the Attorney General and furnish such information as he may direct.

13. The Auditor shall transmit to the Advisory Budget Commission annually a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year, as revealed by his audits and investigations as herein prescribed, with copies of such statements furnished to the Governor and to such other persons as may be deemed advisable.

14. The Auditor shall examine as often as may be deemed necessary the accounts of the debits and credits in the bank book kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the Advisory Budget Commission, with copy of such report to the Governor.

15. The Auditor may examine the accounts and records of any bank or trust company relating to transactions with the State Treasurer, or with any State de-

partment, institution, board, commission, officer, or other agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

16. The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence, files, records, money, investments, and property of any State department, institution, board, commission, officer, or other agency as it relates to the handling of State funds. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request. Should any officer or employee fail to perform the requirements of this section, he shall be guilty of a misdemeanor. The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as it relates to transactions with any department, board, officer, commission, institution, or other agency of the State; provided that such examination shall be limited to those things which might relate to irregularities on the part of any State agency.

17. The Auditor may, as often as he deems advisable, make a detailed examination of the bookkeeping and accounting systems in use in the various State agencies and make suggestions and recommendations to the agencies for improvements, with a copy of such recommendations transmitted to the Budget Bureau. Any State department, board, commission, institution or agency which plans to change its accounting system must first submit its plan to the Director of the Budget and obtain approval in accordance with provisions of G. S. 143-22; prior to approval of any change in accounting systems, the Director of the Budget shall submit the proposed changes to the Auditor and receive and consider the Auditor's advice and recommendations with respect to such changes.

18. The Auditor, or his deputy, while conducting an examination authorized by these sections, shall have the power to administer oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of such person for the purpose of such an examination. If any person shall willfully swear falsely in such an examination, he shall be guilty of perjury.

19. The Auditor may appoint a deputy auditor to perform any duties pertaining to the office, and he may appoint a deputy auditor for any specific purpose; provided that any deputy so appointed shall not be authorized to transfer authority to any other person.

20. The Auditor shall charge and collect from each of the following agencies the actual cost of audit of such agency: North Carolina Rural Rehabilitation Corporation, State Board of Barber Examiners, State Board of Certified Public Accountant Examiners, State Board of Cosmetic Art Examiners, State Board of Registration for Professional Engineers and Land Surveyors, North Carolina Board of Nurse Registration and Nursing Education, North Carolina Board of Opticians, North Carolina Milk Commission, the State Banking Commission, State Highway Commission, Law Enforcement Officers Benefit and Retirement Fund, Board of Paroles, State Probation Commission, North Carolina Wildlife Resources Commission, Atlantic and North Carolina Railroad, Department of Motor Vehicles, Burial Association Commission, North Carolina Public Employees Social Security Agency, and any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund. Costs collected under this subsection shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such cost. Amounts collected under this subsection shall be deposited in the general fund as nontax revenue.

21. Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of pre-audit of State agency expenditures, issuance of

warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Budget Bureau. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Budget Bureau, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Budget Bureau. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Budget Bureau the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Budget Bureau under the provisions of this section.

22. Nothing under this article shall be construed to affect the right of the Director of the Budget to require information from State agencies under the provisions of article 1, chapter 143 of the General Statutes. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 390.)

Editor's Note.—

The 1955 amendment, effective July 1, 1955, rewrote this section as changed by the 1953 amendment.

The 1957 amendment rewrote subsec-

tion 20, and by virtue of Session Laws 1957, c. 65, § 11, "State Highway Commission" was substituted therein for "State Highway and Public Works Commission."

ARTICLE 6.

Treasurer.

§ 147-65. **Salary of State Treasurer.**—The salary of the State Treasurer shall be twelve thousand dollars (\$12,000.00) a year, payable monthly. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; 1907, c. 994, s. 2; 1917, c. 161; 1919, c. 233; 1919, c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the salary to \$10,000.00 from the time that the Treasurer took the oath of office and began serving the term for which he was elected in 1952.

The 1957 amendment increased the salary to \$12,000.00 from the time the Treasurer took the oath of office and began serving the term for which he was elected in 1956.

§ 147-68. **To receive and disburse moneys; to make reports.**—1. It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer by the State Disbursing Officer or the State Auditor or the State Treasurer in the lawful exercise of their duties and responsibilities.

2. No moneys shall be paid out of the treasury except on warrant of the State Disbursing Officer or the State Auditor or the State Treasurer, and unless there is a legislative appropriation or authority to pay the same.

3. It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

4. The Treasurer shall report to the Governor and Advisory Budget Commission annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

5. The State Treasurer shall except as provided in G. S. 143-25 be inde-

pendent of any fiscal control exercised by the Director of the Budget or the Budget Bureau and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C. S., s. 7682; 1955, c. 577.)

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

§ 147-69.1. **Deposit or investment of surplus State funds; reports of State Treasurer.**—It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State, at any other time, to carefully analyze the amount of cash in the general fund of the State and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State, and to determine in his opinion when the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of State, are hereby authorized and empowered to deposit such excess funds at interest with any official depository of the State upon such terms as may be authorized by applicable laws of the United States and the State of North Carolina, or to invest such excess funds in bonds or certificates of indebtedness or treasury bills of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in certificates of deposit issued by banks or official depositories within the State of North Carolina yielding a return at rates not less than U. S. treasury notes and certificates of indebtedness of comparable maturities. Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by those banks or official depositories within the State of North Carolina, whose ratio of total loans to total deposits is equal to or exceeds thirty-nine per cent (39%) on the date of application for new deposits or renewal of outstanding certificates of deposit, yielding a return at the maximum rate permitted by statutes or regulations: Provided further, however, that if the rates available on United States treasury bonds, notes, certificates of indebtedness or bills exceed the rates banks are permitted to pay by as much as one-half of one per cent ($\frac{1}{2}$ of 1%), the funds invested with banks on certificates of deposit shall be withdrawn and invested otherwise as provided by this section; provided further that any such bank shall, on its application for such funds certify that the sum applied for is needed to make loans to farmers or domestic industries and will not be invested by the applicant in U. S. treasury bonds, notes, certificates of indebtedness or bills. The said funds shall be so invested that in the judgment of the Governor and State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund.

(1957, c. 1401.)

Editor's Note.—

The 1957 amendment inserted in the first paragraph the third sentence and provisos

thereto. As only the first paragraph was changed the rest of the section is not set out.

Chapter 148.
State Prison System.

Article 1.

Administration by Director of Prisons.

- Sec.
148-1. Prison Department created; State Prison Commission; Director of Prisons.
148-2. Prison moneys and earnings.
148-3. Prison property.
148-4. Control and custody of prisoners.
148-5. Director to manage prison property.
148-8. Automobile license tags to be manufactured by Department.
148-9. State Board of Public Welfare to supervise prison.
148-10. State Board of Health to supervise sanitary and health conditions of prisoners.

Article 2.

Prison Regulations.

- 148-11. Authority to make regulations.
148-12. Classification of prisoners.
148-25. Director to investigate death of convicts.

Article 3.

Labor of Prisoners.

- 148-26. State policy on employment of prisoners.
148-32. Prisoners may be sentenced to work on city and county properties; Department may provide prisoners for county.
148-33.1. Sentencing, quartering, and control of prisoners with work-day release privileges.
148-34, 148-35. [Repealed.]
148-36. Director of Prisons to control prison camps.
148-38, 148-39. [Repealed.]
148-41. Recapture of escaping prisoners; reward.
148-45. Escaping or assisting escape from the State prison system.
148-48. Parole powers of Board of Paroles unaffected.

Article 3A.

Prison Camp for Youthful and First Term Offenders.

- 148-49.6. Other prison camps for youthful and first term offenders.

Article 4.

Paroles.

- 148-50, 148-51. [Repealed.]

Sec.

- 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.
148-52. Appointment of Board of Paroles; members; duties; quorum; salary.
148-52.1. Prohibited political activities of member or employee of Board of Paroles.
148-53. Investigators and investigations of cases of prisoners.
148-54.1. [Repealed.]
148-55. Administrative assistant; field supervisors; clerical and secretarial help, etc., for Board of Paroles; salaries and expenses.
148-56. Assistance in supervision of parolees and preparation of case histories.
148-57. Rules and regulations for parole consideration.
148-58. Time of eligibility of prisoners to have cases considered.
148-58.1. Limitations on discharge from parole; effect of discharge; relief from further reports; permission to leave State or county.
148-59. Duties of clerks of all courts as to commitments; statements filed with Board of Paroles.
148-60.1. Allowances for paroled prisoner.
148-61.1. Revocation of parole by Board; conditional or temporary revocation.
148-64. Cooperation of prison and other officials; information to be furnished.
148-65. [Repealed.]

Article 5.

Farming Out Convicts.

- 148-67. Hiring to cities and towns and State Board of Agriculture.

Article 5A.

Prison Labor for Farm Work.

- 148-70.1 to 148-70.7. [Repealed.]

Article 7.

Consolidated Records Section—Prison Department.

- 148-74. Records Section established.
148-76. Duty of Records Section.
148-80. Seal of Records Section; certification of records.

Article 9.

Prison Advisory Council.

- 148-85 to 148-88. [Repealed.]

ARTICLE 1.

Administration by Director of Prisons.

§ 148-1. **Prison Department created; State Prison Commission; Director of Prisons.**—(a) A State Prison Department is hereby created. All powers and duties respecting the control and management of the State prison system heretofore vested in and imposed upon the State Highway and Public Works Commission are hereby transferred to the State Prison Department. The governing authorities of the Department shall include a State Prison Commission and a Director of Prisons.

(b) The State Prison Commission shall consist of seven members appointed by the Governor, who shall designate one member to serve as chairman. Members of this Commission shall be deemed "commissioners for special purposes" within the meaning of the language of article 14, § 7, of the Constitution of this State. The Governor shall, on 1 July 1957, appoint four members to serve for four years and three members to serve for two years. Subsequent appointments to this Commission shall be made for a term of four years, except those made to fill out an unexpired term in case of the death, resignation, or removal of a member. The Governor may remove any member for cause. Prison commissioners shall each receive such per diem and necessary traveling expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally. Members who are salaried officials or employees of the State shall not receive any per diem but shall receive their regular salary without deduction for loss of time while engaged in their duties as members of this Commission. The Commission shall meet at least once in each ninety days, and may hold special meetings at any time and place within the State at the call of its chairman, to formulate general prison policies, to adopt prison rules and regulations, to approve budgetary proposals of the State Prison Department, and to advise with the Director of Prisons on matters pertaining to prison administration. The Commission shall keep minutes of all its meetings.

(c) The executive head of the State Prison Department shall be a Director of Prisons appointed by the State Prison Commission, subject to the approval of the Governor. A Director shall be appointed on July 1, 1957, or as soon thereafter as practicable, for a term expiring July 1, 1962. Subsequent appointments to this office shall be made for a term of four years, except those made to fill out an unexpired term in case of the death, resignation, or removal of a Director. The Director shall administer the affairs of the State Prison Department subject to the duly adopted policies and rules and regulations of the Commission. The Commission may remove the Director, with the consent and approval of the Governor, at any time after notice and hearing for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The Director shall be responsible for the appointment, promotion, demotion, and discharge of other prison system personnel.

(d) The salary of the Director of Prisons shall be set by the Governor subject to the approval of the Advisory Budget Commission. The compensation and duties of other prison system personnel shall be determined by the Director of Prisons in conformity with the provisions of the Executive Budget Act and the State Personnel Act.

(e) Neither the Director of Prisons nor any other person employed in a supervisory capacity in the State prison system shall be permitted to use his position to influence elections or the political action of any person. (1901, c. 472, s. 3; Rev., s. 5388; C. S., s. 7703; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1955, c. 238, s. 1; 1957, c. 349, s. 1.)

Editor's Note.—

Public Laws 1933, c. 172, created the State Highway and Public Works Commission, which formerly controlled and managed the State prison system as well as the State highway system.

The 1955 amendment rewrote this section so as to create the office of Director of Prisons and transfer to such Director the administrative and executive powers formerly vested in the State Highway and Public Works Commission.

The 1957 amendment rewrote subsections (a), (b) and (c), creating the State Prison Department and the State Prison Commission and relating to the Director of Prisons.

§ 148-2. Prison moneys and earnings.—(a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the State Prison Commission, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(b) All revenues from the sale of articles and commodities manufactured or produced by prison enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated "Prison Enterprises Fund." The Prison Enterprises Fund shall be used for capital and operating expenditures, including salaries and wages of supervisory personnel, necessary to develop and operate prison industrial and forestry enterprises to provide diversified employment for prisoners. When, in the opinion of the Governor, the Prison Enterprises Fund has reached a sum in excess of requirements for these purposes, the excess shall be used for other purposes within the State prison system or shall be transferred to the general fund as the Governor may direct. (1901, c. 472, s. 7; Rev., s. 5389; C. S., s. 7704; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 2.)

Editor's Note. — The 1957 amendment rewrote this section.

§ 148-3. Prison property.—(a) The State Prison Department shall, subject to the provisions of G. S. 143-341, have control and custody of all unexpended surplus highway funds previously allocated for prison purposes and all property of every kind and description now used by or considered a part of units of the State prison system, except vehicles used on a rental basis. The property coming within the provisions of this section shall be identified and agreed upon by the executive heads of the highway and prison systems, or by their duly authorized representatives. The Governor shall have final authority to decide whether or not particular property shall be transferred to the Prison Department in event the executive heads of the two systems are unable to agree.

(b) Property, both real and personal, deemed by the Prison Department to be necessary or convenient in the operation of the State prison system may, subject to the provisions of G. S. 143-341, be acquired by gift, devise, purchase, or lease. The Prison Department may, subject to the provisions of G. S. 143-341, dispose of any prison property, either real or personal, or any interest or estate therein. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C. S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1957, c. 349, s. 3.)

Editor's Note.—
The 1957 amendment rewrote this section. Section 12 of the amendatory act pro-

vided that no funds for the support of the Prison Department shall come from the general fund.

§ 148-4. Control and custody of prisoners.—The Director of Prisons shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Prison Department, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Director of Prisons or his authorized representative, who shall designate the places of con-

finement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Director shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly provided for management of convicts and prison property by the State Highway and

Public Works Commission.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-5. Director to manage prison property.—The Director of Prisons shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly provided for control over prison property by

the State Highway and Public Works Commission.

§ 148-6. Custody, employment and hiring out of convicts.—The State Prison Department shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Department shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Department: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C. S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—

The 1957 amendment substituted "State

Prison Department" for "State Highway and Public Works Commission."

§ 148-7. Inspection of mines.—The State Prison Department is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which State convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for

"State Highway and Public Works Commission."

§ 148-8. Automobile license tags to be manufactured by Department.—The State Prison Department is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Prison Department for the State automobile license tag requirements from year to year.

The price to be paid to the State Prison Department for such tags shall be fixed and agreed upon by the Governor, the State Prison Department, and the

Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment “State Highway and Public Works Commission” substituted “State Prison Department” for “State Highway and Public Works Commission.”

§ 148-9. **State Board of Public Welfare to supervise prison.**—The State Board of Public Welfare shall exercise a supervision over the State prison as contemplated by the Constitution, under proper rules and regulations, to be prescribed by the Governor. (1925, c. 163; 1933, c. 172; 1957, c. 100, s. 1.)

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

§ 148-10. **State Board of Health to supervise sanitary and health conditions of prisoners.**—The State Board of Health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Prison Department, and shall make periodic examinations of the same and report to the State Prison Department the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C. S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted “State Prison Department” for “Division of Prisons” and for “State Highway and Public Works Commission.”

ARTICLE 2.

Prison Regulations.

§ 148-11. **Authority to make regulations.**—The Director shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the State Prison Commission. The Director shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly authorized the adoption of regulations by the State Highway and Public Works Commission. The 1957 amendment rewrote the first sentence.

§ 148-12. **Classification of prisoners.**—The rules and regulations for the government of the State prison system shall provide for initial classification and periodic reclassification of prisoners, and for classification and conduct records to be kept on all prisoners held in the system. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5.)

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

§ 148-13. **Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.**—The rules and regulations for the government of the State prison system may contain provisions relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their discharge

or parole. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6.)

Editor's Note.—The 1955 amendment rewrote this section. **Cited in** *In re Swink*, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

§ 148-19. Prisoners examined for assignment to work.—Each prisoner committed to the charge of the State Prison Department shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to labor and the work he is required to do shall be dependent upon the report of said physician as to his physical and mental capacity. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Highway and Public Works" for "State Prison Department" and "Commission."

§ 148-20. Whipping or flogging prisoners.—It is unlawful for the Director of Prisons to whip or flog, or have whipped or flogged, any prisoner committed to his charge until twenty-four hours after the report of the offense or disobedience, and only then in the presence of the prison physician or prison chaplain; and no prisoner other than those of the third class as defined in this article shall be whipped or flogged at any time. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" in line two and "his" for "their" in line three.

§ 148-22. Recreation and instruction of prisoners.—The Director of Prisons shall arrange certain forms of recreation for the prisoners, and arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, to attend lectures, and to take part in other forms of amusement that may be provided by the Director. The Director shall organize classes among the prisoners so that those who desire may receive instruction in various lines of educational pursuits. He shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes; such services, however, shall be voluntary on the part of the prisoner. This section shall apply to the State prison and to the State farms and State camps. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" at the beginning of the first sentence and "Director" for "Commission" at the end of the first sentence. It also substituted "Director" for "Commission" at the beginning of the second sentence and "He" for "They" at the beginning of the third sentence.

§ 148-23. Prison employees not to use intoxicants or profanity.—No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the State Prison Department, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of intoxicating liquors, shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Prison Department who curses a prisoner under his charge shall at once cease to be an employee and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C. S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Highway and Public Works Commission" for "State Prison Department" and "mission."

§ 148-24. **Religious services; Sunday school.**—The Director of Prisons shall make such arrangements as are necessary to hold religious services for the prisoners in the State prison and in the State farms and camps, on Sunday and at such other times as may be deemed wise. Attendance of the prisoners at such religious services shall be voluntary. The Director shall if possible secure the visits of some minister at the hospital to administer to the spiritual wants of the sick. In order to provide religious worship for the prisoners confined in the State prison, known as the Caledonia Farm, the Director shall employ a resident minister of the gospel and provide for his residence and support. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; 1925, c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Com- mission" in the first sentence and "Director" for "Commission" in the third and fourth sentences.

§ 148-25. **Director to investigate death of convicts.**—The Director of Prisons, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Director may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Com- mission" and "Director" for "Commission."

ARTICLE 3.

Labor of Prisoners.

§ 148-26. **State policy on employment of prisoners.**—(a) It is declared to be the public policy of this State to provide diversified employment for all able-bodied inmates of the State prison system in work for the public benefit that will reduce the cost of their keep while enabling them to acquire or retain skills and work habits needed to secure honest employment after their release.

(b) As many of the male prisoners available and fit for road work shall be employed in the maintenance and construction of the public roads of the State as can be used for this purpose. The number of prisoners to be kept available for work on the public roads and the amount to be paid for this labor supply shall be agreed upon by the governing authorities of the State's highway and prison systems far enough in advance of each budget period to permit proper provisions to be made in the requests for appropriations submitted by each agency. The Governor shall decide these questions in event of disagreement between the two agencies.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of State-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by State-supported institutions or activities.

(e) The State Prison Department may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Prison Department may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Director of the

Department of Conservation and Development as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Prison Department. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5.)

Editor's Note.—

The 1957 amendment rewrote this section.

Applied in *State v. Cooper*, 238 N. C. 241, 77 S. E. (2d) 695 (1953).

§ 148-27. Women prisoners; limitations on labor of prisoners.—The State Prison Department may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the State Prison Department whose term of imprisonment is less than six months, or who is under sixteen years of age. (1931, c. 145, s. 32; 1933, c. 39; 1933, c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409; 1953, c. 1230; 1957, c. 349, s. 10.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, substituted "sixteen" for "eighteen" near the end of the second sentence.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

Quarters for Women Provided at Central Prison.—In sentencing a feme defendant convicted of a misdemeanor, the court

may designate the place of imprisonment as the quarters provided by the State Highway and Public Works Commission for women prisoners, and upon a finding that such quarters are maintained in the central prison at Raleigh, order defendant's imprisonment in such quarters at that place. *State v. Cagle*, 241 N. C. 134, 84 S. E. (2d) 649 (1954).

§ 148-28. Sentencing of prisoners to central prison.

Only Felons Sentenced to Central Prison.—A defendant may be sentenced to the central prison only upon conviction of a felony. *State v. Cagle*, 241 N. C. 134, 84 S. E. (2d) 649 (1954).

Possession of non-taxpaid whiskey, possession of such whiskey for the purpose of sale, and the selling of such whis-

key, are misdemeanors, and sentence of defendant, upon conviction, to be confined in the State's prison is not sanctioned by law, and the cause must be remanded for proper sentence. *State v. Floyd*, 246 N. C. 434, 98 S. E. (2d) 478 (1957).

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.—The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the Auditor as true copies of those on file in his office. The State is not liable for the expenses of maintaining convicts until they have been received by the State Prison Department authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.— The 1957 amendment substituted "State Highway and Public Works Commission."

§ 148-30. Sentencing to public roads.—In all cases not provided for in §§ 148-28 and 148-32, the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Prison Department, and the clerks of the several courts in which such sen-

tences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the Department as he may be advised by them is the proper person to receive such notice. Whereupon, the Department shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the Department shall designate: Provided, however, the Department shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male person shall be so assigned whose term of imprisonment is less than thirty days. (1933, c. 172, s. 8; 1943, c. 409; 1957, c. 349, s. 10.)

Editor's Note.—

The 1957 amendment substituted "State and Public Works Commission."

Prison Department" for "State Highway

§ 148-32. Prisoners may be sentenced to work on city and county properties; Department may provide prisoners for county.—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the State Prison Department, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The Department may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the Department. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243; 1957, c. 349, s. 10.)

Editor's Note.—Prior to the 1957 amendment this section referred to the former State Highway and Public Works Com-

mission and the former Division of Prisons.

§ 148-33. Prison labor furnished other State agencies.—The State Prison Department may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. (1933, c. 172, s. 30; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for

"State Highway and Public Works Commission."

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-day release privileges.—(a) Whenever a person is sentenced to a term of imprisonment for commission of a misdemeanor, the presiding judge may, if the defendant has not previously served a term or terms or parts thereof totaling more than six months in jail or other prison, recommend to the governing body of the State prison system that the defendant be granted the option of serving the sentence imposed under the work release plan as hereinafter authorized.

(b) The governing body of the State prison system is authorized and directed

to establish a work release plan for those serving sentences for misdemeanors under its jurisdiction. Under the plan, a prisoner may be released from actual custody during the time necessary to proceed to the place of employment, perform his work, and return to quarters designated by the prison authorities.

(c) The prison authorities shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work release privileges apart from prisoners serving regular sentences. In areas where facilities suitable for this purpose are not available within the State prison system when needed, the prison authorities may contract with the proper authorities of political subdivisions of this State for quartering in suitable local confinement facilities prisoners with work release privileges.

(d) No prisoner shall be eligible to serve his term of imprisonment under the work release plan except upon recommendation of the presiding judge set forth in the judgment of imprisonment and unless the prisoner requests in writing that the prison authorities grant this privilege and further agrees in writing that upon violation of the conditions prescribed by prison rules and regulations for the administration of the work release privilege that such privilege shall be withdrawn and the prisoner transferred to the general prison population to serve out the remainder of his sentence. The governing body of the State prison system is authorized to adopt reasonable and necessary rules and regulations for the administration of the work release plan, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Prison Department their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Prison Department shall cause to be paid through the county department of public welfare such part of the balance as is needed for the support of the prisoner's dependents. Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The State Board of Public Welfare is authorized to promulgate uniform rules and regulations governing the duties of county welfare departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence. (1957, c. 540.)

§§ 148-34, 148-35: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-36. **Director of Prisons to control prison camps.**—All prison camps established or acquired by the State Prison Department shall be under the administrative control and direction of the Director of Prisons, and operated under rules and regulations adopted and approved as provided in G. S. 148-11. Subject to such rules and regulations, the Director shall establish grades for prisoners according to conduct, and so far as possible introduce the honor system, and may transfer honor prisoners to honor camps. Prisoners may be transferred from one district camp to another, and the Director of Prisons may where it is deemed practical to do so establish separate camps for white prisoners and colored prisoners. In each district camp, quarters shall be pro-

vided for the care and maintenance of such prisoners as may be sick or in need of special care. For each camp, a physician may be employed for such portion of his time as may be necessary, and prisoners may be used as attendants or nurses. Prisoners classified as having special qualifications to perform labor other than labor upon the public roads may be assigned to such special duties as the Director may determine. Personnel for such camps shall be employed by the Director of Prisons as provided in G. S. 148-1. (1931, c. 145, s. 28; 1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4; 1933, c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10.)

Editor's Note.—The 1955 amendment "Prison Department" for "State Highway and Public Works Commission."

The 1957 amendment substituted "State

§ 148-37. Additional prison camps authorized.—The State Prison Department may establish such additional camps as are necessary for use by the Department, such camps to be either of a permanent type of construction, or of temporary or movable type as the Department may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the State as to render their employment most economical and profitable, the Department to be the sole judges of the type and character of such buildings without the control of any other department. For this purpose, the Department may purchase or lease camp sites and suitable lands adjacent thereto and erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the Budget Bureau for this purpose. (1933, c. 172, s. 19; 1957, c. 349, s. 10.)

Editor's Note.—Prior to the 1957 amendment this section referred to the former State Highway and Public Works Com-

§§ 148-38, 148-39: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-40. Recapture of escaped prisoners.—The rules and regulations for the government of the State prison system may provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or prison camps, or county road camps of this State, and the State Prison Department may pay to any person recapturing an escaped convict such reward or expense of recapture as the regulations may provide. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the State Prison Department. (1933, c. 172, s. 21; 1955, c. 238, s. 8; 1957, c. 349, s. 10.)

Editor's Note.—The 1955 amendment and Public Works Commission" in line five and for "Division of Prisons" at the

The 1957 amendment substituted "State Prison Department" for "State Highway

§ 148-41. Recapture of escaping prisoners; reward.—The Director of Prisons shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Director shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem advisable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Prison Department and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407;

1917, c. 236; 1917, c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10.)

Cross Reference.—See note to § 148-45.
Editor's Note.—

The first 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" in the first sentence, and substituted "Director"

for "Commission" in the second sentence. And the second 1955 amendment struck out the former second paragraph.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-42. Indeterminate sentences.—The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the Director is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoner's conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior which his conduct may justify. (1933, c. 172, s. 24; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director" for "Commission."

Commutation of Indeterminate Sentence.—Where judgment imposing prison sentence of not less than five nor more than seven years was commuted by Governor to a prison sentence of from two years, four months, thirteen days to four years, four months, and thirteen days, such sentence remained an indeterminate

sentence, and whether prisoner was to be discharged at the conclusion of the minimum term or some time thereafter prior to the expiration of the maximum term was for determination of the State Highway and Public Works Commission. In re Swink, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

Applied in State v. Cooper, 238 N. C. 241, 77 S. E. (2d) 695 (1953).

§ 148-44. Segregation as to race, sex and age. — The Department shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and shall provide for segregation of youthful offenders as required by §§ 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10.)

Editor's Note.—

Prior to the 1957 amendment this sec-

tion referred to the former State Highway and Public Works Commission.

§ 148-45. Escaping or assisting escape from the State prison system.—Any prisoner serving a sentence imposed upon conviction of a misdemeanor who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year. Any prisoner serving a sentence imposed upon conviction of a felony who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years. Any prisoner convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years. Any prisoner who connives at, aids or assists other prisoners to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court. Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the prisoner is held at the time an offense defined by this statute is committed by such prisoner. Any prisoner convicted of an escape or attempt

to escape classified as a felony by this statute shall immediately be classified and treated as a convicted felon even if such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1933, c. 172, s. 26; 1955, c. 279, s. 2.)

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

The 1955 amendatory act, which became effective March 22, 1955, provided in section 4: "The provisions of this act shall be construed to be mandatory rather than directive; but this act does not apply to

any offenses committed prior to the effective date thereof, and any such offense is punishable as provided by the statute in force at the time such offense was committed."

Quoted in *In re Swink*, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

§ 148-47. Disposition of child born of female prisoner.—Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the superintendent of public welfare of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section. (1933, c. 172, s. 28; 1955, c. 1027.)

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

§ 148-48. Parole powers of Board of Paroles unaffected.—Nothing in this chapter shall be construed to limit or restrict the power of the Board of Paroles to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, substituted "Board of Paroles" for "Governor."

ARTICLE 3A.

Prison Camp for Youthful and First Term Offenders.

§ 148-49.1. Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.—The State Hospitals Board of Control is authorized and empowered to convert the old "Prisoners of War" Camp located on its property at Camp Butner into a modern prison camp or guardhouse with a capacity of one hundred (100) for the purpose of receiving and detaining such youthful and first term prisoners as may be sent it by the Director of Prisons under such rules and regulations as may be jointly adopted by the Director of Prisons and the North Carolina Hospitals Board of Control. Should the North Carolina Hospitals Board of Control find it more practicable to establish the prison camp or guardhouse on some other property owned by the State at Butner, then, and in such event, such prison camp or guardhouse may be constructed at such other location on property owned by the State at Butner. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9.)

Editor's Note.—

The 1955 amendment substituted "Di-

rector of Prisons" for "State Highway and Public Works Commission."

§ 148-49.2. "Youthful offender" and "first term offender" defined.

Judicial Notice.—The courts will take judicial notice of the fact that the "Umstead Youth Center" is a State penal institution authorized under and by virtue of chapter 297, Session Laws of 1949, and

maintained for the purpose of receiving and detaining youthful and first term prisoners. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

§ 148-49.3. Employment and supervision of prisoners.—Prisoners received at Camp Butner Prison shall be employed in work on the farm, workshops, the upkeep and maintenance of the property located at Camp Butner or in such other similar work as may be determined by the State Hospitals Board of Control and the Director of Prisons. The said prisoners to be under the general supervision of the agents and employees of the Director of Prisons or of such employees of the State Hospitals Board of Control as may be agreed upon by the two State agencies. (1949, c. 297, s. 3; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

section, means to make use of the services of the "prisoners," and not in the sense of hiring them for wages. *Alliance Co. v. State Hospital*, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Meaning of "Employed."—The word "employed," in the sense it is used in this

§ 148-49.4. Expenses incident to conversion of Camp and maintenance of prisoners.—All expenses incident to the conversion of the old "Prisoners of War" Camp shall be borne by the State Hospitals Board of Control and paid out of the proceeds from the sale of surplus property owned by said Board and located at Camp Butner. Said prison camp or guardhouse to fully meet the requirements of the Director of Prisons as to construction, plans and specifications. The cost of the maintenance of prisoners assigned to said prison shall be borne by the State Hospitals Board of Control. (1949, c. 297, s. 4; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

§ 148-49.5. Adoption of rules and regulations.—As soon as practicable the State Hospitals Board of Control and the Director of Prisons shall jointly adopt such rules and regulations as they may deem necessary to fully carry out the intents and purposes of this article. (1949, c. 297, s. 5; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

§ 148-49.6. Other prison camps for youthful and first term offenders.—The State Hospitals Board of Control is authorized to establish and construct modern prison camps or guardhouses on any other property of the State under its supervision and control where youthful and first term prisoners may be sent, supervised and employed as and in the manner provided in this article. (1953, c. 1249.)

ARTICLE 4.

Paroles.

§§ 148-50, 148-51: Repealed by Session Laws 1955, c. 867, s. 13.

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

§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.—Whenever the words "Commissioner of Paroles" are used

or appear in any statute of this State, the same shall be stricken out and the words "Board of Paroles" shall be inserted in lieu thereof. (1953, c. 17, s. 2.)

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

§ 148-52. Appointment of Board of Paroles; members; duties; quorum; salary.—(a) There is hereby created a Board of Paroles with authority to grant paroles (including both regular and temporary paroles), to persons held by virtue of any final order or judgment of any court of this State in any prison, jail, or other penal institution of this State or its political subdivisions. The Board shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before June 30, 1955) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) The Board of Paroles shall consist of three members, all of whom shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Board. The Governor shall designate one of the persons so appointed to serve as chairman of the Board of Paroles. The three members of the first board shall be appointed for terms of office beginning July 1, 1955, as follows: One member to serve for two (2) years, one member to serve for three (3) years, and one member to serve for four (4) years. Any appointment to fill a vacancy shall be for the balance of the term only, but in the event that any member of the Board is temporarily incapable of performing his duties, the Governor may appoint some suitable person to act in his stead during the period of incapacity. At the end of the respective terms of office of the members of the first board, their successors shall be appointed for terms of four (4) years and until their successors are appointed and qualified. The Governor shall have power to remove any member of the Board only for total disability, inefficiency, neglect of duty or malfeasance in office.

(c) A majority of the Board shall constitute a quorum for the transaction of business.

(d) The salary of the members of the Board shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

(e) Nothing herein shall affect the power and authority of the State Board of Correction and Training to grant, revoke, or terminate paroles as now provided by law with regard to inmates of any training or correctional institution, school, or agency of a similar nature which is under the management and administrative control of said Board. (1935, c. 414, s. 2; 1939, c. 335; 1953, c. 17, s. 3; 1955, c. 867, s. 1.)

Editor's Note. — The 1953 amendment, effective July 1, 1953, rewrote this section

of Paroles.

which formerly provided for a Commis-

sioner of Paroles. The 1955 amendment, effective July 1, 1955, again rewrote this section.

§ 148-52.1. Prohibited political activities of member or employee of Board of Paroles.—No member or employee of the Board of Paroles shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether voluntary or involuntary, to any political party. Any Board member or employee of the Board who shall violate any of the provisions of this section shall be subject to dismissal from office or employment. (1953, c. 17, s. 4.)

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

§ 148-53. Investigators and investigations of cases of prisoners.—For the purpose of investigating the cases of prisoners serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms, the Board of Paroles is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the direction of the Board of Paroles, investigate all cases designated by it, and otherwise aid the Board in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair, and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2.)

Editor's Note.—The 1955 amendment, the former provision as to investigating effective July 1, 1955, substituted "Board any prison, prison camp, etc., when war- of Paroles" for "Governor," and omitted ranted.

§ 148-54. Parole supervisors provided for; duties.—The Board of Paroles is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the Board of Paroles and under regulations prescribed by it exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Board of Paroles, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the Board of Paroles may require. The number of supervisors may be increased by the Board of Paroles as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, substituted "Board of Paroles" for "Governor."

§ 148-54.1: Repealed by Session Laws 1955, c. 867, s. 13.

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

§ 148-55. Administrative assistant; field supervisors; clerical and secretarial help, etc., for Board of Paroles; salaries and expenses.—(a) The Board of Paroles shall have authority to employ sufficient field supervisors, clerical and secretarial help and other necessary labor to conduct the affairs of the Board with economy and efficiency. It shall also have authority to discharge personnel, assign their duties and responsibilities, administer all fiscal affairs relating to the budget, expenditures, purchases, and equipment. All employees of the Board of Paroles shall be subject to the provisions of chapter 143, article 2 of the General Statutes. All salaries and expenses, including the salary of the members of the Board of Paroles shall be paid by the State Prison Department upon voucher approved by the chairman of the Board of Paroles.

(b) The chairman of the Board of Paroles shall exercise such administrative authority as the Board shall delegate to him. The Board of Paroles may designate its chief supervisor or one of its investigators to serve (in addition to his regular duties) as administrative assistant to the chairman. (1935, c. 414, s. 5; 1953, c. 17, s. 6; 1955, c. 867, s. 3; 1957, c. 349, s. 10.)

Editor's Note.—The 1953 amendment, supervisors, chairman of Board of Paroles and administrative assistant.

The 1955 amendment, effective July 1, 1955, added the provisions relating to field The words "State Prison Department" have been substituted for "State Highway

and Public Works Commission" in subsection (a), the General Assembly apparently having failed to do so through inadvertence. See G. S. 148-1.

§ 148-56. Assistance in supervision of parolees and preparation of case histories.—Upon request by the Board of Paroles, the county superintendents of public welfare shall assist in the supervision of parolees and shall prepare and submit to the Board of Paroles case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9.)

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

§ 148-57. Rules and regulations for parole consideration.—The Board of Paroles is hereby authorized and empowered to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. (1935, c. 414, s. 7; 1955, c. 867, s. 4.)

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

§ 148-58. Time of eligibility of prisoners to have cases considered.—All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate; provided, that any prisoner serving sentence for life shall be eligible for such consideration when he has served ten years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section. Cited in *State v. Conner*, 241 N. C. 468, 85 S. E. (2d) 584 (1955).

§ 148-58.1. Limitations on discharge from parole; effect of discharge; relief from further reports; permission to leave State or county.—(a) No person released on parole (except temporary parole) shall be discharged from parole prior to the expiration of a period of one year. The official discharge by the Board of Paroles of a parolee shall have the effect of terminating the sentence or sentences under which the parolee was paroled.

(b) The Board of Paroles may relieve a person on parole from making reports and may permit such person to leave the State or county if fully satisfied that this is for the best interest of both the parolee and society. (1953, c. 17, s. 7; 1955, c. 867, s. 10.)

Editor's Note. — The act inserting this section became effective July 1, 1953. The 1955 amendment, effective July 1, 1955, rewrote this section.

§ 148-59. Duties of clerks of all courts as to commitments; statements filed with Board of Paroles.—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Board of Paroles shall by regulations prescribe, which information shall contain, among other things, the following: (1) The court in which the prisoner was tried; (2) the name of the prisoner and of all co-defendants; (3) the date or term when the prisoner was tried; (4) the offense with which the prisoner was charged and the offense for which convicted; (5) the judgment of the court and the date of the beginning of the sentence; (6) the name and address of the presiding judge; (7) the name and address of the prosecuting solicitor; (8) the name and address of private prosecuting attorney, if any; (9) the name and ad-

dress of the arresting officer; and (10) all available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Board of Paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Prison Department without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10.)

Editor's Note. — The 1953 amendment, effective July 1, 1953, substituted "Board of Paroles" for "Commissioner" in line three of the second paragraph. The 1955 amendment, effective July 1, 1955, substituted "Board of Paroles" for "Governor" in the first paragraph.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission" near the end of the section.

§ 148-60.1. Allowances for paroled prisoner.—Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Board of Paroles may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money not to exceed twenty-five dollars (\$25.00). (1953, c. 17, s. 8.)

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

§ 148-61.1. Revocation of parole by Board; conditional or temporary revocation.—(a) The Board of Paroles may at any time, in its discretion, revoke the order of parole of any parolee. The time a parolee is at liberty on regular parole shall not be counted as any portion of or part of the time served on his sentence, and if any parolee shall have his parole revoked, he shall thereafter be returned to the penal institution having custodial jurisdiction over him.

(b) The Board of Paroles may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time during which the Board of Paroles shall determine whether or not the conditions of said parole have been violated. If it is determined by the Board of Paroles that the conditions of said parole have been violated, the Board of Paroles may in its discretion revoke the order of parole. If it is determined by the Board of Paroles that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be reinstated upon his original parole. (1951, c. 947, s. 1; 1955, c. 867, s. 6.)

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

§ 148-62. Discretionary revocation of parole upon conviction of crime.—If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the Board of Paroles and at such time as the Board of Paroles may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the Board of Paroles, to serve the remainder of the first or original sentence upon which his parole was granted, after the comple-

tion or termination of the sentence for said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The Board of Paroles, however, may, in its discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. (1935, c. 414, s. 12; 1951, c. 947, s. 2; 1955, c. 867, s. 12.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, substituted "Board of Paroles" for "Governor."

§ 148-64. Cooperation of prison and other officials; information to be furnished.—The Director of the Prisons, the warden of each prison and the superintendent of each camp and farm and all officers and employees thereof and all other public officials shall at all times cooperate with the Board of Paroles and shall furnish to it, or any member of its staff, all information that may be requested from time to time that will assist the Board in performing its functions, and all such wardens and other employees shall at all times give to the Board of Paroles and its staff free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7.)

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

§ 148-65: Repealed by Session Laws 1955, c. 867, s. 13.

ARTICLE 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Board of Agriculture may contract for prison labor.—The corporate authorities of any city or town may contract in writing with the State Prison Department for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Board of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Prison Department for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C. S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Highway and Public Works Commission" for "State Highway and Public Works Commission."

§ 148-67. Hiring to cities and towns and State Board of Agriculture.—The State Prison Department shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Prison Department, in its discretion, to hire to the Board of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by

the State Prison Department. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C. S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10.)

Editor's Note.—

The 1957 amendment substituted "State

Prison Department" for "State Highway and Public Works Commission."

§ 148-70. **Management and care of convicts; prison industries; disposition of products of convict labor.**—The State Prison Department in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the Department shall provide for the guarding and working of such convicts under its sole supervision and control. The Department may make such contracts for the hire of the convicts confined in the State prison as may in its discretion be proper and will promote the purpose and duty to make the State prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in section eleven, article eleven of the Constitution. The Department may use the labor of convicts confined in the State prison in such work on farms, in manufacturing, either within or without the State prison, as the Department may find proper and profitable to be carried on by the State prison; and the Department may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the State prison, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State; and the Department may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note. — The 1957 amendment "State Highway and Public Works Commission." substituted "State Prison Department" for

ARTICLE 5A.

Prison Labor for Farm Work.

§§ 148-70.1 to 148-70.7: Repealed by Session Laws 1957, c. 349, s. 11.

ARTICLE 7.

Consolidated Records Section—Prison Department.

§ 148-74. **Records Section established.**—A State bureau to be entitled Consolidated Records Section—Prison Department is hereby established. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4.)

Editor's Note. — The 1953 amendment changed the catchline of this section from "Bureau established" to "Records Section established," and substituted in the section "Consolidated Records Section—Prison

Department" for "the Bureau of Identification." Section 1 of the amendatory act changed the article heading which formerly read "Bureau of Identification."

§ 148-75. **Director.**—A deputy warden of the State prison is hereby designated as director of said Records Section, who shall be a fingerprint expert and familiar with other means of identifying criminals and who shall have complete control of said Records Section within the limits hereinafter prescribed, said director to devote a sufficient portion of his time to the purposes of said Records Section and shall maintain the principal offices of the same at the State prison, and the said Records Section with full equipment as herein provided for shall be established and maintained by the board of trustees of the penitentiary out of the general appropriation to the State prison. (1925, c. 228, s. 2; 1953, c. 55, s. 3.)

Editor's Note. — The 1953 amendment substituted "Records Section" for "Bureau".

§ 148-76. Duty of Records Section.—It shall be the duty of the said Consolidated Records Section—Prison Department to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or co-operative action on the part of the criminals, reporting such conditions, and to co-operate with all officials in detecting and preventing. (1925, c. 228, s. 3; 1953, c. 55, s. 4.)

Editor's Note — The 1953 amendment inserted "Consolidated Records Section—Prison Department" in lieu of "Bureau of Identification" in this section, and substituted "Records Section" for "Bureau" in the catchline.

§ 148-78. Annual report.—The director of the Records Section is directed to submit in his annual report as a part of the report of the State prison, a full account of all funds received and expenses to the Governor, and an estimate of what is necessary to carry out the provisions of this article. (1925, c. 228, s. 5; 1953, c. 55, s. 4.)

Editor's Note. — The 1953 amendment substituted "Records Section" for "Bureau".

§ 148-79. Fingerprints taken; photographs. — Every chief of police and sheriff in the State of North Carolina is hereby required to take or cause to be taken on forms furnished by this Records Section the fingerprints of every person convicted of a felony, and to forward the same immediately by mail to the said Consolidated Records Section—Prison Department. The said officers are hereby required to take the fingerprints of any other person when arrested for a crime when the same is deemed advisable by any chief of police or sheriff, and forward the same for record to the said Records Section. No officer, however, shall take the photograph of a person arrested and charged or convicted of a misdemeanor unless such person is a fugitive from justice, or unless such person is, at the time of arrest, in the possession of goods or property reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the Federal Bureau of Investigation, or the State Bureau of Investigation, or some other law enforcing officer or agency. (1925, c. 228, s. 6; 1945, c. 967; 1953, c. 55, s. 4.)

Editor's Note.— The 1953 amendment inserted "Consolidated Records Section — Prison Department" for "Bureau of Identification" in lieu of "Bureau", and substituted "Records Section" for "Bureau of Identification."

§ 148-80. Seal of Records Section; certification of records. — The director shall provide a seal to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of said Consolidated Records Section—Prison Department and when so certified under seal such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4.)

Editor's Note. — The 1953 amendment inserted "Consolidated Records Section—Prison Department" in lieu of "Bureau of Identification" in this section, and substituted "Records Section" for "Bureau" in the catchline.

§ 148-81. Report of disposition of persons fingerprinted.—Every chief of police and sheriff shall advise said Records Section of final disposition of all persons fingerprinted. (1925, c. 228, s. 8; 1953, c. 55, s. 4.)

Editor's Note. — The 1953 amendment substituted "Records Section" for "Bureau".

ARTICLE 9.

Prison Advisory Council.

§§ 148-85 to 148-88: Repealed by Session Laws 1957, c. 349, s. 11.

Chapter 149.**State Song and Toast.**

Sec.

149-2. "A Toast" to North Carolina.

§ 149-2. "**A Toast**" to North Carolina.—The song referred to as "A Toast" to North Carolina is hereby adopted and declared to be the official toast to the State of North Carolina, said toast being in words as follows:

"Here's to the land of the long leaf pine,
The summer land where the sun doth shine,
Where the weak grow strong and the strong grow great,
Here's to 'Down Home', the Old North State!

"Here's to the land of the cotton bloom white,
Where the scuppernong perfumes the breeze at night,
Where the soft southern moss and jessamine mate,
'Neath the murmuring pines of the Old North State!

"Here's to the land where the galax grows,
Where the rhododendron's rosette glows,
Where soars Mount Mitchell's summit great,
In the 'Land of the Sky', in the Old North State!

"Here's to the land where maidens are fair,
Where friends are true and cold hearts rare,
The near land, the dear land whatever fate,
The blest land, the best land, the Old North State!"

(1957, c. 777.)

Chapter 150.**Uniform Revocation of Licenses.**

Sec.

150-1 to 150-8. [Repealed.]

150-9. Definitions.

150-10. Opportunity for licensee or applicant to have hearing.

150-11. Notice of contemplated board action; request for hearing; notice of hearing.

150-12. Method of serving notice of hearing.

150-13. Venue of hearing.

150-14. Hearings public; use of trial examiner or committee.

150-15. Rights of person entitled to hearing.

Sec.

150-16. Powers of board in connection with hearing.

150-17. Contempt procedure.

150-18. Rules of evidence.

150-19. Transcript of the proceedings.

150-20. Manner and time of rendering decision.

150-21. Service of written decision.

150-22. Procedure where person fails to request or appear for hearing.

150-23. Contents of decision.

150-24. Availability of judicial review; notice of appeal; waiver of right to appeal.

<p>Sec. 150-25. Record filed by board with clerk of superior court; contents of record. 150-26. Appeal bond; stay of board order. 150-27. Scope of review; power of court in disposing of the case. 150-28. Power of board to reopen the case. 150-29. Power of reviewing court to remand for hearing newly discovered evidence; procedure before the board.</p>	<p>Sec. 150-30. Appeal to Supreme Court; appeal bond. 150-31. Power of board to sue; to seek court action in preventing violations. 150-32. Declaratory judgment on validity of rules. 150-33. Judicial review procedure exclusive. 150-34. Amending and repealing.</p>
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§§ 150-1 to 150-8: Repealed by Session Laws 1953, c. 1093.

Editor's Note.—The repealing act, effective July 1, 1953, substituted §§ 150-9 to 150-34 in lieu of the repealed sections.

§ 150-9. **Definitions.**—As used in this chapter the term “board” shall mean the State Board of Certified Public Accountant Examiners, the State Board of Architectural Examination and Registration, the State Board of Barber Examiners, the State Board of Chiropody Examiners, the North Carolina State Board of Chiropractic Examiners, the North Carolina Licensing Board for Contractors, the North Carolina State Board of Cosmetic Art Examiners, the Board of Examiners of Electrical Contractors, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Engineers and Land Surveyors, the North Carolina Board of Nurse Examiners, and the North Carolina Board of Nurse Examiners Enlarged, the North Carolina Board of Opticians, the North Carolina State Board of Examiners in Optometry, the North Carolina State Board of Osteopathic Examination and Registration, the State Board of Examiners of Plumbing and Heating Contractors, the State Examining Committee of Physical Therapists, the Board of Examiners for Licensing Tile Contractors, and the North Carolina Board of Veterinary Medical Examiners. (1953, c. 1093.)

Editor's Note.—For comment on §§ 150-9 to 150-34, see 31 N. C. Law Rev. 378.

§ 150-10. **Opportunity for licensee or applicant to have hearing.**—Every licensee or applicant for a license, except applicants for license by comity and applicants for reinstatement after revocation, shall be afforded notice and an opportunity to be heard before the board shall have authority to take any action, the effect of which would be

- (a) To deny permission to take an examination for licensing for which application has been duly made; or
- (b) To deny a license after examination for any cause other than failure to pass an examination; or
- (c) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
- (d) To suspend a license; or
- (e) To revoke a license. (1953, c. 1093.)

§ 150-11. **Notice of contemplated board action; request for hearing; notice of hearing.**—(a) When a board contemplates taking any action of a type specified in subsections (a) or (b) of § 150-10 it shall give to the applicant a written notice containing a statement:

- (1) That the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
- (2) Indicating in what respects the applicant has so failed to satisfy the board; and
- (3) That the applicant may secure a hearing before the board by depositing in

the mail within twenty days after service of said notice, a registered letter addressed to the board and containing a request for a hearing.

In any board proceeding involving the denial of a duly made application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

(b) When a board contemplates taking any action of a type specified in subsections (c), (d), or (e) of § 150-10 it shall give to the licensee a written notice containing a statement:

(1) That the board has sufficient evidence which, if not rebutted or explained, will justify the board in taking the contemplated action;

(2) Indicating the general nature of the evidence, and

(3) That unless the licensee or applicant within twenty days after service of said notice deposits in the mail a registered letter addressed to the board and containing a request for a hearing, the board will take the contemplated action.

(c) If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of such request, notify the licensee or applicant of the time and place of hearing, which hearing shall be held not more than thirty nor less than ten days from the date of the service of such notice. (1953, c. 1093.)

Applied in *In re Berman*, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 150-12. **Method of serving notice of hearing.**—Any notice required by § 150-11 may be served either personally by an officer authorized by law to serve process, or by registered mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addressee or refusal of the addressee to accept the notice. (1953, c. 1093.)

§ 150-13. **Venue of hearing.**—Board hearings held under the provisions of this chapter shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county. (1953, c. 1093.)

§ 150-14. **Hearings public; use of trial examiner or committee.**—All board hearings under this chapter shall be open to the public. At all such hearings at least a majority of the board members shall be present to hear and determine the matter; except that, in cases where the hearing is held in a county other than that in which the board maintains its office, the board may designate in writing one or more of its members to conduct the hearing as a trial examiner or trial committee, with the decision to be rendered in accordance with the provisions of § 150-20. (1953, c. 1093.)

§ 150-15. **Rights of person entitled to hearing.**—A person entitled to be heard pursuant to this chapter shall have the right

(a) To be represented by counsel;

(b) To present all relevant evidence by means of witnesses and books, papers, and documents;

(c) To examine all opposing witnesses on any matter relevant to the issues; and

(d) To have subpoenas and subpoenas duces tecum issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request therefor to the board. (1953, c. 1093.)

§ 150-16. **Powers of board in connection with hearing.**—In connection with any hearing held pursuant to the provisions of this chapter the board or its trial examiner or committee shall have power

(a) To have counsel to develop the case;

(b) To subpoena witnesses and relevant books, papers, and documents;

(c) To administer oaths or affirmations to witnesses called to testify;

(d) To take testimony;

(e) To examine witnesses; and

(f) To direct a continuance of any case. (1953, c. 1093.)

§ 150-17. **Contempt procedure.**—In proceedings before a board or its trial examiner or committee, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court shall issue such order in its discretion. Should any person willfully fail to comply with an order so issued the court shall punish him as for contempt. (1953, c. 1093.)

§ 150-18. **Rules of evidence.**—In proceedings held pursuant to this chapter, boards may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs. Boards may in their discretion exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. In proceedings involving the suspension, revocation, or the withholding of the renewal of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this State. (1953, c. 1093.)

§ 150-19. **Transcript of the proceedings.**—In all hearings conducted pursuant to this chapter, a complete record shall be made of all evidence received during the course of the hearing. (1953, c. 1093.)

§ 150-20. **Manner and time of rendering decision.**—After a hearing has been completed the members of the board who conducted the hearing shall proceed to consider the case and as soon as practicable shall render their decision. If the hearing was conducted by a trial examiner or trial committee, the decision shall be rendered by the board at a meeting where a majority of the members are present and participating in the decision, provided that all such members who were not present throughout the hearing must thoroughly familiarize themselves with the entire record including all evidence taken at the hearing before participating in the decision. In any case the decision must be rendered within ninety days after the hearing. (1953, c. 1093.)

§ 150-21. **Service of written decision.**—Within five days after the decision is rendered the board shall serve upon the person whose license is involved a written copy of the decision, either personally or by registered mail. If the decision is sent by registered mail it shall be deemed to have been served on the date borne on the return receipt. (1953, c. 1093.)

§ 150-22. Procedure where person fails to request or appear for hearing.—If a person who has requested a hearing does not appear, and no continuance has been granted the board or its trial examiner or committee may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by § 150-20.

Where because of accident, sickness, or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give such person notice thereof as required by §§ 150-11 and 150-12. At the time and place fixed a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing. (1953, c. 1093.)

§ 150-23. Contents of decision.—The decision of the board shall contain

- (a) Findings of fact made by the board;
- (b) Conclusions of law reached by the board;
- (c) The order of the board based upon these findings of fact and conclusions of law; and
- (d) A statement informing the person whose license is involved of his right to appeal to the courts and the time within which such appeal must be sought. (1953, c. 1093.)

Quoted in *In re Berman*, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 150-24. Availability of judicial review; notice of appeal; waiver of right to appeal.—Any person entitled to a hearing pursuant to this chapter, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the Superior Court of Wake County, or in the superior court of the county in which the hearing was held, or, upon agreement of the parties to the appeal, in any other superior court of the State. In order to obtain such review such person must, within twenty days after the date of service of the decision as required by § 150-21, file with the board secretary a written notice of appeal, stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. Failure to file such notice of appeal in the manner and within the time stated shall operate as a waiver of the right to appeal and shall result in the decision of the board becoming final; except that for good cause shown, the judge of the superior court may issue an order permitting a review of the board decision notwithstanding such waiver. (1953, c. 1093.)

§ 150-25. Record filed by board with clerk of superior court; contents of record.—Within thirty days after receipt of the notice of appeal, the board shall prepare, certify, and file with the clerk of the superior court in the proper county the record or the case, comprising

- (a) A copy of the notice of hearing required under §§ 150-11 and 150-12;
- (b) A complete transcript of the testimony taken at the hearing;
- (c) Copies of all pertinent documents and other written evidence introduced at the hearing;
- (d) A copy of the decision of the board containing the items specified in § 150-23; and
- (e) A copy of the notice of appeal containing the exceptions filed to the decision.

With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional

costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1953, c. 1093.)

§ 150-26. Appeal bond; stay of board order.—The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of \$200 at the same time the notice of appeal is filed with the board as required by § 150-24. At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The court may grant or deny the stay in its discretion. (1953, c. 1093.)

§ 150-27. Scope of review; power of court in disposing of the case.—Upon the review of any board decision under this chapter, the judge shall sit without a jury, and may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (f) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1953, c. 1093.)

Findings of Fact Supported by Competent Evidence Are Conclusive.—The administrative findings of fact made by the State Board of Opticians, if supported by competent, material and substantial evidence in view of the entire record, are conclusive upon a reviewing court, and not within the scope of its reviewing powers. In

re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

The court cannot substitute its judgment for that of the State Board of Opticians in making findings of fact. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 150-28. Power of board to reopen the case.—At any time after the hearing and prior to the service of the board's decision, the person affected may request the board to reopen the case to receive additional evidence or for other cause. The granting or refusing of such request shall be within the board's discretion. The board may reopen the case on its own motion at any time before notice of appeal is filed; thereafter, it may do so only with permission of the reviewing court. (1953, c. 1093.)

§ 150-29. Power of reviewing court to remand for hearing newly discovered evidence; procedure before the board.—At any time after the notice of appeal has been filed, the aggrieved person may apply to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the board, the court may remand the case to the board where additional evidence shall be heard. The board may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation of, or modifications in, its findings or decision. (1953, c. 1093.)

§ 150-30. **Appeal to Supreme Court; appeal bond.**—Any party to the review proceeding, including the board, may appeal to the Supreme Court from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the board's decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court. (1953, c. 1093.)

§ 150-31. **Power of board to sue; to seek court action in preventing violations.**—Any board may appear in its own name in the courts of the State and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. (1953, c. 1093.)

§ 150-32. **Declaratory judgment on validity of rules.**—The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the Superior Court of Wake County when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board. (1953, c. 1093.)

§ 150-33. **Judicial review procedure exclusive.**—The provisions of this chapter providing a uniform method of judicial review of board actions of the kind specified in § 150-10 shall constitute an exclusive method of court review in such cases and shall be in lieu of any other review procedure available under statute or otherwise. Nothing herein, however, shall be construed to bar the use of any available remedies to test the legality of any type of board action not specified in § 150-10 (1953, c. 1093.)

§ 150-34. **Amending and repealing.**—The provisions of this article may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of this article being amended, repealed, or superseded. (1953, c. 1093.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1957

I, George B. Patton, Attorney General of North Carolina, do hereby certify that the foregoing 1957 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.

GEORGE B. PATTON,
Attorney General of North Carolina

